

1-1997

Beginning from (My) Experience: The Paradoxes of Lesbian/Queer Narrativites

Ruthann Robson

Follow this and additional works at: https://repository.uchastings.edu/hastings_law_journal



Part of the [Law Commons](#)

Recommended Citation

Ruthann Robson, *Beginning from (My) Experience: The Paradoxes of Lesbian/Queer Narrativites*, 48 HASTINGS L.J. 1387 (1997).
Available at: https://repository.uchastings.edu/hastings_law_journal/vol48/iss6/13

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Law Journal by an authorized editor of UC Hastings Scholarship Repository. For more information, please contact wangangela@uchastings.edu.

Beginning From (My) Experience: The Paradoxes of Lesbian/Queer Narrativities

by

RUTHANN ROBSON*

The shaping of experience into narrative is a staple of progressive legal theorizing, including lesbian/queer¹ legal theorizing. The importance of narrative rests upon two intertwined beliefs. First, it rests upon the belief that the extant legal theories and doctrines are impoverished because they are based upon the experiences only of dominant groups, those who have had the power to construct the theories and doctrines. Second, the importance of narrative rests upon the belief that the present legal landscape can be improved if those of us outside the dominant group make public our experiences. In short, the argument provides that lesbians and other queers, faced with a dominant legal regime to which we are essentially “foreigners,” can effect change in the law by telling our stories.

the beginning

Let me begin again, this time with a quote:

* Professor of Law, City University of New York (CUNY) School of Law. This Article is based upon remarks at the *Intersexions* Symposium, held March 1997 in San Francisco, California. I am indebted to the organizers of the Symposium, especially Sarah Colby, as well as to the other participants. Some of my initial ruminations about this topic were delivered at the Modern Language Association (MLA) Conference, held December 1996 in Washington, D.C., on the panel “The Novel, Queer Theory, and Narrativity: Novelists on Queer Theory,” moderated by Joe Boone. I am appreciative of the comments by the other novelists on the panel: Michael Cunningham, Samuel Delaney, Jonathan Strong, and especially Valerie Miner.

I would also like to thank my research assistants, Julian Kahuna White and Jana Jacobson, and to thank Eve Preminger for her generous support of faculty scholarship at CUNY School of Law. This Article benefited from a CUNY Law Faculty Professional Development Award.

1. I use the term “queer” to denote gay male, lesbian, bisexual, transgendered, and other minority sexualities. I use the term “lesbian/queer” because my focus is specifically lesbian and because of the historical and contemporary erasure of lesbianism in discussions of minority sexual practices, cultures, and theorizing.

What would happen if one woman told the truth about her life?
The world would split open²

To include such an epigraph is to lay the foundation for a personal revelation: what feminists would name experience,³ what Foucault might call an engagement in the confessional mode,⁴ what postmodernists would label narrativity,⁵ and what legal theorists might entitle story-telling⁶ or outsider jurisprudence.⁷

And like most epigraphs, this one probably has more resonance for its user than for its audience. The first time I heard these words, they were read aloud not by their author, the poet Muriel Rukeyser,⁸ but by a fellow student in a women's literature course. We were using the then-newly-published anthology, *No More Masks!: An Anthology of Poems by*

2. MURIEL RUKEYSER, *Käthe Kollwitz*, in *THE COLLECTED POEMS OF MURIEL RUKEYSER* 479-84 (1978).

3. See *infra* notes 22-31 and accompanying text.

4. 1 MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY* 58 (Robert Hurley trans., Pantheon Books 1978) (1976) (arguing that since at least the Middle Ages, confession has been one of the "main rituals" relied upon for the "production of truth").

5. While the use of the terms "narrative," "narrativity," or "narratology," does not belong exclusively to postmodern discourse, these terms seem to predominate in structuralist, critical theory, semiotic, and post-structuralist texts. For a helpful volume containing definitions of these terms, as well as hundreds of other terms, see generally GERALD PRINCE, *DICTIONARY OF NARRATOLOGY* (1987).

6. See, e.g., Margaret (H.R.) Chon, *On the Need for Asian-American Narratives in Law: Ethnic Specimens, Native Informants, Storytelling and Silences*, 3 *ASIAN PAC. AM. L.J.* 4 (1993); Lisa Crooms, *Stepping Into the Projects: Lawmaking, Storytelling, and Practicing the Politics of Identification*, 1 *MICH. J. RACE & L.* 1 (1996).

7. Mari Matsuda is generally believed to have coined the term "outsider jurisprudence." Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 *MICH. L. REV.* 2320, 2323-24 (1989). Others have used the term "outsider scholarship." See, e.g., Mary Coombs, *Outsider Scholarship: The Law Review Stories*, 63 *U. COLO. L. REV.* 683, 683 (1992), or "outsider narratives." See, e.g., Jerome McCristal Culp, Jr., *Telling a Black Legal Story: Privilege, Authenticity, "Blunders," and Transformation in Outsider Narratives*, 82 *VA. L. REV.* 69, 69 (1996). This is not to suggest, however, that personal revelation is co-extensive with outsider jurisprudence. See *infra* note 97.

8. Muriel Rukeyser (1913-1980) "has long been known as one of the neglected, yet great and essential female voices of the twentieth century." *THE OXFORD COMPANION TO WOMEN'S WRITING IN THE UNITED STATES*, 772-73 (Cathy N. Davidson & Linda Wagner-Martin eds., 1995) [hereinafter *OXFORD COMPANION TO WOMEN'S WRITING*]. In addition to being a poet, Rukeyser was a novelist, biographer, translator, playwright, and theater critic. In her work and her life, she was known for her "outspoken political activism." See 6 *TWENTIETH-CENTURY AMERICAN LITERATURE* 3463 (Harold Bloom ed., 1987). To date, there has not been a full-length biography of Rukeyser. Biographers of other twentieth century writers portray Rukeyser's affairs with women. See, e.g., MARGOT PETERS, *MAY SARTON: A BIOGRAPHY* 145 (1997) (describing affair between Sarton and Rukeyser).

Women,⁹ and the very idea that there were enough poems written by women to fill an entire book seemed rather exciting. Part of each class consisted of a student presentation: a student would select a poem and read it aloud, talk about what the poem meant to her personally, and then facilitate a class discussion about the poem. In these discussions, we never mentioned line breaks or meters, and we almost always talked about our lives. Although it could not be graded in a traditional manner, we knew that telling and listening to our experiences was a fundamental portion of the course.

Käthe Kollwitz is the title of the poem by Muriel Rukeyser that my fellow student read aloud. Käthe Kollwitz was a visual artist, working in Germany between World Wars One and Two, most famous for her pacifism and her woodcuts. Her life was the subject of a biography, published a few years after the anthology.¹⁰ In the Rukeyser poem, Kollwitz becomes an embodiment of the dilemma of the woman artist—caught between her female gender and her “masculine art.” The poem provoked stories from the women in the class, a large proportion of whom were then called “returning women.” These returning women spoke about their struggles to do the reading for classes and attend to their demanding husbands and children; their tales were full of topless toothpaste tubes and televisions.

“If one woman told the truth about her life, the world would split open,” the woman who had read the poem aloud paraphrased. Her voice was sharp as she spoke very eloquently about being prescribed Valium when she told her physician husband that she felt her life was empty and she wanted to go to college. I remember that she spoke a long time, longer than had become customary. I remember looking across the circle at one of the other younger students in the room, trying to catch her eye and looking away when I did. I remember the sympathetic expression on the professor’s face. I remember it was spring, but I was still wearing boots. I remember tamping down my own reactions to what I saw as her economic privilege; I remember thinking that she could have sold the Valium on a street corner or on campus and I could have told her some good locations; I remember thinking that she was lucky to have toothpaste, topless or not. But this is what I remember most of all: no matter

9. NO MORE MASKS!: AN ANTHOLOGY OF POEMS BY WOMEN (Florence Howe & Ellen Bass eds., 1973).

10. MARTHA KEARNS, KÄTHE KOLLWITZ: WOMAN AND ARTIST (1976).

how much truth she told about her life, the world did not split open. At least not for me.

Because what I understood Muriel Rukeyser to mean, even allowing for poetic excess, was that the world was as susceptible to being ruptured by the story of an ordinary woman as a chicken could be cleaved in half by the sharp knife of a skillful chef. And every evening, in the restaurant where I waitressed, I could hear bones cracking as the chicken breasts were being sundered and sliced. Sometimes I would proffer this experience as the basis for my vegetarianism. I might even crack my knuckles as a soundtrack.

beginning again

Let me begin again, because I have digressed, as telling a story often leads one to do. What I want to discuss is the current state of narrativity in lesbian/queer legal theorizing. But any attempt at this discussion leads me to the role of experience in theorizing, especially in feminist theorizing. For although lesbian/queer narratives often accompany feminist narratives as well as racialized and ethnicized narratives—under the rubric of “outsider” scholarship—the explicit links between the feminist emphasis on experience and the present popularity of narrativity often remain unexplored.

from epistemology to experience

This is not to say that experience as epistemological method and the critiques of such are originary with feminists. To theorize at all, even if such theorizing is labeled ontological, is to engage the questions of epistemology—how we know what we (think we) know. In the ancient Chinese philosophic tradition, the most famous example is Chuang-tzu's story of the man who dreams he is a butterfly: “He didn't know if he was Chueng Chou who had dreamt he was a butterfly, or a butterfly dreaming he was Chueng Chou.”¹¹ Similarly, Plato's allegory of the cave points to the partiality of perception—experience—for apprehending reality.¹² Building on both Chinese and Greek traditions, Hegel sought to

11. CHUANG-TZU, *THE COMPLETE WORKS OF CHUANG-TZU* 49 (Burton Watson trans., 1968). Chuang-tzu (399-295 B.C.), now romanized as Zhuangzi, is generally considered to be a founder of the Chinese philosophy of Taoism, along with the more famous Lao-Tzu, now romanized as Laozi, the author of the *Tao-te Ching*.

12. PLATO, *Republic; Book 7*, in *THE COLLECTED DIALOGUES* 575, 747 (Edith Hamilton & Huntington Cairns eds., 1961). Plato (428-347 B.C.) is the reputed author of thirty-five

explain experience as the "dialectical process which consciousness executes on itself,"¹³ meaning that experience was both the mind's apprehension of a thing and the thing itself. Both before and after Hegel, countless other philosophers, including Kant,¹⁴ Husserl,¹⁵ Heidegger,¹⁶ Hume,¹⁷ all struggled with the role and reliability of experience in theorizing, yet most of these thinkers concentrated on ontological matters.¹⁸ Karl Marx, however, eschewed ontology for an imposition of the dialectical "history of consciousness" onto the experience of economics and state power.¹⁹

Yet we do not necessarily think of Chuang-tzu or Plato as authorities on experience, at least in the sense that we have come to think of experience. In its contemporary usage, experience is not the perception of objects *qua* objects, but is a more complicated—and personally unique—

dialectically structured dialogues featuring the learned Socrates. The allegory of the cave, appearing in the extended dialogue *Republic*, which mostly concerns theories of justice, is a rejection of empiricism. In the allegory of the cave, Socrates describes persons chained in a cave, unable to view each other, and able only to see a series of shadows on the wall of the cave. *See id.* at 747. These shadows are considered "real." *See id.* Once removed from the cave, an individual realizes that the shadows are in fact shadows and are made by a series of statues of objects. *See id.* at 747-48.

13. G.W.F. HEGEL, *THE PHENOMENOLOGY OF MIND* 142 (J.B. Baille trans., Harper & Row 1967) (1807).

14. *See generally* IMMANUEL KANT, *A CRITIQUE OF PURE REASON* (Norman Kemp Smith trans., MacMillan & Co., Ltd. 1st ed. 1929) (1781). Kant (1724-1804) argued for the existence of *a priori* concepts which are not dependent upon sensations or objects.

15. *See generally* EDMUND HUSSERL, *IDEAS: GENERAL INTRODUCTION TO PURE PHENOMENOLOGY* (W.R. Boyce Gibson trans., Humanities Press 1931) (1913). Husserl (1859-1938) is generally considered to be the founder of phenomenology, which includes the "bracketing of existence" so that the focus is on the meanings of an object in the human mind, regardless of whether or not the object is "real."

16. *See generally* MARTIN HEIDEGGER, *BEING AND TIME* (John Macquarrie & Edward Robinson trans., Harper 1962) (1927). Heidegger (1889-1976) was primarily concerned with human "being" and the struggle for humans to achieve authentic existence and meaning despite their interactions in the world of objects which have come to them through time.

17. *See generally* DAVID HUME, *AN ENQUIRY CONCERNING HUMAN UNDERSTANDING* (Oxford U. Press 3d ed. 1975) (1777). Hume (1711-76), known as the Scottish skeptic, argued that reason is simply the habitual association of experiences, thereby rejecting rational notions such as causation. Even more fundamentally, Hume rejected the existence of the individual, arguing that an individual is simply a "bundle" of different perceptions.

18. Which is not to say that these philosophers were devoted exclusively to ontological matters. David Hume, for example, wrote a six-volume history of England; Immanuel Kant is well-known for his philosophical investigations into ethics; Plato and Hegel both wrote extensively about the state as well as aesthetics.

19. *See* KARL MARX, *CAPITAL: A CRITIQUE OF POLITICAL ECONOMY* (Samuel Moore & Edward Aveling trans., Kerr & Co. 1906) (1867). Originally published in German in 1867, this classic has influenced generations of philosophers, political scientists, economists, and activists.

process involving a host of interpersonal relationships, social conditions, environmental interactions, and events. The critiques of subjectivity, however, apply equally forcefully to experience as perception of objects and experience as personal history. In both cases, experience presupposes a fully constituted individual: perception and experience are something a person has.²⁰

Nevertheless, it is also widely recognized that experience constructs subjectivity. Even in a traditional philosophical dialectical process, consciousness itself is transformed by the apprehension of the object. In Marxist terms, "[l]ife is not determined by consciousness but consciousness by life."²¹ Similarly, we routinely relate specific experiences in our personal histories as a way of explaining our current personalities and we speak of transformative experiences.

