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Race and Gender Exclusivity in Legal Scholarship

ARTHUR AUSTIN[†]

I. Exclusivity

In 1992 the American Association of Law Schools recommended that new forms of scholarship be given the same consideration for promotion and tenure as "more traditional" scholarship.¹ Traditional scholarship includes vocational, doctrinal, and interdisciplinary writing,² and aspires to be objective and analytical, and to cover all relevant arguments.³ As the dominant model, doctrinal scholarship is the progeny of Christopher Columbus Langdell's conversion of legal education from vocational training to law as a science and profession. The law as a science thesis assumes that decisions can be analyzed

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1. *Report of the AALS Special Committee on Tenure and the Tenuring Process*, 42 J Legal Educ 477, 505 (1992). "The school should commit itself to avoiding prejudice against any particular methodology or perspective used in teaching or scholarship. When evaluating any work embodying innovative or less widely pursued methodologies or perspectives, the standard should be neither higher nor lower than the standard used for evaluating more traditional work." Id.

2. Vocational writing is descriptive of cases, statutes, or administrative rulings. Doctrinal and interdisciplinary writing would fall within Rubin's "standard legal scholarship." This is defined as "an essentially prescriptive approach that acknowledges its normative basis. Contemporary legal scholars are now generally aware that their work consists of recommendations addressed to legal decision-makers, recommendations that are ultimately derived from value judgments rather than objective truth." Edward L. Rubin, *The Practice and Discourse of Legal Scholarship*, 86 Mich L Rev 1835, 1904 (1988).

Posner divides traditional legal scholarship into three categories: doctrinal, interdisciplinary (law and . . .), and normative analysis (the "use of the social sciences (primarily economics) and the humanities (primarily philosophy) to evaluate legal doctrines."). Richard A. Posner, *The Present Situation in Legal Scholarship*, 90 Yale L J 1113, 1125 (1981).

3. "Every textual statement must be justified by appropriate 'authority' to reinforce the appeal to neutral method and objectivity." Donald H. Gjerdingen, *The Future of Legal Scholarship and the Search for a Modern Theory of Law*, 35 Buff L Rev 381, 391 (1986).

and distilled into general principles for guidance in problem solving. The traditional doctrinal article is a written expression of the scientific technique in the form of a research paper on a specific problem that synthesizes cases and statutes to produce a recommended solution.

Non-traditional scholarship is the overflow, anything from storytelling to poetry.⁴ Flourishing within the non-traditional category is the race-gender genre—a submarket of writers dedicated to exposing the perceived injustices of the legal establishment. Their style is purposely subjective, emotional, empathetic, openly “oppositional,” and ideological. Moreover, the genre’s race and gender ideology ferments the notion of “exclusivity”—the assumption that the group’s culture and historical experience produces a distinctive and unique type of scholarship. Uniqueness creates barriers around the scholarship, leaving race and gender scholars with exclusive rights to the production, interpretation, and evaluation of their work.

The race-gender crusade considers exclusivity to be the product of alienation and oppression.⁵ In addition, there is the “voice” assumption that posits that there are fundamental differences of perception between outsider females and people of color and insider white males.⁶ They contrast the dominant “voice” of the liberal white male establishment (the “insiders”) with the subordinate “voice” of the people of color and females (the “outsiders”).⁷ Outsider “experiences of the same circumstances may be very, very different” from insider perceptions and “the same symbol may mean different things to each of us.”⁸ Moreover, insider and outsider categories evoke a range of conflicting secondary meanings. “Liberal white male” is associated with authoritarianism, hierarchy, rationalism, objectivism, individualism, and patriarchy. Race-gender writers attach negative connotations to these words; they describe an oppressive agenda.

The response to the oppression agenda comes in the secondary meaning of words associated with females and people of color: empathy, altruism, emo-

4. See Arthur Austin, *The Top Ten Politically Correct Law Reviews*, 1994 Utah L Rev 1319, 1323.

5. “These scholars argue that some members of marginalized groups, by virtue of their marginal status, are able to tell stories different from the ones legal scholars usually hear.” Richard Delgado, *When a Story Is Just a Story: Does Voice Really Matter?* 76 Va L Rev 95, 95 (1990).

6. The boilerplate reference for the “voice” thesis is Carol Gilligan, *In a Different Voice: Psychological Theory and Women’s Development* (Harvard 1982). See also Leslie Bender, *From Gender Difference to Feminist Solidarity: Using Carol Gilligan and An Ethic of Care in Law*, 15 Vt L Rev 1, 3 (1990).

7. Outsiders “encompass various outgroups, including women, people of color, poor people, gays and lesbians, indigenous Americans, and other oppressed people who have suffered historical under-representation and silencing in the law schools.” Mari Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground*, 11 Harv Women’s L J 1, 1 n 2 (1988).

8. Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 Harv CR-CL L Rev 401, 409 (1987).

tion, community, an ethic of caring, and nurturing. These words are, however, ignored or denigrated by the voice of the majoritarian liberal white male oppressors.⁹ The voice of the dominant insider trumps the marginalized voices of the outsider victims.

This sharp dichotomy has two consequences. First, outsiders assume that their work is excluded from mainstream establishment scholarship. "Legal scholarship remains one of the last vestiges of white supremacy in civilized intellectual circles."¹⁰ Secondly, outsiders have the obligation and right to exercise exclusive authority for producing and judging "their" scholarship.¹¹

The most resolute rationalization for exclusivity is based on essentialism which posits a distinct Black experience. To Professor Williams, essentialism is derived from slavery, which robbed Blacks of a sense of self. "The black slave experience was that of lost languages, cultures, tribal ties, kinship bonds, even of the power to procreate in the image of oneself and not that of an alien master."¹² Derrick Bell agrees and sees Blacks as permanent outcasts in an alien culture, a theme that he uses parables such as *The Space Invaders* to cultivate. A fleet of space ships suddenly appears to trade with what has become an economically besieged United States. The space invaders make a non-negotiable offer of gold and other critically needed supplies in exchange for all African Americans. The initial reaction is shock, then indignation—it is, after all, slave trading. After reflection, the offer becomes an "irresistible temptation," prompting the fast passage of a constitutional amendment to legalize the trade. "And just as the forced importation of those African ancestors had made the nation's wealth and productivity possible, so their forced exodus saved the country from the need to pay the price of its greed-based excess."¹³

In addition, there is the concern with subversion; if insiders enter the field, they will dilute and divert the vigor of outsider scholarship with a gloss of majoritarian voice.¹⁴ Moreover, outsider legal scholars are entitled to the same

9. "Under patriarchy, men are the model and the embodiment of the fully human; to maintain their status and power, men are entitled to exercise both subtle and violent control over women." Lynne Henderson, *Law's Patriarchy*, 25 *Law & Soc Rev* 411, 412 (1991).

10. Jerome McCristal Culp, Jr., *Toward a Black Legal Scholarship: Race and Original Understandings*, 1991 *Duke L J* 39, 41.

11. "[T]hose who have experienced discrimination speak with a special voice to which we should listen." Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 *Harv CR-CL L Rev* 323, 324 (1987). "It is a structure of domination that not only forms identities and practices, but also potentially empowers those experiencing its oppression to speak for others from that location in appropriate contexts." Bender, 15 *Vt L Rev* at 27 (cited in note 6).

Moreover, the outsider movement "need not . . . comply with the standards it contests," Jane B. Baron, *Resistance to Stories*, 67 *S Cal L Rev* 255, 285 (1994).

12. Patricia Williams, *The Alchemy of Race and Rights* 153 (Harvard 1991).

13. Derrick Bell, *After We're Gone: Prudent Speculations on America in a Post-Racial Epoch*, 34 *SLU L Rev* 393, 400 (1990).

14. "Adopting a black feminist perspective would require that white male scholars criticize the white supremacist and patriarchal thinking that are the sources of their

presumption of expertise as Blacks get in the social sciences.¹⁵ As for standards of evaluation, they “must develop out of the discourses of the outsider communities,” not from insiders.¹⁶

The insiders’ commitment to Euro-cans renders their understanding of outsider work problematical. Johnson says: “[T]he voice of color is identified and synonymous with marginalized groups in our society whose marginal outsider status enables them to relate important stories—stories that cannot be sincerely told by their privileged majoritarian peers.”¹⁷ Even if an insider did use the outsider style in narrative, it would come out as a “mimic” or “affectation,” tantamount to “impostors” producing “counterfeit” stories.¹⁸ There is, nevertheless a role for insiders—as listeners “to enrich their own reality . . . and reduce the felt terror of otherness when hearing new voices for the first time.”¹⁹

superior status. Moreover, because white male scholars have the capacity to dominate any area of inquiry they share with minority academics . . . they have the capacity to dilute whatever counterideological impact black feminist scholarship might have. For these reasons, wariness is in order.” Regina Austin, *Sapphire Bound!*, 1989 Wis L Rev 539, 543 n 14 (citing Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U Pa L Rev 561 (1984)).

“We remain invisible and unheard in the literature that is the evidentiary database for legal discourse, and when we are seen, in stories told by others, our images are severely distorted by the lenses of fear, bias, and misunderstanding.” Charles R. Lawrence, III, *The Word and the River: Pedagogy As Scholarship As Struggle*, 65 S Calif L Rev 2231, 2279 (1992).