For feminists of the 1970s, consciousness-raising—the sharing of personal experiences—was itself postulated as a transformative experience. Hearing one's own story spoken by one's self and recognizing one's own story in the stories of other women was itself an experience which would lead to a reconceptualization of the way one thought of one's own life and of one's identity as a woman. The relevance of experience, shared in the context of consciousness-raising sessions (whether formally named as such or not), has been called a core concept of feminism.²² The reliance of women on individual experience allowed women to question previously held "objective" notions, such as that women were not oppressed as women. Perhaps ironically, it was individual experience that formed the basis for shared identity—by speaking about individual problems women were to realize that these experiences were not in fact individual in the sense of being unique "personal" problems, but were part of larger patterns. According to an early 1970s "working sheet" for a beginning consciousness-raising group: "The consciousness-raising process is one in which personal experiences, when shared, are

20. See Joan Scott, *Experience*, in *FEMINISTS THEORIZE THE POLITICAL* 22, 27-33 (Judith Butler & Joan W. Scott eds., 1992) (discussing only the sense of experience as used by Anglo-American historians—and not the sense of experience as perception—and noting that "experience is something people have").

21. KARL MARX & FREDERICK ENGELS, *THE GERMAN IDEOLOGY* 47 (C.J. Arthur ed., Lawrence & Wishart 2d ed. 1974) (1846).

22. See JUDITH GRANT, *FUNDAMENTAL FEMINISM: CONTESTING THE CORE CONCEPTS OF FEMINIST THEORY* 4 (1993) (arguing that "much of the richness" as well as "a good portion" of the problems of feminist theory are traceable to the three "core concepts" of feminism, which are "woman," experience, and personal politics).

recognized as a result not of an individual's idiosyncratic history and behavior, but of the system of sex-role stereotyping."²³ Or, as stated two decades later by feminist theorist Catharine MacKinnon:

The analysis that the personal is political came out of consciousness raising. It has four interconnected facets. First, women as a group are dominated by men as a group, and therefore as individuals. Second, women are subordinated in society, not by personal nature or by biology. Third, the gender division, which includes the sex division of labor which keeps women in high-heeled low-status jobs, pervades and determines even women's personal feelings in relationships. Fourth, since a woman's problems are not hers individually but those of women as a whole, they cannot be addressed except as a whole. In this analysis of gender as a nonnatural characteristic of a division of power in society, the personal becomes the political.²⁴

There are many pitfalls and problems with consciousness-raising. First, the process as a means to its proclaimed end is debatable. Although many feminists posited the slogan "the personal is political" as a retort to New Left nonfeminists who interpreted consciousness-raising as simply personal therapy,²⁵ some feminists themselves expressed doubts as to the relationship between relating personal incidents and the achievement of political solutions. For example, as early as 1971, Carol Williams Payne published her piece about leaving her consciousness-raising group because she "felt that nothing could be accomplished by becoming more and more intimate with a small group of women."²⁶ Furthermore, once a group abandoned the "group therapy" model,²⁷ the ability to take concrete action was often hampered by the group's devotion to the leaderless, "structureless" mode of organization.²⁸

Further, like any methodology that posits experience as a path to truth, consciousness-raising possesses a fundamental flaw—the inability to account for women who experienced their own experiences as different from the political "truth" being proffered by others. This flaw led to an

23. *Consciousness Raising*, in *RADICAL FEMINISM* 280, 280 (Anna Koedt et al. eds., 1973). The unsigned piece also includes a list of topics which could be discussed by a group.

24. CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 95 (1989).

25. See GRANT, *supra* note 22, at 37.

26. Carol Williams Payne, *Consciousness Raising: A Dead End?*, in *RADICAL FEMINISM*, *supra* note 23, at 282, 284.

27. *Id.*

28. See Joreen, *The Tyranny of Structurelessness*, in *RADICAL FEMINISM*, *supra* note 23, at 285, 293 ("Unstructured groups may be very effective in getting women to talk about their lives; they aren't very good for getting things done.").

adoption of the concept of false consciousness,²⁹ the state inhabited by those who did not (yet) understand their condition in feminist terms. Yet because feminism itself attacked the existence of objective and singular truth (heretofore male), the positing of a singular truth necessary to render false consciousness "false" was problematic. Further, this version of truth was deemed partial, having been based only upon a relatively privileged and predominantly white group of women.³⁰

Despite the problems with consciousness-raising and the role of experience in feminist theorizing, it is important to remember the roots of the practice of relating individual experiences. Sharing experiences was intended to foster recognition of shared conditions and to reject the notion of individual pathologies. The goal was to forge an understanding that women's lives were constrained by political forces. It was not necessary that this goal be achieved by the particular method of sharing experience through consciousness-raising; what was necessary was that this understanding would lead to political action to improve women's lives.³¹ Thus, the sharing of experience was never in and of itself a goal.

coming out

The closest parallel to feminist consciousness-raising in the lesbian/queer context is "coming out." The stereotypical coming out narrative constructs an individual's experience as a linear progression, culmi-

29. The term "false consciousness" is derived from Marx, although apparently Marx himself never utilized the phrase. Nevertheless, the concept is fundamental to the Marxist concept of ideology, especially given the postulate that the ruling class is able to control the means of intellectual as well as material production. See MICHÈLE BARRETT, *THE POLITICS OF TRUTH: FROM MARX TO FOUCAULT* 7-10 (1991). The feminist adoption of the term may or may not have been Marxist-influenced. See GRANT, *supra* note 22, at 32 (arguing that although some early radical feminists may have believed it was so derived, it merely followed from feminism's emphasis on experience).

30. See, e.g., ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* 80-132 (1988); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990).

31. Writing in 1972, Joreen notes:

Consciousness raising as the main function of the women's liberation movement is becoming obsolete. Due to the intense press publicity of the last two years and the numerous overground books and articles now being circulated, women's liberation has become a household word. Its issues are discussed and informal rap groups are formed by people who have no explicit connection with any movement group. Purely educational work is no longer such an overwhelming need. The movement must go on to other tasks. It now needs to establish its priorities, articulate its goals, and pursue its objectives in a coordinated fashion.

Joreen, *supra* note 28, at 297.

nating in the revelation of one's lesbian or queer sexual identity.³² As lesbian theorist Judith Roof notes, the "quintessential lesbian narrative is the coming out story, not because there is something inherently lesbian about it, but because it is both ubiquitous and proclaimed as such by lesbians."³³ In lesbian literature, the coming out story is the common *bildungsroman*.³⁴ In a lesbian studies course, a professor may have the students "share" their "coming out stories."³⁵ Lesbian legal scholar Mary Dunlap has suggested that in order to evaluate scholarship, it is necessary that an author adhere to an ethical duty to elucidate his or her own experiences which are pertinent to the subject.³⁶

Yet although there is a sharing of stories in literary and other modes of cultural production, I do not believe that "coming out" is necessarily a narrative process in and of itself. As Kenneth Plummer suggests, narrative is important in the production of individual as well as communitarian sexual identities,³⁷ yet it is not the same as "life."³⁸ Thus, although coming out can be constructed as a story and often results in the reconstruction of a narrative of one's experiences, it is distinguishable from consciousness-raising because one does not necessarily come out through the revelation of one's own story combined with a recognition of its commonality with the other stories one is hearing. Further, coming out does not necessarily have the required "beginning, middle, and end" of narrative structure because we often refer to "coming out" to denote a declarative statement about one's sexual identity rather than a retelling of a story of which the claiming of an identity is the end.³⁹ Additionally,

32. See KENNETH PLUMMER, *TELLING SEXUAL STORIES: POWER, CHANGE AND SOCIAL WORLDS* 82-83 (1995).

33. JUDITH ROOF, *COME AS YOU ARE: SEXUALITY AND NARRATIVE* 104 (1996).

34. BONNIE ZIMMERMAN, *THE SAFE SEA OF WOMEN: LESBIAN FICTION 1969-1989*, 35-38 (1990).

35. See, e.g., *Sample Syllabi from Courses on Lesbianism*, in *LESBIAN STUDIES: PRESENT AND FUTURE* 217 (Margaret Cruikshank ed., 1982).

36. See Mary Dunlap, *Foundering on the Seas of Hopelessness: A Review of Gays/Justice*, 87 MICH. L. REV. 1366, 1368 n.8 (1989); Mary Dunlap, *Sexual Speech and the State: Putting Pornography in its Place*, 17 GOLDEN GATE U. L. REV. 359, 363 n.10 (1987).

37. Plummer argues:

[F]or narratives to flourish there must be a community to hear; that for communities to hear, there must be stories which weave together their history, their identity, their politics. The one—community—feeds upon and into the other—story. There is an ongoing dynamic or dialectic of communities, politics, identities, and stories.

PLUMMER, *supra* note 32, at 87.

38. "Whatever else a story is, it is not simply the lived life." *Id.* at 168.

39. As Aristotle notes, a narrative (*mythos* in Greek) must have a beginning, a middle, and an end. See ARISTOTLE'S *POETICS*, Ch. VII at 139 (Leon Golden trans., FSU Press 2d ed.

coming out is not always the self-construction of a narrative, as the possibility of being "outed" demonstrates.⁴⁰ My argument is that coming out is not necessarily or fundamentally a narrative process; one may just as easily come out in the context of nonnarrative experiences such as going to bars or flirting or engaging in sex, although certainly those incidents can later be narrativized.

This is the point at which I am permitted to engage in my own coming out story.

I have a confession: I often find such stories tedious. Including my own coming out narrative; especially my own narrative.

I have another confession: I am always tempted to pretend that my own narrative is so extraordinary—extraordinarily intense, or painful, or embarrassing, or funny, or wonderful, or even pathetic—that its specialness must be guarded.

This is my final confession: I am sometimes even tempted to construct and tell as true an extraordinary narrative—one that is intense and wonderful, or perhaps painful and pathetic—as long as it is interesting.

For that is narrative's ultimate imperative: to be fascinating. The formal structures of narrative, codified since Aristotle,⁴¹ are merely techniques to accomplish narrative's task of engaging our attention. This attention may ultimately be erotic. In the phrasing of literary theorist Peter Brooks, narrative is equated with desire: "Narratives both tell of desire—typically present some story of desire—and arouse and make use of desire as dynamic of signification."⁴² Similarly, Teresa de Lauretis ex-

1981). Aristotle's definitions of these terms endure. A beginning is that which itself is not, by necessity, after anything else, but after which something naturally develops. *See id.* An end is the opposite: "that which is naturally after something else, either necessarily or customarily, but after which there is nothing else." *Id.*

40. For discussions of "outing," see generally Susan J. Becker, *The Immorality of Publicly Outing Private People*, 73 OR. L. REV. 159 (1994); John P. Elwood, *Outing, Privacy, and the First Amendment*, 102 YALE L.J. 747 (1992); Jon E. Grant, "Outing" and Freedom of the Press: Sexual Orientation's Challenge to the Supreme Court's Categorical Jurisprudence, 77 CORNELL L. REV. 103 (1991); Katherine Guzman, *About Outing: Public Discourse, Private Lives*, 73 WASH. U. L.Q. 1531 (1995); John F. Hernandez, *Outing in the Time of AIDS: Legal and Ethical Considerations*, 5 ST. THOMAS L. REV. 493 (1993); Barbara Moretti, *Outing: Justifiable or Unwarranted Invasion of Privacy? The Private Facts Tort as a Remedy for Disclosures of Sexual Orientation*, 11 CARDOZO ARTS & ENT. L.J. 857 (1993); David H. Pollack ed., *Forced Out of the Closet: Sexual Orientation and the Legal Dilemma of "Outing,"* 46 U. MIAMI L. REV. 711 (1992); Mathieu Shapiro, *When Is a Conflict Really a Conflict? Outing and the Law*, 36 B.C. L. REV. 587 (1995); Ronald F. Wick, *Out of the Closet and into the Headlines: "Outing" and the Private Facts Tort*, 80 GEO. L.J. 413 (1991).

41. *See* ARISTOTLE'S POETICS, *supra* note 39, Ch. VII at 139.

42. PETER BROOKS, *READING FOR THE PLOT: DESIGN AND INTENTION IN NARRATIVE* 37 (1992).

claims that "narrative is desire"⁴³ and Roland Barthes famously explicates the pleasures of the text.⁴⁴ The correlation of narrative with desire relies upon Freudian concepts of psychoanalysis,⁴⁵ yet one need not subscribe to psychoanalytic theories to accept the rather prosaic notion that narrative's imperative is to be interesting.

legal narrativities

In the legal context, however, narrative has an additional function. In advocacy, narrative is harnessed to the goal of success. Integral to strategy, narrativity is a technique employed by the advocate who evaluates testimony and evidence and constructs a story that will achieve the client's desired outcome. This is nothing new: "It would hardly shock lawyers who lived before the era of high critical theory in American academia to discover that the winner in some trials is the more sophisticated or compelling storyteller."⁴⁶ While there might be many competing narratives that one could choose for a particular case, part of advocacy training is learning to select and hone the narrative that will best achieve the desired outcome.⁴⁷ The advocate conveys the narrative theme in pleadings, during the trial through questioning, and, felicitously, most coherently during closing arguments.⁴⁸ If one is successful, the narrative

43. TERESA DE LAURETIS, *ALICE DOESN'T: FEMINISM, SEMIOTICS, CINEMA* 140 (1984).

44. See ROLAND BARTHES, *THE PLEASURE OF THE TEXT* (Richard Miller trans., Hill and Wang 1975) (1973).

45. In discussing the "close interrelation" between "desire as narrative thematic, desire as narrative motor, and desire as the very intention of narrative language," Peter Brooks explicates a passage from Freud's *Beyond the Pleasure Principle*, which leads to a discussion of Lacan's explication of desire. BROOKS, *supra* note 42, at 54-55. Similarly, Teresa de Lauretis relies upon Freudian concepts, especially Freud's treatment of the myth of Oedipus. See DE LAURETIS, *supra* note 43, at 130-40.

46. Robert Weisberg, *Proclaiming Trials as Narratives: Premises and Pretenses*, in *LAW'S STORIES: NARRATIVE AND RHETORIC IN LAW* 61, 64 (Peter Brooks & Paul Gewirtz eds., 1996) [hereinafter *LAW'S STORIES*].

47. Obviously, this choice also has ethical dimensions and implicates the advocate's relationship with her or his client. For a sophisticated analysis of such problems, see generally Naomi R. Cahn, *Inconsistent Stories*, 81 GEO. L.J. 2475 (1993), and Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990).