15. “This phenomenon may be contrasted with that which prevails in social science research. It is my own experience that in this other body of scholarly writing, minority status constitutes virtually a presumption of expertise; Blacks writing about the Black community and Chicanos about the Chicano community are accepted as equal (perhaps more-than-equal) partners. Indeed, ethnic studies departments sometimes resist hiring Caucasian faculty members out of the belief that they are generally less qualified for the position than candidates who are members of the minority group in question.” Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U Pa L Rev 561, 564 n15 (1984) (citing telephone interview with Michael Olivas, Director, Institute on Law & Higher Education, University of Houston (September 14, 1983)).

16. “The standards of judgment must develop out of the discourses of the outsider communities. Those movements have a long enough history so that one can begin to describe what defines the practice and thus what its practitioners are likely to consider as good work. I do not claim any authority to prescribe what those standards ought to be; I do claim a membership in the community that grounds my observations/proposals as part of the discourse.” Mary I. Coombs, *Outsider Scholarship: The Law Review Stories*, 63 U Colo L Rev 683, 712-13 (1992).

17. Alex M. Johnson, Jr., *The New Voice of Color*, 100 Yale L J 2007, 2038 (1991).

18. 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, 837 (1994).

19. Richard Delgado, *Storytelling For Oppositionists and Others: A Plea for Narrative*, 87 Mich L Rev 2411, 2439-2440 (1989).

II. Criticisms of Exclusivity

Advocates of the victim and voice thesis are relying on what Robert Merton called the Insider Doctrine: "the claim holds that some groups have *privileged access* [to particular kinds of knowledge], with other groups also being able to acquire that knowledge for themselves at greater risk and cost."²⁰ He added that "according to the doctrine of the Insider, the Outsider, no matter how careful and talented, is excluded in principle from gaining access to the social and cultural truth."²¹ Like other groups have in the past, Blacks and feminists seek to carve out a self-designated status as a means of redistributing academic power. According to Merton and Randall Kennedy, who has written the seminal article on exclusivity in legal scholarship, Black status empowerment is the inevitable consequence of racism.²²

And just as the social system has for centuries operated on the tacit or explicit premise that in cases of conflict between whites and blacks, the whites are presumptively right, so there now develops the counterpremise, finding easy confirmation in the long history of injustice visited upon American Negroes, that in cases of such conflict today, the blacks are presumptively right.²³

Both Kennedy²⁴ and Merton reject the notion of privileged access. To Merton, it is individual variability that contributes to the development of a

20. Robert K. Merton, *Insiders and Outsiders: A Chapter in the Sociology of Knowledge*, 78 Am J Soc 9, 11 (1972). Note that victim and voice advocates cast themselves as "outsiders" (see notes 7-8 and accompanying text) while Merton calls them "insiders."

21. *Id.* at 15.

22. Randall L. Kennedy, *Racial Critiques of Legal History*, 102 Harv L Rev 1745, 1801 (1989).

23. Merton, 78 Am J Soc at 19 (cited in note 20). Kennedy, 102 Harv L Rev at 1750-60 (cited in note 22).

24. "None of the contributors to the racial critique literature who have articulated what I have called the racial distinctiveness thesis have offered a substantive definition of blackness." Kennedy, 102 Harv L Rev at 1803 (cited in note 22).

Kennedy's Harvard Law Review article served as a catalyst for criticism and debate. See, for example, Colloquy, *Responses To Randall Kennedy's Racial Critiques of Legal Academia*, 103 Harv L Rev 1844 (1990). Despite accusations that Kennedy's article had rationalized a "backlash" against minority writing (Charles Rothfeld, *Minority Critic Stirs Debate on Minority Writing*, NY Times B6 (Jan 5, 1990)), narrative writing has flourished.

Farber and Sherry reach a similar conclusion as to the voice of women thesis. "Thus, although some evidence exists that men and women possess different perspectives on the law, the weight of the *evidence does not support either of the strong versions of the different voice thesis*: i) that the voices of men and women are so different that the former normally can neither understand nor evaluate the work of the latter, or ii) that women are in a unique position to transform legal scholarship. At most, the empirical evidence suggests that women may write about or *emphasize* different aspects of the law than men, potentially providing a more complete vision of the legal system." Daniel A. Farber and Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 Stan L Rev 807, 814 (1993) (emphasis added).