48. The insight that "trials always function through the framework of storytelling" is "simple enough" but has "far-reaching implications." Robert Ferguson, *Untold Stories in the Law*, in *LAW'S STORIES*, *supra* note 46, at 84.

that one has chosen is the narrative that the jury accepts as "truth."⁴⁹ On appeal, an advocate crafts a persuasive "statement of facts" in the brief⁵⁰ and hopes that these will be reproduced as the "facts" in the judicial opinion.⁵¹ Such narratives may be explicit and specific or may implicate larger issues of justice. For example, in the death penalty context, an advocate may advance a narrative that a specific client should not be executed as well as a narrative that executions are unjust.⁵²

Outside the litigation context, legal theorists are also enamored of narrative. While such has always been true, in the last decade or so, story-telling, narrativity, and autobiography have been more explicitly proffered as scholarly methodology.⁵³ Such scholarship is related to the so-called law and literature movement, but as Robert Chang perceptively notes, the distinction is that law and literature scholarship "talks about narrative," as opposed to "doing" narrative.⁵⁴ Nevertheless, before

49. Generally, but especially in a criminal trial, the "bifurcation" of the jury verdict or judgment (guilty or not guilty) does not allow a mediation between the stories, but requires a choice of the narrative closer to the truth. See *id.* at 85.

50. See, e.g., URSULA BENTELE & EVE CARY, *APPELLATE ADVOCACY: PRINCIPLES AND PRACTICE* 267-74 (2d ed. 1995) (discussing techniques to "predispose the court to rule in your client's favor" including selection of facts, emphasis of facts, structuring presentation of facts, and word choice); RICHARD K. NEUMANN, JR., *LEGAL REASONING AND LEGAL WRITING* 304-10 (2d ed. 1994) (discussing principles of "paint[ing] the picture" for appellate judge(s) including "[b]reath[ing] life" into the facts by telling a compelling story, emphasizing favorable facts, neutralizing unfavorable facts, and "humaniz[ing]" client); WILLIAM P. STATSKY & R. JOHN WERNET, JR., *CASE ANALYSIS AND FUNDAMENTALS OF LEGAL WRITING* 290-92 (3d ed. 1989) (providing examples of statements of fact by opposing parties to illustrate precept that each attorney should use "every opportunity to portray facts in a light most sympathetic" to the client's position).

51. As Robert Weisberg notes, an emphasis on appellate opinions and their use of facts is a conventional focus of law as narrative scholarship: "Numerous scholars have of late uttered the performative affirmation of law as narrative with little more in mind than noting that the statement of facts in an appellate case is a contestable and selective rendition of supposedly raw data." Weisberg, *supra* note 46, at 66.

52. See Austin Sarat, *Narrative Strategy and Death Penalty Advocacy*, 31 HARV. C.R.-C.L. L. REV. 353, 365 (1996); Christopher Meade, Note, *Regarding Death Sentences: The Narrative Construction of Capital Punishment*, 71 N.Y.U. L. REV. 732, 748-60 (1996).

53. See generally Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1991); Richard Delgado, *Storytelling for Oppositionalists and Others: A Plea For Narrative*, 87 MICH. L. REV. 2411 (1989).

54. Robert Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241, 1269 n.127 (1993). A somewhat similar distinction is made by Paul Gewirtz in his piece *Narrative and Rhetoric in the Law*, an introduction to the anthology *LAW'S STORIES*, *supra* note 46, at 2, which was a product of a 1995 symposium. Gewirtz notes that although the "new academic interest in narrative and rhetoric in law can be seen as part of a broader scholarly movement usually denominated 'law and literature,'" there is a distinction between law *in* literature and law *as* literature. See

"doing" narrative, legal scholars have often engaged in an explanatory exegesis of the value of narrative.⁵⁵ While there are no previous specifically lesbian pieces, queer scholarly contributions have been made by Marc Fajer,⁵⁶ William Eskridge,⁵⁷ and most recently Larry Catá Backer.⁵⁸ These contributions are contextualized among the work by many legal scholars of color⁵⁹ and feminist legal scholars⁶⁰—having become loosely grouped into a genre known as "outsider narratives."⁶¹

Like other outsider narratives, lesbian/queer narrative legal scholarship rests upon the two intertwined beliefs mentioned at the beginning of this Article. First, it rests upon the belief that the extant legal theories and doctrines are impoverished because they are based upon the experiences only of dominant groups, those who have had the power to construct the theories and doctrines. So, for example, Marc Fajer argues that the law is based upon certain "pre-understandings" or stereotypes⁶²

id. A less nuanced categorization is made by Richard Posner, who views the narrative turn within legal scholarship (which he erroneously labels as narratology) simply as a "subdiscipline" of the law and literature movement. See Richard A. Posner, *Legal Narratology*, 64 U. CHI. L. REV. 737, 737 (1997) (reviewing *Law's Stories*).

55. As Professor Chang himself explains in his excellent article: "before narrative can be used in this way, a space must be created for its use in legal discourse." Chang, *supra* note 54, at 1268.

56. See Marc A. Fajer, *Can Two Real Men Eat Quiche Together? Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men*, 46 U. MIAMI L. REV. 511 (1992) [hereinafter Fajer, *Can Two Real Men Eat Quiche Together?*].

57. See William N. Eskridge, Jr., *Gaylegal Narratives*, 46 STAN. L. REV. 607 (1994).

58. See Larry Catá Backer, *Constructing a "Homosexual" for Constitutional Theory: Sodomy Narrative, Jurisprudence, and Antipathy in United States and British Courts*, 71 TUL. L. REV. 529 (1996).

59. As Alex Johnson states,

Over the last decade, a body of scholarship known as Critical Race Theory has emerged. Written predominantly by scholars of color, it challenges traditional legal orthodoxy and contends that the neutral acontextual approach taken in legal scholarship is seriously flawed. Furthermore, a methodological format known as Narrative has emerged as the preferred genre of scholarship for scholars of color and others producing Critical Race Theory. Some authorities applaud the use of Critical Race Theory and its exposition in Narrative format, although others decry its use.

Alex M. Johnson, Jr., *Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship*, 79 IOWA L. REV. 803, 803-04 (1994) (footnotes omitted).

60. See generally Abrams, *supra* note 53 (examining and defending feminist narrative legal scholarship).

61. See *supra* note 7.

62. Fajer, *supra* note 56, at 524 & n.65 (citing Anthony Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2123-24 (1991)). Fajer explains his preference for the term "pre-understanding" as used by Alfieri rather than the term "stereotype" on the basis that pre-understanding connotes something broader and more

of queers, and that for queers ourselves to tell our stories is an effective way to combat these stereotypes. In his ground-breaking article, Fajer identifies three important pre-understandings "about gay people: the sex-as-lifestyle assumption, the idea that gay issues are inappropriate for public discussion, and the cross-gender assumption."⁶³ That such "pre-understandings" are in fact themselves the results of narrative processes is made clear by the work of Larry Catá Backer, who demonstrates that gay men have been relegated by sodomy jurisprudence narratives into categories he names "the predator," "the pied piper," "the Whore of Babylon," and "the defiler of the public space."⁶⁴ Implicit in both Fajer's and Backer's arguments is that such cultural and judicial categories have been forged apart from the influence of persons known to be sexual minorities.⁶⁵

Second, queer narrative legal scholarship rests upon the belief that the present legal landscape can be improved if we outside the dominant group make public our experiences. In short, this belief is that lesbians and other queers, faced with a dominant legal regime to which we are essentially "foreigners," may be able to effect change in the law by telling our stories. Thus, Fajer assembles narratives from a wide variety of sources: personal experiences, judicial opinions, lesbian/queer texts, and newspaper accounts, to combat the harmful pre-understandings he has identified.⁶⁶ Additionally, there is strong sentiment that succumbing to the pressure to suppress our narratives will not ensure legal—or personal—success.⁶⁷

complex than stereotype, does not connote something necessarily negative, and is more susceptible to usage in advocacy. *Id.* at 524 n.65.

63. *Id.* at 515.

64. Backer, *supra* note 58, at 529.

65. Although perhaps not without the influence of persons who actually were sexual minorities. Cf. William Eskridge, *Outsider-Insiders: The Academy of the Closet*, 71 CHI.-KENT L. REV. 977, 978 (1996) (discussing the phenomenon of the closet which allows "gay people," (and, it would seem, especially gay men) to be considered insiders in legal academia).

66. See Fajer, *Can Two Real Men Eat Quiche Together?*, *supra* note 56, at 546-70, 591-607, 611-14.

67. In an important, albeit brief, personal narrative, William Eskridge discusses his denial of tenure by the University of Virginia despite his "willingness to be cooperative," discreet, and closeted. Eskridge, *supra* note 57, at 644.

reviewing the critiques of narrative legal scholarship

The genre of narrative legal scholarship has provoked rather virulent debate. The work of some scholars of color,⁶⁸ as well as some feminists,⁶⁹ became the subject of the initial critiques⁷⁰ that focused on "outsider" narratives.⁷¹ These critiques in turn provoked compelling responses⁷² and subsequent practitioners of narrative scholarship seemed compelled to engage with the critique.⁷³ While the initial critiques

68. See, e.g., DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987); RICHARD DELGADO, *THE RODRIGO CHRONICLES: CONVERSATIONS ABOUT AMERICA AND RACE* (1995); PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991); Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539 (1991).

69. See, e.g., Marie Ashe, *Zig-Zag Stitching and the Seamless Web: Thoughts on "Re-production" and the Law*, 13 NOVA L. REV. 355 (1989); Robin West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 WIS. WOMEN'S L.J. 81 (1987). See also Abrams, *supra* note 53. While generally celebrating feminist narratives, Abrams seeks to evaluate them and does not engage in narrative methodology itself. See *id.*

70. See, e.g., Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 VA. L. REV. 1229 (1995); Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993) [hereinafter Farber & Sherry, *Telling Stories*]; Mark Tushnet, *The Degradation of Constitutional Discourse*, 81 GEO. L.J. 251 (1992).

71. Compare Tushnet, *supra* note 70, with Coughlin, *supra* note 70, and Farber & Sherry, *Telling Stories*, *supra* note 70. In his critique of narrative, Tushnet discusses the work of Catharine MacKinnon (who does not provide autobiographical narratives), the work of conservative writer Stephen Carter (STEPHEN CARTER, *REFLECTIONS OF AN AFFIRMATIVE ACTION BABY* (1991)), the Clarence Thomas confirmation hearings, and the work of Patricia Williams. See Tushnet, *supra* note 70, at 261-71, 279-97. In contrast, Farber and Sherry choose as their focus "feminist and critical race theorists," Farber & Sherry, *Telling Stories*, *supra* note 70, at 807, and Coughlin is solely interested in criticizing the autobiographical moves of those deemed "outsiders," see Coughlin, *supra* note 70, at 1231-32.

72. See, e.g., Jane B. Baron, *Resistance to Stories*, 67 S. CAL. L. REV. 255 (1994); Richard Delgado, *Coughlin's Complaint: How to Disparage Outsider Writing, One Year Later*, 82 VA. L. REV. 95 (1996) [hereinafter Delgado, *Complaint*]; Richard Delgado, *On Telling Stories in School: A Reply to Farber and Sherry*, 46 VAND. L. REV. 665 (1993) [hereinafter Delgado, *In School*]; Marc A. Fajer, *Authority, Credibility, and Pre-Understanding: A Defense of Outsider Narratives in Legal Scholarship*, 82 GEO. L.J. 1845 (1994) [hereinafter Fajer, *Authority*]; Alex M. Johnson, Jr., *Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship*, 79 IOWA L. REV. 803 (1994).

73. For example, in the exciting and important work of Asian American scholars utilizing narrative, the methodology is often not only explicated but defended. See, e.g., Chang, *supra* note 54, at 1243-84; Chon, *supra* note 6, at 11. Of course, other Asian American legal scholars utilize first-person and third-person narrative successfully without providing explications and defense of the methodology. See, e.g., Sharon Hom, *Female Infanticide in China: The Human*

avoided any substantive engagement with lesbian/queer legal issues,⁷⁴ as the debate developed it began to include work of sexual minority scholars, specifically Fajer⁷⁵ and Eskridge.⁷⁶ Before discussing what I consider to be certain paradoxes implicated in the possibilities of lesbian/queer narrative legal scholarship and lesbian/queer narrativity more generally,⁷⁷ I here want to indulge in a brief review of the current controversy. The present terms of the debate encompass five basic arguments: the accuracy argument, the representative argument, the special voice argument, the nonobjective argument, and the evaluative argument.

First, the accuracy argument against narrative entails the objection that narrative, especially any purportedly autobiographical narrative, does not allow a reader to confirm the truth of the narrative because there are no external or objective sources readily available. The accuracy of narrative is posited as important in legal scholarship because a misrepresentation of events is "perilously close to what is known in other fields as research fraud: doctoring data to fit your thesis."⁷⁸ "[C]ritics have been concerned about the risk that stories can distort the legal debate, particularly if those stories are atypical, inaccurate, or incomplete."⁷⁹ Legal academic scholarship is paralleled to litigation, in which a lawyer is not able to offer her own testimony at trial or vouch for the credibility of a witness,⁸⁰ and the "facts" have been subjected to an adversary process.⁸¹

Rights Specter and Thoughts Towards (An)other Vision, 23 COLUM. HUM. RTS. L. REV. 249, 249 (1992).

74. *Accord*, Eskridge, *supra* note 57, at 609 (expressing surprise at the virtual absence of references to "gay" narratives in the original Farber and Sherry piece).

As Fajer notes, Farber and Sherry only refer to his article, Fajer, *Can Two Real Men Eat Quiche Together?*, *supra* note 56, in a footnote which grudgingly (it seems to me) accords some validity to lesbian/queer narratives because the "phenomenon of 'closeting'" has made "information about the lives of gay men and lesbians" "unavailable to scholars." Fajer, *Authority*, *supra* note 72, at 1849 (quoting and citing Farber & Sherry, *Telling Stories*, *supra* note 70, at 829 n.119) (quotation marks omitted).

In responding to Eskridge, Farber and Sherry do discuss sexual minority issues. See Daniel A. Farber & Suzanna Sherry, *The 200,000 Cards of Dimitri Yurasov: Further Reflections on Scholarship and Truth*, 46 STAN. L. REV. 647, 649-52, 656-61 (1994) [hereinafter Farber & Sherry, *200,000 Cards*].