discipline.²⁵ Likewise, there is no special intellectual content to victimization, which is always in the eyes of the beholder.²⁶ The voice assumption is undercut by the sharp clashes between the different perceptions of conservatives, liberals, separatists, Marxists, etc., that are scattered among all races and genders.²⁷ There is, moreover, no rational and credible way to separate Black issues from white issues.²⁸ Most importantly, the victim and voice thesis “with its epistemological claim to a monopoly of certain kinds of knowledge, runs counter, of course, to a long history of thought.”²⁹ It is the diversity of perspective that creates knowledge.³⁰

The victim and voice advocates ignore the role that “experience” plays in scholarship. There is a linear trace from experience to perception to scholarship. The trace is consumed with static. Experience is determined by a multitude of factors—intelligence, economic status, race, luck, etc. Perception is equally illusive, shaped by the blending of experiences into the individual’s vision of the environment. The individual has privileged access to his perceptions but not to his culture, race, gender, etc.³¹ The result is that a fixed and

25. “Important as such allowance for individual variability is for general structural theory, it has particular significance for a sociological perspective on the life of the mind and the advancement of science and learning. For it is precisely the individual differences among scientists and scholars that are often central to the development of the discipline. They often involve the differences between good scholarship and bad; between imaginative contributions to science and pedestrian ones; between the consequential ideas and stillborn ones. In arguing for the monopolistic access to knowledge, Insider doctrine can make no provision for individual variability that extends beyond the boundaries of the ingroup which alone can develop sound and fruitful ideas.” Merton, 78 *Am J Soc* at 28 (cited in note 20).

26. Victimization is now a popular explanation for failure, crime, and dysfunctionism. See Charles J. Sykes, *A Nation of Victims: The Decay of the American Character* 142 (St. Martin’s 1992); Alan M. Dershowitz, *The Abuse Excuse: And Other Cop-Outs, Sob Stories, and Evasions of Responsibility* (Little Brown 1994); John Taylor, *Don’t Blame Me!: The New Culture of Victimization*, *New York* 26 (June 3, 1991).

27. Kennedy complains that victim and voice advocates ignore “all intra-racial disagreement.” Kennedy, 102 *Harv L Rev* at 1784 (cited in note 22).

28. To do so would have negative effects on Black scholars who would be “outsiders” to white issues. *Id.* at 1794 (cited in note 22).

29. Merton, *Am J Soc* at 30 (cited in note 20).

30. “Publish or perish!” is a fundamental psychological, indeed almost physiological, imperative that is rooted in the very metabolism of scholarship as a vocation. For that is how research remains honest, by exposing itself to the criticism and correction of other scholars and by inviting them—or daring them—to replicate its results (if they can!) and, if possible, to carry those results further.” Jaroslav Pelikan, *Scholarship: A Sacred Vocation*, 16 *Scholarly Pub* 3, 19 (Oct 1984).

31. “The doctrine of privileged access has two versions; one is commonsense and trivially true; the other is somewhat more philosophical yet still fairly commonsense—and false. The true version is this. Every person has access to some information available to that person alone, and it involves one’s self, at least as an eye-witness. There is no doubt that this doctrine is true—at least in the sense that not a single author has ever put forth so much as one paragraph in an attempt to question it. The false version is that every person knows his own self best.” Joseph Agassi, *Privileged Access*, 12 *Inquiry* 420 (1969).

distinctive collective experience for any group to claim as the source for an exclusive form of scholarship can never exist. Self-isolation under the politics of victimization and oppression cannot fence out the influence of voices from other cultures. Professor Delgado's efforts to presume privileged access is a political maneuver,³² an example of what Professor Gitlin calls "hermetic bravado celebrating victimization and stylized marginality."³³

III. Expanding the Exclusivity Dialogue: Richard Wright and James Baldwin

Exclusivity advocates argue that it is the narrative-storytelling genre that best exemplifies their distinctive contribution to legal scholarship. It is the *expression* of the writer's agony, frustration, or humiliation, that gives storytelling its status. Victim and voice narratives say something new, and that "something new is the author's tale, that is, that the events occurred as the author relates them."³⁴ Patricia Williams, the best known voice storyteller, is revered for blending parody, parable, and sometimes poetry, to describe spiritual murder by the dominant white culture. "Buzzers are big in New York City"³⁵ is the first sentence in her story about a "narrow-eyed, white teenager . . . feasting on bubble gum"³⁶ using a crowd screening device to deny her admission to a fashionable Benetton store. Williams analyzes her rage, ultimately realizing that when Blacks participate in the buzzer system, they accept self-hatred. Like a favorite song, every storyteller has committed the Benetton story to memory. As one admirer gushes, "[i]n short, I believe Williams' stories the way I believe a good piece of literature."³⁷

What is missing from the dialogue over the credibility of the victim and voice storytelling thesis is reference to a wider universe of storytelling. This "other" universe composed of the traditions, aspirations, and experiences of storytelling *qua* storytelling refutes the notion of exclusion.