75. See Fajer, *Can Two Real Men Eat Quiche Together?*, *supra* note 56; Fajer, *Authority*, *supra* note 72.

76. See Eskridge, *supra* note 57.

77. See *infra* notes 127-207 and accompanying text.

78. Farber & Sherry, *Telling Stories*, *supra* note 70, at 834 (footnote omitted).

79. Daniel Farber & Suzanna Sherry, *Legal Story Telling and Constitutional Law: The Medium and the Message*, in LAW'S STORIES, *supra* note 46, at 37, 37-38. The atypicality argument is discussed *infra*.

80. See Farber & Sherry, *Telling Stories*, *supra* note 70, at 835-36.

While this epistemological anxiety⁸² does not trouble all critics,⁸³ it is a significant objection of the critics of narrative in legal scholarship.

There are several responses to the accuracy critique. One overall theme of such responses is that the accuracy of a narrative is not comparable in importance to the accuracy of empirical data. For some, the function of the narrative in the general account determines the stress to be placed upon issues of accuracy;⁸⁴ for others, it is not necessarily the factual accuracy but the integrity or coherence of the narrative that counts.⁸⁵ Further, as Fajer points out, in law we "regularly use fictional hypotheticals to further [our] analyses and engage in discussions assuming facts to be true *arguendo*."⁸⁶ Fajer also makes several concrete and constructive suggestions to enable scholars constructing a narrative to minimize the credibility issue.⁸⁷ There seems to be an agreement that, under the assumptions of narrative form, a reader may not be able to compare the author's story with an external account of the event,⁸⁸ but defenders of narrative argue that stories can provide the reader with a "flash of recognition."⁸⁹ Thus, while there is some agreement that narratives should be accurate unless denominated differently,⁹⁰ the importance of accuracy and the methods of verification are contested.

Second, the representative argument, often discussed as a question of typicality, disputes any claim that a narrative can reveal itself as either customary or aberrant. This argument is composed of two intertwined but distinct problems: the narrative may not be representative of the

81. Abrams, *supra* note 53, at 979.

82. *See id.* at 1017.

83. *See, e.g.,* Tushnet, *supra* note 70, at 273 n.101 (stating that it is "uninteresting" whether or not certain events as related in a narrative "actually happened" because "events like those certainly have happened").

84. Abrams, *supra* note 53, at 1025-27 (distinguishing between "first person agony narratives," "insider narratives," narratives that operate as metaphor for an abstract concept, and narratives that prompt a flash of self-recognition).

85. While Tushnet's critique certainly implicates questions of credibility, *accord* Fajer, *Authority*, *supra* note 72, at 1859-60, his explicit argument concentrates on questions of literary style. *See* Tushnet, *supra* note 70, at 251.

86. Fajer, *Authority*, *supra* note 72, at 1864.

87. *Id.* at 1863 (suggesting adherence to the duty to be accurate, a willingness to discuss the narrative if questioned, and the presentation of additional evidence).

88. Abrams, *supra* note 53, at 1024.

89. *Id.* at 1023.

90. As Jane Baron notes, "even as storytelling's proponents contest particular definitions" of truthfulness, they share the concerns over credibility. Baron, *supra* note 72, at 280 n.169 (citations omitted). Baron suggests that by accepting the validity of concerns about accuracy, "storytellers do not escape, and may inadvertently lend force to, the empiricist assumptions of many of their critics." *Id.* at 280-81 n.169.

writer's other experiences; and even if the narrative is representative of the writer's experiences, it may not be representative of the experiences of other (similarly situated) people. The critique again interprets narrative as empirical data and questions whether it is "statistically significant."⁹¹ A powerful narrative may become particularly suspect because "individuals assume that dramatic or easily remembered events are typical," which means that people have a tendency to "overestimate the likelihood" of such an event and likewise overestimate the prevalence of such an event in the experiences of other members of the population.⁹² In short, people stereotype.⁹³

However, if Fajer and others are correct that one function of narrative is to combat stereotypes,⁹⁴ then the criticism that a narrative may not be representative is largely irrelevant. In other words, even if the narrative is considered to be a singular event in an unusual person, it can operate to undermine the stereotype. Additionally, the tendency toward typicality, likelihood, and prevalence is counterbalanced by a certain status quo solipsism. As Robert Chang expresses it, because people have convinced themselves that the ugliness of racism does not exist, at least in blatant forms, they can dismiss Chang's narratives of discrimination against him as a Korean American as "isolated incidents."⁹⁵ Thus, critics and supporters of narrative in legal scholarship have divergent opinions about whether representativeness is an appropriate criteria of assessment.

Third, and linked to the issue of the ability of a writer to represent members of her "group," critics dispute any claim that any group of narrators possess a special "voice."⁹⁶ In this view, outsider and narratives become fused, although not all "outsider" scholars practice narrative and not all practitioners of narrative are outsiders.⁹⁷ Critics reject any claim

91. Abrams, *supra* note 53, at 1028 (stating the existence of such criticism rather than advancing it).

92. Farber & Sherry, *Telling Stories*, *supra* note 70, at 839.

93. *See id.*

94. *See* Fajer, *Authority*, *supra* note 72, at 1847. *Accord* Robert Hayman, Jr. & Nancy Levit, *The Tales of White Folk: Doctrine, Narrative, and the Reconstruction of Racial Reality*, 84 CAL. L. REV. 377, 398-99 (1996) (review essay).

95. Chang, *supra* note 54, at 1274.

96. The combination of the representative argument with the "voice" argument places any narrator with a group identity (which I suggest would be every narrator) between Scylla and Charybdis. Either the narrator is not representative of her group, in which case her narrative should be dismissed as aberrant, or else she is claiming to possess a special group "voice" which does not exist.

97. Legal scholarship that is not "outsider" under conventional definitions, *see supra* note 7, explicitly employs and esteems narrative. For example, in *Constructing the Insurance Rela-*

tionship: *Sales Stories, Claims Stories, and Insurance Contract Damages*, 72 TEX. L. REV. 1395, 1396-98 (1994), Professor Tom Baker argues,

Like *King Lear* and *King Richard III*, these insurance stories work by organizing experience into a narrative structure that has a recognizable and predictable outcome. For example, if the story we are told about an insurance claim is one with a greedy and dishonest insured (Richard), we understand and applaud a careful, detailed investigation by the insurance company; if the story is one with a dependent, vulnerable insured (Lear), we may see in that investigation delay and extortion.

Typically, we use these insurance stories as advocacy tools, to persuade another to do what we want, whether that is buying insurance, accepting the denial of a claim, or deciding a case in our favor. But these insurance stories have another use—a use that, while not unrelated to advocacy, aims more at understanding the insurance relationship. The stories we tell about insurance reveal our vision of the insurance relationship, including the promises and obligations of that relationship. While the stories I tell may be of interest to my students, the stories that insurance companies tell are of far greater interest. These stories reveal a vision of the insurance relationship that should matter to courts asked to determine the obligations that inhere in that relationship.

Lawyers already use the stories insurance companies tell as a source of obligation. As excerpts from some judicial opinions reveal, judges do too—as they should. It is through these stories that insurance companies tell people what to expect from insurance, insurance companies, and insurance claims. Examining these stories; and the competing visions of insurance that they project, can help judges decipher the unwritten obligations of the insurance relationship. Moreover, analyzing the way judges use the stories can serve another, equally important purpose, that of understanding the doctrinal lines drawn in insurance cases.

Insurance companies tell two different sets of stories about insurance at two distinct points in the insurance relationship. When marketing their services, insurance companies tell what I will call “sales stories.” This first set of stories, drawn from insurance advertising, responds to the fears of dependency that are epitomized by *King Lear*. When handling claims, insurance companies tell a second set of stories, which I will call “claims stories.” This second set of stories, drawn from fieldwork with adjusters and from insurance adjustment trade literature, stresses the need to protect the insurance fund from overreaching, as dramatized (perhaps overdramatized) by *King Richard III*. These two sets of stories evoke quite different visions of the insurance relationship. The continuing trouble of the courts in defining the obligations of the insurance relationship stems in part from this duality, which is also apparent in judicial opinions. In the abstract at least, both visions are equally “right” (and just as equally “wrong”). Yet, the choice of lens can determine whether the insured in a particular case is seen as poor King Lear or wicked King Richard.

Id. at 1396-98 (footnotes omitted). This example is not unique. See, e.g., Thomas E. Kauper, *Antitrust in 1992: The Year of the Storyteller*, 61 ANTITRUST L.J. 347 (1993); Deborah A. Stone, *Promises and Public Trust: Rethinking Insurance Law Through Stories*, 72 TEX. L. REV. 1435 (1994).

Similarly, a state court appellate judge contends that state constitutional interpretation “involves the process of discovering, remaking, and retelling narratives” and that a “lucid understanding of the nature of this narrative process is essential.” Barry R. Schaller, *Getting the Stories Right: Reflections on Narrative Voice in State Constitutional Interpretation*, 26 CONN. L. REV. 671, 671-72 (1994). Prosecutors in criminal cases have also recognized the power of narrative, as the use of victim impact statements has demonstrated. See, e.g., Susan Brandes, *Empathy, Narrative, and Victim Impact Statements*, 63 U. CHI. L. REV. 361 (1996). Law profes-

that an outsider narrative has a claim that it is based upon group experiences, because there is neither a distinct nor unitary voice possessed by any group.⁹⁸ Critics use theories of social constructionism and anti-essentialism, developed by many outsider theorists themselves, to dispute the existence of any coherent perspective possessed by any particular group.⁹⁹ Defenders, in fact, may agree: some defenders of narrative aver that "voice" is an "unfortunate metaphor"¹⁰⁰ or a "false issue."¹⁰¹ Alex Johnson, however, in supporting a "Voice of Color," argues that "voice" is not some essentialist possession, but a result of the social construction of the categories of race itself; the "Voice of Color" is thus "socially constructed as different or minority—as 'other' or 'them,' never as 'same' or 'us.'"¹⁰² Or, as Jane Baron contends, one need not assert the "existence of any essentially different voice" to explain why those who lack power, or who represent people who do, might be particularly focused "on one of power's most important forms, the story."¹⁰³ Thus,

sors often use stories as well. See, e.g., Beryl Blaustone, *Teaching Evidence: Storytelling in the Classroom*, 41 AM. U. L. REV. 453 (1992).

Further, the stories told by law professors, judges, and lawyers can be quite autobiographical, and prosecutors and law enforcement officers also engage in personal narratives. See, e.g., MARCIA CLARK, *WITHOUT A DOUBT* (1997); WILLIAM DUNN, *BOOT: AN LAPD OFFICER'S ROOKIE YEAR* (1996); SOL WACHTLER, *AFTER THE MADNESS: A JUDGE'S OWN PRISON MEMOIR* (1997); Dan Edwards, *Reflections on Three Stories: "Practicing" Law and Christianity at the Same Time*, 27 TEX. TECH L. REV. 1105 (1996).

Outside of the legal realm, there has been a marked turn toward narrative autobiography, especially in the form of the memoir. See James Atlas, *The Age of the Literary Memoir is Now*, N.Y. TIMES, May 12, 1996, § 6 (Magazine), at 25; William Gass, *The Art of Self: Autobiography in an Age of Narcissism*, HARPER'S, May 1994, at 43, 48-52. Further, "moi criticism" has become a staple of academia. See Adam Begley, *The I's Have It*, LINGUA FRANCA, March-April 1994, at 54, 54 (focusing on Duke University but noting that "[a]utobiography is the latest wave, and not just at Duke"). This trend has produced not only articles and single volumes, but anthologies devoted to the purpose of exploring and defending personal writing as scholarly. See, e.g., *CONFESSIONS OF THE CRITICS* (H. Aram Veese ed., 1996).

Thus, although as Richard Delgado notes, majoritarian stories may not seem like stories at all but simply truth, see Delgado, *In School*, *supra* note 72, at 666, explicit celebration and employment of narrative is not limited to outsiders.

Moreover, not all—or even most—outsider scholarship is narrative. In evaluating an annotated bibliography of critical race theory that he co-authored, Delgado notes that "[a]t most, one-quarter of the works could be described as written in the storytelling or narrative mode." *Id.* at 669. An analysis of feminist legal scholarship, as well as lesbian/queer legal scholarship, would produce a similar result.

98. See Farber & Sherry, *Telling Stories*, *supra* note 70, at 809-19.

99. See Farber & Sherry, *200,000 Cards*, *supra* note 74, at 651-52.

100. Fajer, *Authority*, *supra* note 72, at 1853.

101. Delgado, *In School*, *supra* note 72, at 669.

102. Johnson, *supra* note 59, at 832-33.

103. Baron, *supra* note 72, at 266 (footnote omitted).

both supporters and critics of narrative may seek to distance themselves from the sin of essentialism. In this distancing, there does seem to be at least a superficial agreement that "outsider" narratives are not special simply because they are written by persons who are members of what might be described as outsider groups. Nevertheless, supporters of outsider narrative would maintain that group membership can be important and that a narrative can demonstrate the significance of group membership.¹⁰⁴

Fourth, critics raise arguments concerning the nonobjective nature of narrative. In some sense, the nonobjectivity argument underlies the criticisms of narratives with regard to accuracy, representation, and voice.¹⁰⁵ This criticism implicitly contrasts narrative with logical argument, implying that narrative is flawed because it is not capable of an authoritative interpretation. Yet within the debate, this argument has a rather unique twist, devolving into a claim by critics that although practitioners of outsider narratives claim their texts are susceptible to multiple meanings, the practitioners themselves insist upon a singularly correct interpretation.¹⁰⁶

This argument is related to another nonobjectivity argument: that narratives, especially personal ones, foreclose rather than enhance scholarly (objective) debate. In this view, the inclusion of a personal narrative makes it difficult to challenge the author's point without questioning the author's "emotional stability or veracity"¹⁰⁷ or seeing one's challenge construed as an *ad hominem* attack.¹⁰⁸ In response, defenders of narra-

104. See Fajer, *Authority*, *supra* note 72, at 1855.

105. Cf. Abrams, *supra* note 53, at 1013 (stating that "[c]hallenges to the 'truth' or 'typicality' of narratives . . . reflect the evaluative premises of objectivity").

106. See Coughlin, *supra* note 70, at 1311 (arguing that the structure and "apology" quality of Patricia Williams' narratives constrict "readers' interpretive room" and have a "potent coercive effect on readers" to "endorse Williams's interpretation of the experience"); Farber & Sherry, *200,000 Cards*, *supra* note 74, at 656 ("[I]nside [the supporters of narrative's] pragmatic and social constructionist arguments against objectivity, we find reinscribed the very foundationalism and belief in objectivity that they reject. Many of those who reject objective truth exhibit a contradictorily high level of confidence when engaged in the task of interpretation.").

107. Farber & Sherry, *Telling Stories*, *supra* note 70, at 836.

108. See Coughlin, *supra* note 70, at 1281. As Coughlin asserts:

[P]ersonal stories tend to pre-empt responses other than sympathy or silence, precisely because any critical commentary or desire for clarification may be dismissed as *ad hominem*—and any criticism necessarily is *ad hominem*, since the material available for criticism or clarification is the scholar's personal experience. Ironically, therefore, the power of the autobiographical exchange to inspire readers' sympathy turns out to be a significant shortcoming within the context of an academy whose participants, even when sympathetic to an idea, are committed to immediate, often

tive point to the very existence of the critical scholarship giving rise to such arguments to defeat the claim that such criticism is foreclosed,¹⁰⁹ and note that “[c]onsiderable scholarly discussion exists regarding the work of scholars who . . . employ narratives extensively.”¹¹⁰ More specifically, Marc Fajer outlines a number of civil and scholarly responses that could be made by those who are skeptical about a particular narrative.¹¹¹

In sum, while questions of objectivity are implicated in the other criticisms of narrative, the struggles regarding objectivity are not simply between those professing an objective stance and those asserting that all stances are contingent. Rather, arguments regarding interpretative authority and the conditions of scholarly debate reflect very different postulations of the academic enterprise and the legal scholarly “community.”

The last argument also involves issues rather exclusive to the academy. The evaluative argument, or what I would prefer to name the tenure difficulty, expresses doubts about whether narrative scholarship can meet the criteria of “excellence” employed by academic arbiters—arbiters who have the power to award tenure, as well as to make decisions regarding promotion and initial faculty appointments—and if so, under what criteria.¹¹² Critics of narrative argue that the claim of some theorists, that traditional criteria should not apply to narrative, contains several unsustainable contentions. First, according to these critics, aesthetic considerations cannot be determinative because the focus of the legal academy is law and not literature.¹¹³ Second, a claim that “outsider” narratives

face-to-face, critical inquiry and debate. By rejecting any critical reaction as a treacherous failure of sympathy for the author’s pain, if not as the product of prejudiced ignorance, and dismissing criticism as a personal attack on the author’s character, autobiographical rhetoric is no less coercive of readers than the legal rhetoric that the outsiders desire to supersede.

Id. at 1281-82 (footnotes omitted).

109. Delgado, *Complaint*, *supra* note 72, at 101-02.

110. Fajer, *Authority*, *supra* note 72, at 1857.

111. *Id.*

112. See Farber & Sherry, *Telling Stories*, *supra* note 70, at 840. The authors note, however, that there are disputes within the legal academy regarding the evaluation of scholarship, even apart from questions regarding narrative. See *id.*

113. See *id.* at 845 (“In rejecting the creation of literature as a form of legal scholarship, we are admittedly indulging a mild presumption in favor of institutional specialization.”). Cf. Tushnet, *supra* note 70, at 251-52 (stating that “constitutional discourse succeeds when its authors use the persuasive power of their self-presentations by means of an effective literary style”); Mark Tushnet, *The Death of an Author, by Himself*, 70 CHI.-KENT L. REV. 111, 111-

should be judged according to their "ability to advance the interests of the outsider community"¹¹⁴ is akin to a political litmus test.¹¹⁵ The confusion of scholarship with politics is not necessarily transformative, but "can be merely tragic."¹¹⁶ And third, any claim that traditional evaluative standards are biased, or are inapplicable to certain persons, is beyond discussion.¹¹⁷ The lowest common denominator of agreement regarding standards applicable to the evaluation of narrative within the legal academy might be that narratives in the context of legal scholarship should somehow be related to legal concerns.

Obviously, disputes involving tenure, promotion, and even initial appointment, can lead to ugly conflicts within a law school as well as within any larger university in which a law school might be established. In an attempt to forestall such difficulties, Arthur Austin has sought to situate narrative scholarship within the three stages of legal scholarship—vocational, doctrinal, and interdisciplinary—and to remind us that legal scholarship is a relatively new field.¹¹⁸ Given such a background, the implicit suggestion is that legal academics need to be less defensive and less critical and begin the work of formulating concrete standards. Austin proffers his own criteria: that the scholarship must deliver the message with clarity; that the scholarship must "add something to the existing body of knowledge"; that the scholarship opens or is part of an ongoing dialogue; and that specifically narrative scholarship must satisfy the aesthetic requirements of narrative *qua* narrative.¹¹⁹ Austin elaborates these criteria and applies them to specific examples, making his project practically useful for his goal of contributing to the making of an effective response to the "deepening fragmentation of scholars into special interest

12 (1994) (discussing the link between authoritative precedent and literary style, as well as judicial integrity and literary style).

114. Coombs, *supra* note 7, at 713.

115. In criticizing Coombs' touchstone for evaluating scholarship, Farber and Sherry state:

[I]t imposes a single ideological veneer on a broad spectrum of scholarship. Only those who agree both on the problems facing the outsider community and on the policies that count as solutions will have their work evaluated positively. Thus, a person of color whose scholarship attacks the notion of a voice of color (or affirmative action) as dangerous to the community of color is likely to be judged harshly by Coombs' standard.

Farber & Sherry, *Telling Stories*, *supra* note 70, at 843.

116. Farber & Sherry, *200,000 Cards*, *supra* note 74, at 655.

117. See Farber & Sherry, *Telling Stories*, *supra* note 70, at 842 (dismissing argument that standards might be inappropriate with a reference to "promotion and tenure").

118. See Arthur Austin, *Evaluating Storytelling as a Type of Nontraditional Scholarship*, 74 NEB. L. REV. 479, 480 (1995).

119. *Id.* at 515-23.

groups.”¹²⁰ Yet, however “concrete” the standards, they cannot pave over the fundamental disagreement between critics and practitioners of narrative, particularly outsider narrative. For critics, the academic project is a greater “understanding” of law;¹²¹ for supporters of outsider narrative, the project is one of changing the law.¹²²

The foregoing outline of the debate surrounding narrative in legal scholarship, and specifically outsider narratives, is a necessary background for any discussion of lesbian/queer legal narratives. While the critiques of narrative make some interesting points and have opened up a discussion, I do not find the critiques of narrative compelling, and often find them reactionary¹²³ and rude.¹²⁴ Nevertheless, I do have some concerns about relying upon narrativity as a strategy to accomplish progressive legal change relating to lesbian/queer issues. My misgivings encompass narrative as used in legal scholarship, but also in the theorizing that occurs in places other than academic law reviews, as well as narrative more generally. As I hope is clear, I write as one who is enmeshed in narrative, both in legal scholarship¹²⁵ and in traditionally narrative forms such as the novel.¹²⁶ Further, I depart from the contours of the current critiques with their binary attentiveness to a presumed opposition between narrative and logical argument, which probably have more in common with each other than lyricism—and certainly nonlinguistic communication—has with either.

My trepidation is derived from the possibility that a reliance upon narrative may undermine what we seek to accomplish because of certain paradoxes of narrativity. These paradoxes relate to the masculinity/heterosexuality of narrative structure itself, the ubiquity of narrative, the contrast of narrativity with feminist consciousness-raising, the inter-

120. *Id.* at 527-28.

121. Farber & Sherry, *Telling Stories*, *supra* note 70, at 809, 819, 824.

122. See Delgado, *In School*, *supra* note 72, at 673-74.

123. Thus, I agree with the description of the “hotly contested area of debate” surrounding the use of narrative in the legal academy as being “between those who support the status quo and those who oppose it.” Culp, *supra* note 7, at 70.

124. Although there is certainly rudeness on both sides. *Accord*, Baron, *supra* note 72, at 259 (“The tone of the debate on the issue of standards used to evaluate non doctrinal scholarship at times seems to veer from vehement, to, well, nasty.”); Farber & Sherry, *200,00 Cards*, *supra* note 74, at 647 n.1 (discussing a “caustic” exchange and noting that the disagreement can “degenerate into intellectual fratricide”).

125. As the present Article demonstrates. *But cf. infra* note 192.

126. See, e.g., RUTHANN ROBSON, *A/K/A* (1997) (novel); RUTHANN ROBSON, *ANOTHER MOTHER* (1995) (novel); RUTHANN ROBSON, *CECILE* (1991) (short stories); RUTHANN ROBSON, *EYE OF A HURRICANE* (1989) (short fiction).

play between individual and collective narratives, the tendency of narratives to provoke counter-narratives, the lure of self-censorship, and finally the fact that we may be at the end of the period in which narrativity is a relevant undertaking.

seven paradoxes

1. First, it may be paradoxical—and unworkable—to use narrative to advance lesbian/queer liberation because narrative itself may be inescapably male and heterosexual. For those theorists who rely upon psychoanalytic models of narrative as equatable to desire, this desire is constructed as male. As Teresa de Lauretis notes, it is male desire that structures narrativity and results in its singular plot: the male hero's quest which has a woman as the reward/object.¹²⁷ The heterosexuality of this model is made more explicit by lesbian theorist Judith Roof, who argues that "our very understanding of narrative as a primary means to sense and satisfaction depends upon a metaphorically heterosexual dynamic within a reproductive aegis."¹²⁸ Roof is not arguing that there cannot be narratives with lesbian content, or even narratives with "positive" lesbian content, but rather that the structure of narrative is ineluctably male and heterosexual. This may explain some of the dissatisfaction with the revolutionary potential of lesbian/queer narratives,¹²⁹ even when such narratives seek to disrupt sex or gender categories.¹³⁰ As Roof

127. DE LAURETIS, *supra* note 43, at 103-56.

128. ROOF, *supra* note 33, at xxii.

129. In spite of my participation in the production of lesbian literature and my enjoyment of many lesbian narratives, both fictional and not, the nagging rhetorical questions which Judith Roof poses have a regretful resonance:

Why is the story always the same? Why, no matter how sympathetic, clever, radical, or well-meaning the author, the circumstance, the occasion, is the story of the lesbian always really the same old story and her fate the same old, vaguely oppressed fate whether she is the protagonist or a minor character? Why am I rarely happy with any narrative that represents or suggests the presence of lesbian sexuality?

Id. at xxvi.

I would add, however, that I am even more rarely happy with any narrative that does not represent the presence of lesbian sexuality.

130. For example, Susan S. Lanser, in her article *Queering Narratology*, celebrates the novel JEANETTE WINTERSON, *WRITTEN ON THE BODY* (1992), in which the protagonist is having an affair with a married woman, but the sex/gender of the protagonist is never clarified. Susan Lanser, *Queering Narratology*, in *AMBIGUOUS DISCOURSE: FEMINIST NARRATOLOGY AND BRITISH WOMEN WRITERS 250* (Kathy Mezei ed., 1996). Yet Lanser's argument is decidedly modest:

My point is that sex, gender, and sexuality constitute narratologically significant elements that intersect with other textual elements to illuminate "the nature, form, and

states: "Something in the way we understand what a story is in the first place or something in the way narrative itself operates produces narrative's 'heterosexually friendly' shape."¹³¹ While not invoking objections of masculinity or heterosexuality, Fredric Jameson's analysis of the "commodification" of narrative is pertinent.¹³² In Jameson's analysis, narrative's arrangement into beginning-middle-end¹³³ is a reifying and consumptive structure whereby the end determines every portion of the narrative, which portions are themselves consumed under the narrative beginning-middle-end model.¹³⁴ If Roof is correct in her assertion that narrativity only tolerates lesbianism in its perverse middle,¹³⁵ then Jameson's insight about the relative irrelevance of every aspect other than the end means that lesbians can exist as consumable objects within narrative but that our existence cannot be narrativity's end/purpose. Thus, although we may believe that narrative is preferable to doctrinal rules for accomplishing favorable legal change for lesbians and other queers, it may be that narrative is as male and heterosexual a structure as rationalist legalism.

2. A second and related paradox is that the oppositional stance of narrative may not be oppositional at all. Barthes has famously stated that "narrative is international, transhistorical, transcultural: it is simply there, like life itself."¹³⁶

Similarly, Hayden White has stated that to even "raise the question of narrative itself is to invite reflection on the very nature of culture and, possibly, even on the nature of humanity itself."¹³⁷ By using narratives, we often believe we are presenting a specific account as distinct from an abstract theory, but the very structure of narrative may be undermining

functioning of narrative," to describe commonalities and differences among narratives, and to account for readers' "ability to produce and understand them."

Id. at 258.

131. ROOF, *supra* note 33, at xxxii.

132. FREDRIC JAMESON, *Reification and Utopia in Mass Culture*, in SIGNATURES OF THE VISIBLE 9, 13 (1992).

133. See ARISTOTLE'S POETICS, *supra* note 39, Ch. VII at 139.

134. Jameson describes the adventure tale in which the dénouement is a reifying structure which "reaches down into the very page-by-page detail of the book's composition" so that each chapter, and even each paragraph, is a sub-plot (presumably complete with its own beginning, middle, and end), thus transforming the "transparent flow of language as much as possible into material images and objects we can consume." JAMESON, *supra* note 132, at 13.

135. ROOF, *supra* note 33, at 39.

136. ROLAND BARTHES, *Introduction to the Structural Analysis of Narratives*, in IMAGE, MUSIC, TEXT 79 (Stephen Heath ed. & trans., Hill and Wang 1977) (1977).

137. Hayden White, *The Value of Narrativity in the Representation of Reality*, in ON NARRATIVE 1-2 (W.J.T. Mitchell ed., 1990).

its content, no matter how distinctive. As Judith Roof argues, narrative "is a structural defense against a chaotic world"¹³⁸ and in its attempt to impose order it may be more like a logical system than not.