A. RICHARD WRIGHT

To the professional storyteller, the objective is to share experiences and to transcend the inner self to create a universe of conflict, ideas, and values. Experiences are meaningless unless they reach and touch readers. "Effective communication requires bridging the gap between the viewpoints of speaker and

32. Delgado, 132 U Pa L Rev at 561, 577 (cited in note 15).

33. Robert S. Boynton, *The New Intellectuals*, Atlantic Monthly 53, 66 (Mar 1995).

34. Johnson, 79 Iowa L Rev at 820 (cited in note 18). "The narrative form that critical race theorists sometimes select is meant in some sense to be an argument in itself, presenting its own challenge by its very existence: *Could someone white have written this?*, the stories demand." Stephen L. Carter, *Academic Tenure and "White Male" Standards: Some Lessons From Patent Law*, 100 Yale L J 2065, 2077 (1991).

35. Williams, *Alchemy of Race and Rights* at 44 (cited in note 12).

36. *Id.* at 45.

37. Kathryn Abrams, *Hearing the Call of Stories*, 79 Cal L Rev 971, 1003 (1991).

listener, rather than simply presenting the speaker's views without regard to the standpoint of the listener."³⁸ Overlooked in the self-serving exclusivity campaign is the rich history of oppression writing, such as that of Richard Wright.³⁹ His work demonstrates that for narrative to succeed, race nuance must include rather than exclude.

Wright was a writer of contradiction, living in a period of overt and covert racial discrimination yet marrying white women two times.⁴⁰ He participated in left-wing politics but rejected the party's discipline.⁴¹ Professor Walker says, "[b]ut everywhere he turned he felt rejected by family and friends, by fellow members of his race and class, by the hated white race and clan, by church, state, and the upper-middle class."⁴²

The plot of *Native Son*,⁴³ his best known and a critically acclaimed book,⁴⁴ is consumed with racial hatred. Bigger Thomas, the central character, is a hate machine—a bully and a petty thief, yet frightened and confused in dealing with the tensions of a Chicago ghetto trapped by "that white force."⁴⁵ He never had a chance; his first night as a driver for a rich white family is his demise.

What starts as a simple drive to deliver the daughter Mary to a night lecture is detoured to a meeting with her communist lover and disaster. They embarrass him by forcing him to drive the pair to a Black restaurant where he is a regular customer. On the way home the lovers engage in sex while drinking rum. The journey concludes with Bigger toting a passed-out Mary to her bed. Mary's mother, who is blind, enters the room. Assuming that if he is detected he will be accused of some sexual perversion, Bigger panics. To make sure Mary does not give him away, he puts a pillow on her face, accidentally suffocating her. "He had killed a white woman."⁴⁶

Native Son has a chiseled perspective; it is the story of the Black experience in an antagonistic white-dominated society. There are two worlds but it is only the white one that counts. The worlds are separated by an ethos beyond hate.

38. Farber and Sherry, 45 *Stan L Rev* at 826 (cited in note 24). They add: "But in our extensive reading of the storytelling literature, we have found few efforts to connect the events in the stories with the experiences of white or male readers." *Id.* at 826-27.

39. For a biography by someone who knew Wright, see Margaret Walker, *Richard Wright, Daemoniac Genius: A Portrait of the Man, A Critical Look at His Work* (Warner 1988).

40. The first "was a belly dancer who called herself an Egyptian dancer at that time." *Id.* at 160.

41. Wright eventually rejected the party. *Richard Wright*, in Richard Crossman, ed, *The God That Failed* 115, 149 (Harper 1949).

42. Walker, *Richard Wright* at 310 (cited in note 39).

43. Richard Wright, *Native Son* (Harper 1940).

44. "As the historian Irving Howe put it: 'The day *Native Son* appeared, American culture was changed forever.'" Clive Davis, *Ghetto Rebellion from the Sepia Steinbeck*, *The Times* 23 (Oct 27, 1990).

45. Wright, *Native Son* at 97 (cited in note 43).

46. *Id.* at 75.

Bigger acts out the consequences of this ethos; he hates whites, especially those that befriend him. He hates his family, he hates religion, and, for their submission, he hates his race. Bigger Thomas is the ubiquitous *Every Black*.⁴⁷

The separatist will make the argument that only a Black could have the experience to compose a character like Bigger Thomas. It is, without doubt, a profile of extensive psychological range. Moreover, it was Wright's experiences that enabled him to write a unique form of race murder in which the perpetrator of two murders is himself "murdered" two times—once by white society before he kills Mary and afterward when the system puts him in the electric chair. Moreover, could anyone but a Black understand the despair in these lines?