The beginning-middle-end structure of narrative is the same structure employed in Enlightenment and modernist pursuits of history, economics, science, and law. For example, one of Hegel's central notions was that "history is the story of the development of human freedom."¹³⁹ This development is inextricably bound to law and the formation of the nation-state, which in fact enables the conditions for narrativity. As Robert Weisberg explicates Hegel's view:

Only where there is law can there be a subject or kind of event that lends itself to narrative, or a legal subject to serve as the agent, agency, and subject of historical narrative. The urge to tell stories derives either from a desire for national law and order or a desire to challenge that law and order. . . . Hence, narrative deals with law, legality, legitimacy, or more generally *authority*. The desire to narrate is the desire to represent authority, whose legitimacy depends on establishing certain grounding facts.¹⁴⁰

Such philosophizing, indeed all of Hegel's philosophizing, typifies the grand narrative or metanarrative that postmodernism rejects.¹⁴¹ Postmodernism's rejection, however, does not encompass "smaller" narratives, which are often celebrated as a method to oppose scientific, abstract, or even legal systems.¹⁴²

Yet these smaller narratives—by being narratives—replicate the structure of the grand narratives being rejected, albeit on a smaller scale: my afternoon at a lesbian bar is substituted for the global human struggle toward freedom. Yet even my small story of my afternoon at a lesbian bar requires me to "emplot the events according to the principles informing the structures of distinctive story types or genres."¹⁴³ This so-

138. ROOF, *supra* note 33, at xxxi.

139. WALTER KAUFMAN, *HEGEL: A REINTERPRETATION* 250 (1966). Kaufman states that this idea is "at the heart" of Hegel's philosophy of history and that all else receives blood from it. *Id.*

140. Weisberg, *supra* note 46, at 77-78.

141. JEAN-FRANÇOIS LYOTARD, *THE POSTMODERN CONDITION: A REPORT ON KNOWLEDGE* xxiv (Geoff Bennington & Brian Massumi trans., Univ. of Minn. Press 1984) (1979) ("Simplifying to the extreme, I define *postmodern* as incredulity toward metanarratives.").

142. See generally, HAYDEN WHITE, *THE CONTENT OF FORM: NARRATIVE DISCOURSE AND HISTORICAL REPRESENTATION* (1987).

143. Hayden White, *Storytelling: Historical and Ideological, in CENTURIES' ENDS, NARRATIVE MEANS* 58, 69 (Robert Newman ed., 1996).

called emplotment—structuring the events with a beginning, middle, and end—will occur whether I later write the afternoon as a fictional scene, whether I later “truthfully” narrate “what I did today” to my lover, or perhaps even as I remain silent but simply understand/remember that specific afternoon at that specific bar. What I am suggesting is that it may be the very act of emplotment, the narrativizing itself, that is problematic, rather than simply the scale or subject of the narrative.

Just as narrative seems transhistorical, transcultural, and even “natural,” so too does domination and subjection. What if there is a link between the structures of narrative and the structures of domination?

In other words, what if a condition of lesbian emancipation is a state without a *necessary* end? Or as Roof expresses it, a rejection of narrative may allow us to understand what has always been there but which we have left uncounted because it did not lead to “closure or production.”¹⁴⁴ Or perhaps even more radical, what if the condition of lesbian/queer emancipation is a state without *any* end? If “[e]very story is over before it begins” because narratives “report a completed past they cannot alter,”¹⁴⁵ then lesbian/queer liberation in the here-and-now may demand a rejection of narrative.

3. A third, and less abstract, paradox of narrative in legal scholarship is elucidated by a comparison with feminist consciousness-raising. Although narrativity makes a claim to experience, it is not utilized in legal scholarship in the same way that the feminist process of consciousness-raising is utilized to encourage one to recognize one’s own life.¹⁴⁶ Instead, narrativity is often proffered as a process in which one requests the listener’s empathy.¹⁴⁷ It is thus based upon difference rather than likeness. It asks that the listener reject his/her own experience and replace it with the experience of another person, the teller of the tale. Yet perhaps we listen to the stories of others only to fortify the narratives we have constructed for ourselves. According to the writer and critic Charles Baxter:

[W]e are like Ivan Illych’s friends who, upon hearing of his death, think: Well, at least it wasn’t me. We seem to know ourselves, so-

144. ROOF, *supra* note 33, at 187.

145. MICHAEL ROEMER, *TELLING STORIES: POSTMODERNISM AND THE INVALIDATION OF TRADITIONAL NARRATIVE* 3 (1995).

146. This is not to say that this does not occur.

147. See generally Lynne N. Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574 (1987).

cially at least, only by comparing ourselves to someone else, to others. We knit together what comparative context we can.

In day-to-day life we play these little games of comparison-contrast in which we are usually the contrast. I wouldn't have done it that way. I wouldn't have done that at all. Look at him, the one who did it, sinking. *At least it wasn't me!* By telling stories in this manner, we become narratable. We find a story for ourselves. We spin around ourselves, in what seems to be a natural form, the cobweb of a plot. We move our own lives into the condition of narrative progression.¹⁴⁸

Even if Baxter is only partially correct, what his insight demonstrates is that a lesbian/queer narrative intended to promote understanding may have the effect of making a listener more smug about his or her heterosexuality. As Lucie White notes, practices of empathy (such as acquiring knowledge about another person) are often also practices of domination.¹⁴⁹ Thus, we may believe that telling our lesbian/queer stories has inspired empathy, but what we have gotten is pity. From my perspective, pity is not only insufficient, it is unwelcome.

Even more bleak is the possibility that empathy is unachievable. In his work on narrativity and intelligence, Roger Schank posits that a listener's "understanding" is a process of "mapping the speaker's stories onto the listener's stories": "Since we can only understand things that relate to our own experiences, it is actually very difficult to hear things that people say to us that are not interpretable through those experiences."¹⁵⁰ Thus, to the extent our lesbian/queer narratives are not capable of being mapped onto pre-existing narratives, they are unintelligible. To the extent our lesbian/queer narratives are mapped, they may become something other than lesbian/queer.

4. A fourth paradoxical effect of our reliance upon narrative is the effect that it can have on our communities and movements. A reliance upon the narratives of individual experience as a touchstone can lead to a

148. CHARLES BAXTER, *Counterpointed Characterization*, in *BURNING DOWN THE HOUSE: ESSAYS ON FICTION* 109, 112 (1997).

The reference is to Leo Tolstoy's classic story, *The Death of Ivan Illych*, which writer and critic Vladimir Nabokov calls "Tolstoy's most artistic, most perfect, and most sophisticated achievement." VLADIMIR NABOKOV, *LECTURES ON RUSSIAN LITERATURE* 238 (Fredson Bowers ed., 1981). As the story opens, Ivan Illych is dead, but the "unfeeling vulgarity of the bureaucratic middle-class city life in which so recently Ivan himself had participated" continues and his "civil service colleagues think of how his death will affect their careers" and what promotions it might occasion. *Id.* at 239.

149. Lucie E. White, *Seeking " . . . The Faces of Otherness . . . ": A Response to Professors Sarat, Felstiner, and Cahn*, 77 CORNELL L.REV. 1499, 1508-09 (1992).

150. ROGER C. SCHANK, *TELL ME A STORY: NARRATIVE AND INTELLIGENCE* 57 (1990).

solipsism that separates us from each other and inhibits understanding of operations of power.¹⁵¹ For example, our discussions theorizing important issues such as same-sex marriage begin—and often end—with statements about the specific effect it would have (or not have) given one's present situation. Compare these two statements:

I support gay marriage because my lover has a good insurance plan and I am self-employed, and I need the insurance because when I was ill last year and had to go to the hospital the bill was outrageous, and if we were heterosexual and married I would have been covered by my lover's insurance.

I don't support gay marriage because I just broke up with my lover and if we had to go through a divorce it would have been terrible, just like it was when I was heterosexual and my husband and I divorced and he took me to the cleaners, getting the house that I had worked hard to fix up.

Such statements are collapsed narratives, often approved because of their specificity and grounding in personal experience. Further, neither speaker is presuming to speak for any community, the existence of which is contestable at best. The "end" of each statement—the political position in support or not of same-sex marriage—is narrativized by the preceding incidents related by the speaker. These narratives, both structurally and in their appeal to personal experience, can preclude logical argument,¹⁵² and may, more importantly, preclude each other and a collective politics.

Personal narratives may seem more specific, contingent, and contested than Hegelian grand narratives or Aristotelian logics, but they can be equally essentializing. This essentializing movement is bound with psychoanalytic structures, processes, and language.¹⁵³ As Kenneth Plummer argues in his study of sexual stories,

151. While the discussion of this paradox can be related to the argument that autobiographical displays by outsiders may replicate rather than challenge liberalism's construction of the individual, I do not assume that liberalism's constructs of rights-possessing individuals should be abandoned by "outsiders" seeking equality. *But see* Coughlin, *supra* note 70, at 1231-32. Moreover, I am not suggesting that lesbian/queer practitioners of narrative are unaware of this paradox or that "community" is not as problematic a concept as individuality.

152. *See supra* notes 42-45 and accompanying text.

153. Although I focus here on structural issues, the importance of the use of specific language to encapsulate experience in narrative cannot be underestimated. As Kenneth Plummer correctly stresses, narrative is socially constructed not only in its structures, but in the specifics, such as the language utilized. PLUMMER, *supra* note 32, at 168-69. In illustrating this point, Plummer recounts the wonderful narrative by the writer Samuel Delaney about his own narration of his coming out experience. As Delaney expresses it, his first public acknowledgment of his homosexuality occurred in a therapy group at the age of 22. *See* Samuel R. Delaney & Joseph Beam, *Samuel R. Delaney: The Possibility of Possibilities*, in *IN THE LIFE: A BLACK*

Therapy provides a major instance of the power of essentialising stories in personal lives, where sexual stories weave together past, present and future into an identity. They help to clarify personal problems, the story lending a (maybe only momentary) coherence to a life. . . . [N]arrative plays a key role in the healing process. It can provide answers to the questions 'Why me?' . . . and also 'What can be done?'¹⁵⁴

This invocation of the therapeutic is not arbitrary, especially for lesbians. As one national survey has reported, three out of every four lesbians in the United States have been in therapy at some point in their lives.¹⁵⁵ Even if this statistic is inflated, over the last two decades, therapy has gained prominence in "Western middle classes and leftist liberal communities in general," and certainly among lesbians.¹⁵⁶ While once lesbians, queers, and feminists opposed the discipline of psychology on political grounds, now psychology seems to have subordinated politics. As Celia Kitzinger and Rachel Perkins argue in their book, *Changing Our Minds*, the political goal of changing the world has been replaced by "the therapeutic goal of changing ourselves."¹⁵⁷ Thus, the exploration of the questions "Why me?" and "What can be done?" does not lead to an exploration of common conditions or of political, economic, or legal structures, as in the process of consciousness-raising.¹⁵⁸ Instead, there is the development of healing personal narratives. Violence against women is addressed through anger-management counseling for rapists, racism becomes "something to get off your chest in a counseling workshop," and oil spills are remediated by hiring a counselor for the affected persons.¹⁵⁹ Legal, economic, and political patterns that enforce subordination of

GAY ANTHOLOGY 196 (Joseph Beam ed., 1986). Reflecting that same evening on his narrative, Delaney noted that inside the group, he had talked like "someone miserable, troubled, and sick over being gay," when he in fact believed that "the gay aspects of his life from the social to the sexual, were the most educational, the most supportive, the most creative" parts of his life. *Id.* Delaney realized that the discrepancy between his language and his understanding was a result of using the "public language" contained in the texts he had read that had pathologized homosexuality. *Id.* at 196-97. Thus, to be expressible, at least initially, Delaney's narrative had to comport with the narratives he had previously learned. Interestingly, Delaney attributes his ability to compare the language he had used in the therapeutic setting with his understanding of his experience as "a writer." *Id.* at 197.

154. PLUMMER, *supra* note 32, at 173.

155. See CELIA KITZINGER & RACHEL PERKINS, *CHANGING OUR MINDS: LESBIAN FEMINISM AND PSYCHOLOGY* 73 (1993) (citing JUDITH B. BRADFORD, NATIONAL LESBIAN HEALTH CARE SURVEY: MENTAL HEALTH IMPLICATIONS (1987)).

156. *Id.* at 78.

157. *Id.* at 186.

158. See *supra* notes 21-31 and accompanying text. Kitzinger and Perkins specifically contrast consciousness-raising to therapy. See KITZINGER & PERKINS, *supra* note 155, at 75-81.

159. *Id.* at 184.

women and people of color, or that support ecological pollution, remain untheorized and virtually unnoticed. Revolution may still be desirable, but it will occur at the end of specific personal narratives, with the individual attainment of the cure of "self-esteem."¹⁶⁰

Thus, although we may proffer our individual narratives as a specific rebuke to present constructions of power, this very proffering occurs in a therapeutic climate which prizes individual pathologies. While my story of being discriminated against by a specific university ("we don't know if we're ready for a lesbian on our faculty") may be meant to provoke political outrage, perhaps it is only intelligible within a psychological framework that will attend to my feelings of hurt, or at most, pathologize the "homophobia."¹⁶¹ Likewise, political positions on the desirability of same-sex marriage become intelligible only as the product of individual narratives. Discussions among ourselves about political change are thereby inhibited.¹⁶² Paradoxically, and I think mistakenly, the narratives of our personal experiences no longer simply inform or "ground" our politics; such narratives can become our teleologies.

5. Another paradoxical effect is that our counter-narratives provoke other counter-narratives, often directly incorporating and responding to lesbian/queer-produced narratives. The conservative right's notorious video *The Gay Agenda* is largely a reproduction (and editing) of lesbian/queer narratives.¹⁶³ As lesbian theorist Didi Herman notes in her excellent book, *The Anti-Gay Agenda*, conservative material "makes frequent use" of "the texts of gay writers themselves," to support its themes

160. See, e.g., GLORIA STEINEM, *REVOLUTION FROM WITHIN* (1992).

161. Kitzinger and Perkins note that the replacement of "oppression" with the term "homophobia" is part of the domination of psychology over politics. KITZINGER & PERKINS, *supra* note 155, at 186.