He was tired, sleepy, and feverish; but he did not want to lie down with this war raging in him. Blind impulses welled up in his body, and his intelligence sought to make them plain to his understanding by supplying images that would explain them. Why was all this hate and fear? Standing trembling in his cell, he saw a dark vast fluid image rise and float; he saw a black sprawling prison full of tiny black cells in which people lived; each cell had its stone jar of water and a crust of bread and no one could go from cell to cell and there were screams and curses and yells of suffering and nobody heard them, for the walls were thick and darkness was everywhere. Why were there so many cells in the world? But was this true? He wanted to believe, but was afraid. Dare he flatter himself that much? Would he be struck dead if he made himself the equal of others, even in fancy?⁴⁸

But writing is more than race, gender, or ethnicity. To make his novel work, Wright had to carve out a cast of characters. No matter how effective his Black people were, the story would freeze without strong white characters to serve as counters. And to do this, Wright had to become a writer—not a Black writer writing with a Black voice, but a writer.⁴⁹

47. "What Wright achieved in *Native Son*, and what no American writer has done quite so well since (including Wright), was the construction of a fictive universe where everything is charged by the broken mind and broken heart of a black boy reduced to a state of thinghood. It is we, the readers, whom Wright turns into murderers, who he sends fleeing across frosty rooftops in Chicago and finds guilty for both the crimes against Mary Dalton and Bigger's girlfriend Bessie and this country's crimes against all the Bigger Thomases condemned to a life of frustration, invisibility and fear." Charles Johnson, *Black Fiction's Father Figure: Richard Wright's Works, Collected and Unexpurgated*, Chi Trib Sec 14, 4 (Nov 17, 1991). See generally, Harold Bloom, ed, *Bigger Thomas* (Chelsea 1990).

48. Wright, *Native Son* at 306-307 (cited in note 43). According to one critic: "Wright had invented a young black man who awakens to himself by discovering his capacity for rage, by punching through the racial wall into moments of bodily contact (carnal and lethal) that confirm the aliveness of his body." Andrew Delbanco, *An American Hunger*, New Republic 28, 32 (Mar 30, 1992).

49. "There is danger, though, in regarding him only as a 'black' writer. He was much more—an American writer who lived the American dilemma of racism. Pent-up rage fueled his pen and was the sauce of what Mrs. Walker of his 'daemonic genius,' as meant in Mrs. Walker's title, 'Daemonic Genius.' He has left behind a body of work confirming

Wright successfully makes this elevation, especially with Mary Dalton. Her character is critical since she is the one who exposes—or provokes—Bigger’s instinctive hatred of whites. We see Mary as “well-intentioned,” Wright’s notion of the typical liberal, who makes the assumption that by “playing equal” and by eating at Black restaurants, she can understand their “problems.” Instead, she confuses Bigger. “He watched her with a mingled feeling of helplessness, admiration, and hate.”⁵⁰ When he accidentally kills her, we accept it as a natural reaction to a force well beyond Bigger’s comprehension.

Every writer, as a writer, understands and exploits alienation. It is a literary vehicle as important as revenge.⁵¹ Bigger’s alienation is like Joyce’s alienation from Ireland or Dostoyevsky’s alienation from Russian despotism. In fact, the tension that surrounds Bigger’s flight and his interrogation by the prosecutor is similar to the psychological treatment of Raskolnikov in *Crime and Punishment*.⁵² The following is a universal theme to the condemned: “There was no day for him now, and there was no night; there was but a long stretch of time, a long stretch of time that was very short; and then—the end.”⁵³ Wright thereby gives Bigger’s alienation depth and dimension by making it the universal suffering of all the persecuted, regardless of time or race.⁵⁴

B. JAMES BALDWIN

James Baldwin is arguably the most influential Black writer of the century.⁵⁵ Baldwin had a wider range than Richard Wright or Langston Hughes; he wrote novels, essays, and plays while engaging in numerous political-race events throughout the world. Unlike the southerner Wright, Baldwin was a product of the Harlem ghetto, yet he imitated Wright by living his later years in Paris.

If Wright was a smoldering fire of resentment, Baldwin was a machine gun, constantly firing off criticisms of the white power structure. Nevertheless, it was Baldwin who rejected Wright’s notion that *all* writing is protest. Baldwin said: “The failure of the protest novel lies in its rejection of life, the human being, the

him as one of the most powerful writers and thinkers of any time. It is a literary achievement monumental by any standard.” Allegra Bennett, *Richard Wright’s True Legacy of Creative Rage*, Wash Times B7 (Feb 9, 1992).

50. Wright, *Native Son* at 71 (cited in note 43).

51. Richard A. Posner, *Law and Literature: A Misunderstood Relation* 25 (1987).

52. Fyodor Dostoyevsky, *Crime and Punishment* (Mod Lib 1950). See Tony Magistrale, *From St. Petersburg to Chicago: Wright’s Crime and Punishment*, 23 Comp Lit Studies 59, 67 (1986).

53. Wright, *Native Son* at 233 (cited in note 43).

54. “It is in Wright, Faulkner, and Welty that we see the southern writer rising above time and place, struggling beyond the racist limitations of the society, reaching into the truly rarified world of the artist, where human values and universal truths take precedence over provincial notions and bigoted minds. Like all great writers in the world, they move from the local to the universal, from the immediate to the timeless, from the simple to the sublime.” Walker, *Richard Wright* at 49 (cited in at note 39).

55. For a thorough biography see David Leeming, *James Baldwin: A Biography* (Knopf 1994).

denial of his beauty, dread, power, in its insistence that it is his categorization alone which is real and which cannot be transcended."⁵⁶ Instead of being an ideological spokesman, he was a "witness."⁵⁷

Baldwin exercised his talents as a *writer* in *Giovanni's Room*,⁵⁸ published in 1956. It is a novel of subtle nuance, effective character definition, and psychological probing. David, the narrator, describes his frustration and self-doubts as he is forced to confront his homosexuality. It is a tortured journey; he loses his girlfriend when she follows him to a homosexual bar and then suffers the anguish of his male lover being executed for murdering another homosexual.

As a homosexual, this was a difficult theme for Baldwin. The novel was published during a period in which homosexual fiction was a high-risk topic. If one assumes the existence of "Black writing," one would expect Baldwin to rely on what he presumably knew best: Black characters living in a Black environment. Instead he used white characters living in a white world.⁵⁹ The narrator came from a solid middle-class background, while the other characters were either French or Italian. Another interesting nuance: the tone and style of the book reflects a strong Henry James influence.⁶⁰ (In fact, at one time Baldwin wrote under an autographed portrait of James.⁶¹) This is evident when, as the story unfolds, layer after layer of the narrator's protective shell is peeled off imperceptibly in a subtle imitation of James. Some of Baldwin's characters would have been at home in James' work.⁶²

56. W.J. Weatherby, *James Baldwin: Artist On Fire* 73 (Fine 1989).

57. "Perhaps I did not succumb to ideology, as you put it, because I have never seen myself as a spokesman. I am a witness. In the church in which I was raised you were supposed to bear witness to the truth. Now, later on, you wonder what in the world the truth is, but you do know what a lie is." Julius Lester, *James Baldwin—Reflections of a Maverick*, NY Times, Sec 7, 1, 22 (May 27, 1984) (interview).

58. James Baldwin, *Giovanni's Room* (Dell 1956).

59. According to Gates: "James Baldwin's 'Giovanni's Room,' arguably his most accomplished novel, is seldom taught in black literature courses because its characters are white and gay." Henry Louis Gates, Jr., 'Authenticity,' or the Lesson of Little Tree, NY Times Book Rev 1, 28 (Nov 24, 1991).

60. "Giovanni's Room comes from the streets of Paris and the discovery of Henry James. Baldwin had studied James's anatomization of society, his use of dramatic contrast between Old World and New. He borrowed something of James's grandeur to refine the biblical grandeur of his own. In James, more than any other American writer, he found an attention to that 'intensest thing'—one's essential self—that was truly his own subject. He came to quote James regularly, and he admired the mind 'so fine that no idea could violate it.'" James Campbell, *Talking at the Gates: A Life of James Baldwin* 113 (Viking 1991). See also Horace A. Porter, *Stealing the Fire: The Art and Protest of James Baldwin* 125-53 (Wesleyan 1989).

61. Michael Gaspeny, *Baldwin: "A Stranger Everywhere,"* News & Record F5 (May 29, 1994).

62. "[In a brief exchange about a connection between] *Giovanni's Room* and *The Ambassadors*, Baldwin said his novel was 'about what happens to you if you don't tell the truth to yourself . . . about the failure of innocence,' and that James's novel was 'about Stretcher's struggle with that problem.'" Leeming, *James Baldwin* at 255 (cited in note 55).