162. As lesbian theorist Caryatis Cardea compellingly argues, the therapeutic process is the process of lesbian and feminist collectives, groups, and even relationships. See Caryatis Cardea, *Lesbian Revolution and the 50 Minute Hour: A Working-Class Look at Therapy and the Movement*, in *LESBIAN PHILOSOPHIES AND CULTURES* 193, 196-216 (Jeffner Allen ed., 1990). Cardea's stunning insight, however, is not simply the pervasiveness of therapeutic structures, but the way in which they enable middle class lesbians to exert power over lower-classed lesbians. See *id.* at 196-216. Moving beyond the simple notion that a lesbian's participation in therapy usually requires a degree of economic freedom, Cardea argues that the very tenets of therapy (expressing needs, the emphasis on the individual over the group) are derived from middle-class values. See *id.*

163. Videotape: *The Gay Agenda* (Bill Horn 1992). For an argument regarding its status as narrative, see *infra* text accompanying notes 188-90.

of disease and seduction.¹⁶⁴ Gay "success stories" of achievement, especially economic achievement, are harnessed by conservatives to demonstrate their claim that sexual minorities do not suffer discrimination.¹⁶⁵

The use of counter-narrative also occurs in Richard Duncan's recent law review article entitled *Wigstock and the Kulturkampf: Supreme Court Storytelling, the Culture War, and Romer v. Evans*,¹⁶⁶ in which he argues that the landmark case of *Romer v. Evans*¹⁶⁷ is both incorrect and irrele-

164. DIDI HERMAN, *THE ANTI-GAY AGENDA: ORTHODOX VISION AND THE CHRISTIAN RIGHT* 78 (1997). Rather than using the generic term "conservative," Herman defines what she calls the "Christian Right," but part of the value of her book is that she focuses upon what might be termed the mainstream Christian Right rather than its more radical elements. *See id.* at 11-12. Herman also makes clear that the rhetoric of disease and seduction, as well as most of the Christian Right's attention, is aimed at gay men. *See id.* at 76. Her insightful treatment of the Christian Right's strategy regarding lesbians, in a chapter entitled "No Lesbians, Gay Lesbians, Feminist Lesbians" argues that lesbians are generally made invisible, made an extension of gay men, or made an extension of feminism. *Id.* at 92-110.

165. The narratives are very abbreviated, usually into a static portrait of two college-educated gay men touring Europe and/or dining in expensive restaurants. *See* Jean Hardisty & Amy Gluckman, *The Hoax of "Special Rights": The Right Wing's Attack on Gay Men and Lesbians*, in *HOMOECONOMICS: CAPITALISM, COMMUNITY, AND LESBIAN AND GAY LIFE* 209 (Amy Gluckman & Betsy Reed eds., 1997). The narratives are also supported by statistics about gay and lesbian economic status, appropriated from studies done by marketing groups seeking to seduce advertisers. *See id.*

166. Richard F. Duncan, *Wigstock and the Kulturkampf: Supreme Court Storytelling, the Culture War, and Romer v. Evans*, 72 *NOTRE DAME L. REV.* 345 (1997).

167. *Romer v. Evans*, 116 S.Ct. 1620 (1996). *Romer*, also known as the Colorado Amendment Two case, qualifies as a landmark simply because it is the very first time that lesbian/queer equality issues have been successful in the United States Supreme Court.

This success arrives after some stunning defeats. In *Bowers v. Hardwick*, 478 U.S. 186, 190-91 (1986), ten years earlier, the Court gave constitutional imprimatur to state statutes which criminalized homosexual sexual practices. Perhaps less well-known, but equally offensive, was the Court's decision in *San Francisco Arts & Athletics, Inc. v. United States Olympic Comm.*, 483 U.S. 522, 547-48 (1987), in which the Court held that the United States Olympic Committee owned the word "Olympic" and could seek an injunction against the "Gay Olympics" for infringement, despite the fact that it had granted use of the term "Olympic" to other groups (such as the "Explorer Olympics"), and despite its failure to enforce its right against other groups (as with the "Crab-racing Olympics"). Similarly, in *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 579-81 (1995), the Court overruled the Massachusetts Supreme Court and held that the group organizing Boston's St. Patrick's Day Parade did not violate state laws by excluding gay, lesbian, and bisexual Irish-Americans from the St. Patrick's Day Parade, because the Parade Organizers had a First Amendment right to determine the content of the parade.

In *Romer*, the Court recognized the anti-gay animus behind Colorado's Amendment Two which provided in pertinent part:

Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or

vant.¹⁶⁸ Duncan includes an awkwardly crafted section entitled "A Personal Narrative"¹⁶⁹ which does contain personal declarations, although not structured in any recognizable narrative form,¹⁷⁰ as well as a more narratively structured discussion of a case involving a landlord who sought to evade nondiscrimination laws through a religious exemption.¹⁷¹

otherwise be the basis of or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination.

116 S.Ct. at 1623 (quoting COLO. CONST. art. II, § 30b). In ruling upon the constitutionality of the provision, the Court stated, "We must conclude that Amendment 2 classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else. This Colorado cannot do. A State cannot so deem a class of persons a stranger to its laws." *Id.* at 1629.

168. See Duncan, *supra* note 166, throughout. For contrary opinions, see, for example, Akhil Reed Amar, *Attainder and Amendment 2: Romer's Rightness*, 95 MICH. L. REV. 203 (1996) and Larry Alexander, *Sometimes Better Boring and Correct: Romer v. Evans as an Exercise of Ordinary Equal Protection Analysis*, 68 U. COLO. L. REV. 335 (1997).

However, even among those who support the Court's decision in *Romer*, as Janet Halley notes, the majority decision has "gained notoriety as an imperfect text." Janet Halley, *Romer v. Hardwick*, 68 U. COLO. L. REV. 429, 429 (1997). Halley discusses the doctrinal "gaps" in the Court's opinion, but argues that we should not necessarily rush to close them lest we come not to understand their operation in legal discourse. *Id.* at 433.

169. Duncan, *supra* note 166, at 369-71.

170. Duncan's personal narrative consists of declarative statements such as: "I was an advocate in *Romer*. I wrote an amicus brief in support of the Amendment. My personal support for the Amendment was animated by libertarian considerations." *Id.* at 369-70. Later in the "personal narrative" section, he states: "I supported Amendment 2 because I understood the stigmatizing effect of gay rights laws on persons who cling steadfastly to traditional notions of sexual morality in post-modern America." *Id.* at 371.

171. The case Duncan cursorily relates is *Smith v. Fair Employment and Housing Comm'n*, 913 P.2d 909, 913, (Cal. 1996), in which a landlord argued that she could engage in marital status discrimination because her religious beliefs included the idea that unmarried cohabitation was sinful. The California Supreme Court, reversing the court of appeals, decided that the landlord's religious beliefs could not prevail over the public's interest in nondiscrimination. *Id.* at 913. Duncan simply relates the facts but does not discuss the legal issues. See Duncan, *supra* note 166, at 370-71.

Other state courts that have addressed marital status discrimination by landlords have reached contradictory results. See, e.g., *Swanner v. Anchorage Equal Rights Comm'n*, 874 P.2d 274, 278 (Alaska 1994) (holding that landlord discriminated on the basis of marital status); *Attorney General v. Desilets*, 636 N.E.2d 233, 243 (Mass. 1994) (holding in favor of landlord); *State v. French*, 460 N.W.2d 2, 11 (Minn. 1990) (holding in favor of landlord).

For discussions of some of the cases and doctrinal explications of the conflict between prohibiting discrimination on the basis of marital status and the free exercise of religion, see David Kushner, Note, *Free Exercise, Fair Housing and Marital Status—Alaskan Style*, 12 ALASKA L. REV. 335 (1995); Malgorzata (Margo) K. Laskowska, Comment, "No Sinners Under My Roof": Can California Landlords Refuse to Rent to Unmarried Couples by Claiming a Religious Freedom of Exercise Exemption from a Statute Which Prohibits Marital Status Discrimination?, 36 SANTA CLARA L. REV. 219 (1995).

Further, Duncan sprinkles the piece with footnotes from the Bible,¹⁷² which is itself composed of narratives.¹⁷³

I am not arguing that the narrative form is especially susceptible to being countered, either through the production of oppositional stories or through appropriation. For example, Duncan, the author of *Wigstock and the Kulturkampf* also seeks to reverse categories, positing "religious persons" as the "true outsiders" and the "gay elite" as insiders.¹⁷⁴ Further, Duncan uses a quote from the famous lesbian writer Gertrude Stein¹⁷⁵ to critique the majority opinion in *Romer v. Evans*.¹⁷⁶ Conservatives routinely utilize statistics and scientific studies to bolster their theologically derived arguments.¹⁷⁷ What I am arguing, however, is that the use of narrative is not sufficiently special to insulate it from contradictory uses, and that the use of narrative cannot be confined emancipatory purposes.

6. The use of *Wigstock: The Movie*¹⁷⁸—a visual narrative—in a very anti-queer piece of legal scholarship points to yet another paradox of using narrative. Duncan uses the movie, which he describes as "a documentary about the drag queen festival held on Labor Day each year in—did you need to ask?—New York City" and as "screamingly funny and wretchedly sad" to illustrate what he calls "homosexual fundamentalism" and to illustrate what he presumably finds (most?) objectionable about queer culture.¹⁷⁹ This usage demonstrates that if we wish to challenge his

172. See Duncan, *supra* note 166, at 345 n.*, 363 n.92, 371 n.154.

173. See, e.g., CALUM CARMICHAEL, LAW AND NARRATIVE IN THE BIBLE: THE EVIDENCE OF THE DEUTERONOMIC LAWS AND THE DECALOGUE (1985); GERARD LOUGHLIN, TELLING GOD'S STORY: BIBLE, CHURCH, AND NARRATIVE THEOLOGY (1996); THE BIBLE AND NARRATIVE TRADITION (Frank McConnell ed., 1991).

174. Thus, Duncan echoes Justice Scalia's dissenting opinion in *Romer v. Evans*, 116 S.Ct. 1620, 1631 (1996) (Scalia, J., dissenting).

175. Gertrude Stein (1874-1946) was a poet, novelist, essayist, and memoirist, and is considered one of the most innovative writers in the modern era. See OXFORD COMPANION TO WOMEN'S WRITING, *supra* note 8, at 846. Perhaps her best-known work is *The Autobiography of Alice B. Toklas*, a memoir written from the point of view of her lover. See *id.* at 847. Stein and Toklas spent 35 years together, living mostly in Paris. See *id.* at 847-48.

176. See Duncan, *supra* note 166, at 347. Duncan states that "if one searches for sophisticated legal reasoning in the Court's decision in *Romer* he [*sic*] will be disappointed because 'there is no there there,'" and footnotes to "Gertrude Stein's famous description of Oakland" in GERTRUDE STEIN, EVERYBODY'S AUTOBIOGRAPHY (1937). See *id.* at 347 & n.12. Whether the use of the work of a famous lesbian writer in a critique of the Court's first favorable lesbian/queer decision is ironic or simply unintentional is not obvious.

177. See HERMAN, *supra* note 164, at 78.

178. WIGSTOCK—THE MOVIE (Goldwyn 1995).

179. Duncan, *supra* note 166, at 362.

stereotypes with counter-narratives, then we can be forced to select the most anti-stereotypical, conforming, and palatable narratives.¹⁸⁰

So, for example, in Marc Fajer's attempt to counter what he has identified as the "sex as lifestyle" "pre-understanding," he quite reasonably chooses to emphasize stories about long-term relationships.¹⁸¹ Yet as he notes, he risks "accusations" that he is "in some sense 'selling-out' [by] saying we have to model ourselves after nongay ideals to be accepted."¹⁸² Fajer defends himself against this possible accusation by arguing that he is being descriptive: "in many important respects, many of us *are very much like heterosexuals* in the nature of our aspirations, our relationships, and many other aspects of our lives."¹⁸³ But even assuming this is true, it seems to me that it requires suppression (or at least de-emphasis) of the stories that might confirm the pre-understanding. Thus, an attempt to combat the "sex as lifestyle" stereotype requires a rejection of the lesbian/queer stories involving experimentation or explorations of our sexuality.

The preference for respectable narratives also occurs in reform litigation.¹⁸⁴ It does, of course, appear to be the best strategy to select what I have elsewhere called the "whitest and brightest" lesbian/queer clients or "but-for" dykes and other queers as plaintiffs to challenge an oppres-

180. I do not mean to suggest that the stereotypes to be challenged are necessarily coherent. As David Halperin has argued, "homophobic discourses are incoherent" but their incoherence empowers rather than incapacitates them. DAVID M. HALPERIN, *SAINT FOUCAULT: TOWARDS A GAY HAGIOGRAPHY* 34 (1995). "In fact, homophobic discourses operate strategically *by means of* logical contradictions." *Id.* Halperin uses a legal example to illustrate his point, noting that courts have rejected protection for queers because homosexuality is not an immutable characteristic, even as courts have held that "homosexuals as a group do share at least one immutable characteristic: by definition we all commit sodomy." *Id.*

Additional examples in support of Halperin's argument occur in conservative anti-gay rhetoric. As Didi Herman compellingly elucidates, in conservative Christian documents homosexual men are portrayed as anarchic pagan savages (as demonstrated by pride parade footage of shirtless men with painted and tattooed bodies), even as male homosexuality is portrayed as associated with Nazism (as exemplified by a jackbooted, totalitarian, "control-freak"), even as there is a segment of the conservative right which seeks to emulate the Nazis. *See* HERMAN, *supra* note 164, at 91. Herman also points to other rhetorical inconsistencies in antigay discourse, including the absolute incoherency of lesbians, who are simultaneously invisible, hyper-masculinized, pathetic, economically privileged, identical to gay men, and man-hating. *See id.* at 92-110.

181. Fajer, *Can Two Real Men Eat Quiche Together?*, *supra* note 56, at 529.

182. *Id.*

183. *Id.*

184. For a discussion of several cases, see Darren Rosenblum, *Queer Intersectionality and the Failure of Recent Lesbian and Gay "Victories,"* 4 *LAW & SEX* 83 (1994).

sive legal rule.¹⁸⁵ Yet I continue to believe that such a tactic is ultimately divisive and does not afford legal protection for the diversities of lesbian/queer lives.¹⁸⁶

Focusing on litigation narratives which might combat stereotypes can also have the effect of desexualizing lesbian/queers. For example, in much of the litigation challenging military regulations which bar homosexual conduct, advocates have advanced arguments that a declaration of homosexuality does not necessarily mean sexual conduct, thus betraying "the celebration of sexuality for which the gay rights movement once stood."¹⁸⁷ Further, the possibility is bleak that an individual narrative can remain sexual and yet adequately confront the narratives of sexual depravity and criminality entrenched in our current jurisprudence.¹⁸⁸ Even further, as Julie Shapiro has demonstrated in the child custody context, the stories which are acceptable may exclude not only sexuality, but affection.¹⁸⁹ Thus, paradoxically, our reliance on narrative to combat stereotypes threatens to divide us from each other and also encourages self-censorship.

7. Finally, and perhaps most paradoxically, narrativity itself is an extremely troubled practice. What I have been calling the "narrative" of the movie *Wigstock* is in fact barely a narrative at all. Despite the ubiquity of narrative,¹⁹⁰ not everything is narratively structured. *Wigstock: The Movie* is a documentary of an event and its structure is more of a pastiche—a collection of relatively random images, though making use of repetition—than of a narrative that leads ineluctably from beginning to end.¹⁹¹ While legal argument could be said to have a narrative structure, we generally distinguish between logic and story, between analysis and

185. See, e.g., RUTHANN ROBSON, *LESBIAN (OUT)LAW: SURVIVAL UNDER THE RULE OF LAW* 87 (1992).

186. See *id.* See generally Rosenblum, *supra* note 184.

187. Teresa M. Bruce, Note, *Doing the Nasty: An Argument for Bringing Same-Sex Erotic Conduct Back into the Courtroom*, 81 CORNELL L. REV. 1135, 1172 (1996).

188. While Larry Catá Backer attempts to be optimistic that change is possible through exposing the courts to many narratives, his work supports his conclusion that the outlook is "bleak." See Backer, *supra* note 58, at 595.

189. Julie Shapiro, *Custody and Conduct: How the Law Fails Lesbian and Gay Parents and Their Children*, 71 IND. L.J. 623, 647-48 (1996).

190. See *supra* notes 46-53 and accompanying text.

191. For discussions of such distinctions in film theory, see generally DE LAURETIS, *supra* note 43; TERESA DE LAURETIS, *THE PRACTICE OF LOVE: LESBIAN SEXUALITY AND PERVERSE DESIRE* 81-123 (1994); MARY ANN DOANE, *FEMMES FATALES: FEMINISM, FILM THEORY, PSYCHOANALYSIS* (1991); JUDITH MAYNE, *THE WOMAN AT THE KEYHOLE: FEMINISM AND WOMEN'S CINEMA* (1990).

facts. In our celebration of narrativity, the category can expand to include almost everything, thereby losing its explanatory power.¹⁹²

More fundamentally, it is paradoxical that we might proffer narrative as a successful strategy at the end of narrativity itself. As lesbian theorist Sue-Ellen Case argues in *The Domain-Matrix: Performing Lesbian at the End of Print Culture*, the current age is engaged in a "contest between two orders, previously perceived as alphabetic and visual but technologically represented by print and the screen."¹⁹³ Case makes it clear that print/alphabetic culture is associated with traditional narrative structures and that screen/visual culture is associated with the nonnarrative: "The printed page, by the nature of its technology, enforces the sequential development of ideas, whereas the computer screen offers multiple arrangements of data"¹⁹⁴ Although a printed book, Case attempts to emulate screenic qualities in the design and production of *The Domain-Matrix*, encouraging the reader to "surf" through the text rather than be constrained by its linearity, and including bold-faced text meant to mimic hypertext links available on a computer.¹⁹⁵ Hypertext, which

192. For example, William Eskridge, in his article *Gaylegal Narratives*, *supra* note 57, cites some of my work as exemplifying "work[] in which gaylesbian narratives are central to the argument presented." *Id.* at 609-10 n.12 (citing ROBSON, *supra* note 185; Ruthann Robson, *Lavender Bruises: Intra-Lesbian Violence, Law and Lesbian Legal Theory*, 20 GOLDEN GATE U. L. REV. 567 (1990)). Yet it does not seem to me that narratives were central. In the almost two hundred pages of *Lesbian (Out)Law*, for example, there are perhaps three "personal" narratives, one section in which sexual episodes from a novel are used as "facts" upon which the "law" of statutes regulating lesbian sexuality are applied, and the standard factual recitations in discussions of important or illustrative cases. See ROBSON, *supra* note 185, throughout.

193. SUE-ELLEN CASE, *THE DOMAIN-MATRIX: PERFORMING LESBIAN AT THE END OF PRINT CULTURE* 27 (1996).

194. *Id.* at 33.

195. These techniques are not entirely successful. As I stated in a review of the book: The paradox of publishing a book about the end of books is not lost on Case. She explains her often frustrating attempts to construct the book so that it could reach beyond its book-ness and to emulate screenic experience. Yet, using a page border with arrows and computer commands does not actually disturb the reality of the paper in the reader's hands. Similarly, Case's strategy of using bold-faced words to approximate hyper-text and instructing the reader to "view" a different part of the book does not simulate the embedded linkages available using computers. Regrettably, this use of the instructions to view other sections of the book replicates one of the defects of cyber-research: the availability of a link to something else can substitute for a full explication at the present site. Thus, an under-developed argument can be augmented by a citation/link to another section, but upon arrival at the new location, one finds a different under-developed argument with a reference/link back to the original site. This is not to imply, however, that most of Case's arguments are under-developed, only that I wish she would have spent less energy on achieving screens and more energy on expanding some of her own ideas.

can be defined as "text composed of blocks of words (or images) linked electronically by multiple paths, chains, or trails"¹⁹⁶ itself "challenges narrative and all literary forms based on linearity [and] calls into question ideas of plot and story current since Aristotle."¹⁹⁷ Hypertext makes problematic the notion of beginning, which becomes increasingly arbitrary, as well as the notion of ending, which may rest more upon fatigue than satisfying closure.¹⁹⁸ Perhaps most at risk, however, are the Aristotelian ideas that beginning, middle, and end form a coherent whole with a definite "magnitude."¹⁹⁹ A hypertext experience is constructed by the "reader" rather than the text; its length and unity are optional at best.²⁰⁰

Those venerating technological culture are not the only ones who argue that computerization is troubling to narrative coherence. If Hayden White is correct in equating narrativity with culture,²⁰¹ then the arguments against "technopoly" as destructive of "traditional narratives and symbols" and offering only "technical expertise, and the ecstasy of consump-

Ruthann Robson, *The End of Lesbian Writing?*, in LAMBDA BOOK REPORT 25, 25-26 (June 1997).

196. GEORGE P. LANDOW, *HYPERTEXT: THE CONVERGENCE OF CONTEMPORARY CRITICAL THEORY AND TECHNOLOGY* 3 (1992).

As more fully elaborated by another critic:

"Hypertext" is not a system but a generic term, coined a quarter of a century ago by a computer populist named Ted Nelson to describe the writing done in the nonlinear or nonsequential space made possible by the computer. Moreover, unlike print text, hypertext provides multiple paths between text segments, now often called "lexias" in a borrowing from the pre-hypertextual but prescient Roland Barthes. With its webs of linked lexias, its networks of alternate routes (as opposed to print's fixed unidirectional page-turning) hypertext presents a radically divergent technology, interactive and polyvocal, favoring a plurality of discourses over definitive utterance and freeing the reader from domination by the author.

Robert Coover, *The End of Books*, N.Y. TIMES BOOK REV., June 21, 1992, at 43.

197. LANDOW, *supra* note 196, at 101.

198. *See, e.g., id.* at 118.

199. *Id.* at 101-02. For Aristotle, the proper magnitude of a narrative is "one that can be easily taken in by the memory." ARISTOTLE'S POETICS, *supra* note 39, Ch. VII at 15.

200. As Robert Coover phrases it,

And what of narrative flow? There is still movement, but in hyperspace's dimensionless infinity, it is more like endless *expansion*; it runs the risk of being so distended and slackly driven as to lose its centripetal force, to give way to a kind of static low-charged lyricism—that dreamy gravityless lost-in-space feeling of the early sci-fi films. How does one resolve the conflict between the reader's desire for coherence and closure and the text's desire for continuance, its fear of death? Indeed, what is closure in such an environment? If everything is middle, how do you know when you are done, either as reader or writer?

Coover, *supra* note 196, at 43.

201. *See supra* note 137.

tion" are certainly pertinent.²⁰² White's linking of narrativity with culture and even humanity is similarly implicated by the work of critic Sven Birkerts in *The Gutenberg Elegies*, eloquently arguing that the rise of the computer and the decline of the reading of books threaten our culture and our humanity.²⁰³ Discussing his displeasure with hypertext, Birkerts argues that its promise to deliver the reader from the "univocal linearity" of the book is not enticing because the very reason Birkerts reads "fixed acres of print" is to be subjected to an author's masterful narrative.²⁰⁴

Both paeans and reproaches to the end of print culture, however, may be overstated. One is reminded of discussions of the struggle between oral culture and so-called alphabet culture. In the Platonic dialogue *Phaedrus*, Socrates relates a story of the Egyptian god Theuth whose offer of the art of writing to the wise king Thamus was rebuked because the king believed that writing's usurpation of orality would be the demise of memory and wisdom.²⁰⁵ According to a contemporary philosopher, the transition from pictographs, hieroglyphics, and other visual representations to a phonetic alphabet ruptured the human and nonhuman worlds, divorcing human semiotic meaning from the narratives of nature.²⁰⁶ This divorce was finalized with the invention of the printing press, because of both the replacement of calligraphy by standardized

202. See, e.g., NEIL POSTMAN, *TECHNOPOLY: THE SURRENDER OF CULTURE TO TECHNOLOGY* 179 (1992).

203. See SVEN BIRKERTS, *THE GUTENBERG ELEGIES: THE FATE OF READING IN AN ELECTRONIC AGE* 118-32 (1994).

204. *Id.* at 164.

205. If men learn this [writing], it will implant forgetfulness in their souls; they will cease to exercise memory because they rely on that which is written, calling things to remembrance no longer from within themselves, but by means of external marks. What you have discovered is a recipe not for memory, but for reminder. And it is no true wisdom that you offer your disciples, but only its semblance, for by telling them of many things without teaching them you will make them seem to know much, while for the most part they know nothing, and as men filled, not with wisdom, but with the conceit of wisdom, they will be a burden to their fellows.

PLATO, *Phaedrus*, in *THE COLLECTED DIALOGUES*, *supra* note 12, at 520 (line 275-275b). Socrates' position at the end of the dialogue is predictably more nuanced. Socrates does not per se condemn the form of writing but seeks to make a distinction between writing that has been done "with a knowledge of the truth," and whose author can defend it orally, with writing that is simply composed of phrases that the writer has twisted, pasted, and pulled. *Id.* at 524 (line 278c-d).

206. DAVID ABRAM, *THE SPELL OF THE SENSUOUS: PERCEPTION AND LANGUAGE IN A MORE-THAN-HUMAN WORLD* 100-39 (1996). Throughout this excellent book, Abram argues that we have replaced our ability to "read" nature with the ability to read inked marks upon flat pages. See *id.*

type,²⁰⁷ and the widespread availability of written texts. Yet as compelling as these arguments may be, they have not meant the death of memory, nature,²⁰⁸ or narrative, but only change, however dramatic.

Similarly, neither the paeans nor reproaches unequivocally reject narrative. Claims that narrative will be "reconfigured"²⁰⁹ by hypertext are not necessarily the same as claims that narrative will cease. A narrative supplied by reader rather than author is nevertheless a narrative. While the classical definitions formulated by Aristotle are certainly implicated, there is no certainty that the structure of beginning-middle-end or the coherence of unity are absolutely necessary for narrativity in the new millennium.

Yet it is undoubtable that narrative is troubled. It is paradoxical that we might proffer narrative as a path to emancipation at a time when the continuation of narrative as we have known it is becoming increasingly suspect. We may be telling our stories at the end of the story of story-telling.

beginning at last

It is too late to begin again, but I want to return to the returning woman who read aloud the Muriel Rukeyser poem about Käthe Kollwitz. Because there is something else I remember. Something else besides her toothpaste tube and her television set and her physician husband. Something else besides the Valium and the sharp voice. Some other detail necessary to this story.

This something else happened later. It was warm; I remember that. We were outside, tucked into a stand of trees on the knoll of a hill behind the library. Perhaps we were working on a project together, maybe for the same class, maybe even on Muriel Rukeyser's poetry. I really don't remember, and I could offer the excuse that it was more than twenty years ago, but I probably didn't remember these details the next semester. But what I did remember, the next semester and even now, is that she was wearing a yellow shirtdress and her sandals had ankle straps. I remember that her slip was full and white and soft and underneath it her

207. *Id.* at 199 (making the distinction between hand-lettered books and standardized texts).

208. Interestingly, Coover implies that hypertext is more respectful of nature than is print, because of the "forest-harvesting, paper-wasting" required to produce print media. Coover, *supra* note 196, at 43.

209. LANDOW, *supra* note 196, at 101-19.

bra felt like cardboard. I remember her underpants were not cotton, but something synthetic and unpleasant.

I remember the sex.

And what I learned from that experience was what her narrative sought to convey. I learned what it meant to be a returning woman. I learned what it meant to have a husband and children and a life one didn't enjoy. I didn't learn everything, of course, and I didn't learn articulable details about toothpaste tubes. But in a certain slope of the shoulder, a shudder of sweat, I experienced an empathy that had previously eluded me.

I also experienced her beyond empathy. And I allowed her to experience me that way. Inhabiting a space that does not have a male/heterosexual structure, a place that is originary and original. In that uncontestable site where narrative is absolutely absent. Bordering being neither individual nor collective, and not subject to being countered or censored.

In that compelling moment when it seems as if the world just might split open.

This did not make for a lasting relationship, or any relationship.

After that semester, the only other time I saw her was in the restaurant where I waitressed. She was part of a party of five, drank three daiquiris, and ordered chicken cordon bleu.

I do not know how she fit the sexual episode into the narrative of her own sexual history and identity. I fit it into mine as another escapade that I would not mention to my then-girlfriend, despite our commitment to being honestly nonmonogamous.

And now, of course, I try to reconstruct that bodily engagement here—as a narrative about the paradoxes of narrative.

The paradoxes in which I am interested do not speak of narrative's inferiority to logical argument. Logical argument cannot capture sandals with ankle straps, women's sweat, and sex. And sometimes, yes, sometimes, narrative can. But only paradoxically.

Thus, I am not suggesting we eschew narrative any more than I am suggesting we abandon rationality.

I confess I love them both.

But I am arguing that we must never reject or neglect our sexual energy in all its various expressions. And we must unfailingly preserve and honor the illogical, nonverbal, nonarticulate, nonnarrative beauty of our lives.