IV. The Ideology of Authenticity

Victim and voice exclusivity in legal storytelling parallels a similar movement in literary criticism. According to the “ideology of authenticity,”⁶³ readers can read a work and automatically detect an author’s race or gender. “There is an assumption that we could fill a room with the world’s great literature, train a Martian to analyze these books, and then expect that Martian to categorize each by the citizenship or ethnicity or gender of its author.”⁶⁴ The assumption is based on the author’s manifest identity: “the works they create transparently convey the authentic, unmediated experience of their social identities.”⁶⁵

Baldwin rejected “authenticity” writing: “He was very insistent,” says David Ross, an English friend of the time . . . ‘that he was not a black writer but an American one—indeed an English-language writer.’”⁶⁶ As Baldwin’s work demonstrates, “authenticity” is anathema to effective narration. A sense of bonding and sharing should take place between readers and characters. It is the plot, which may, or may not be, the author’s experiences, that must reach the reader. This distinction is crucial: the experiences of the character will (or may) include the “real” experiences of the author along with “experiences” from friends, books, TV, etc.⁶⁷ Thus, in *Giovanni’s Room*, Baldwin meshed the personal with a universal theme to create “a story of the search for identity in the context of social alienation.”⁶⁸ Throughout his career Baldwin refused to write to authenticate experience as a Black or as a homosexual, he instead wrote to authenticate his life as a writer.

63. Gates, NY Times Book Rev at 1 (cited in note 59). In history the parallel is the “doctrine of collective experience” which assumes that race, sex, religion, or ethnic background endows the members of that group “with unique insights or perceptions denied to those outside the group.” Theodore S. Hamerow, *Point of View*, Chron of Higher Educ A 36 (Aug 4, 1993).

64. Gates, NY Times Book Rev at 1 (cited in note 59).

65. Id at 26.

66. Campbell, *Talking at the Gates* at 83 (cited in note 60). Campbell says: “In my view, at that time, the terms ‘black writing’ and ‘black writer’ did not fit him anyway. I had no difficulty in avoiding concepts like those. Baldwin the novelist was an old-fashioned American realist. No more was I, a non-American, inclined to think of him as a black writer than of Mailer as a Jewish writer, or Robert Lowell as a Boston writer. His subject, like theirs, was our common predicament. In fact, I could see that Baldwin and I shared a culture-Calvinism and fragments of a common history. Born ‘James Jones,’ he bore the name of a Celt, as I did. One of his preoccupations was the miscegenation of the races in America and he himself had white relations. Perhaps Celtic blood flowed through his veins.” Id at 265.

When Julius Lester asked him “What do you see as the task facing black writers today?” Baldwin replied: “This may sound strange, but I would say to make the question of color obsolete.” Lester, NY Times at 24 (cited in note 57).

67. “What the ideologues of authenticity cannot quite come to grips with is that fact and fiction have always exerted a reciprocal effect on each other. However truthful you set out to be, your autobiography is never unmediated by literary structures of expression.” Gates, NY Times Book Rev at 29 (cited in note 59).

68. Leeming, *James Baldwin* at 123 (cited in note 55).

The truism that an author's "experiences" are derived from multiple sources is not new,⁶⁹ what is distressing is that it is so consciously ignored. As Gates points out, "all writers are 'cultural impersonators.'"⁷⁰ As a classic—and in the case of the race exclusivity thesis, an ironic example of impersonation—he cites *Famous All Over Town*, a book about a 14 year old Chicano duking it out with the elements in the East Los Angeles barrio.⁷¹ In presenting a literary award to Danny Santiago, the absent author, John Kenneth Galbraith said:

Famous All Over Town adds luster to the enlarging literary genre of immigrant experience, of social, cultural and psychological threshold crossing. The durable young narrator spins across a multi-colored scene of crime, racial violence and extremes of dislocation, seeking and perhaps finding his own space.⁷²

In fact, Danny Santiago was Dan James, a 73 year old Anglo, a graduate of Yale who majored in Greek. When asked about the possibility of being accused of producing a hoax, James "shrugged and said the book itself was the only answer. If the book were good, it was good under whatever identity the author chose to use."⁷³

An even more ironic example is *The Education of Little Tree*,⁷⁴ the autobiography of Little Tree who, after being orphaned at age ten, was raised by his Cherokee grandparents in the hills of Tennessee. After being published by the University of New Mexico in paperback, the book became an instant hit, selling over 350,000 copies. Critics saw it as a "deeply felt" masterpiece "that captured the unique vision of Native American culture."⁷⁵

69. Stephen Crane, for example, never saw combat before writing *The Red Badge of Courage*. Much to the chagrin of Black critics, William Styron assumed the persona of Nat Turner in *The Confessions of Nat Turner*. Styron describes the reaction of James Baldwin:

"In 1967, when *The Confessions of Nat Turner* was published, I began to learn with great discomfort the consequences of my audacity in acquiring the persona of a black man. With a few distinguished exceptions (the historian John Hope Franklin for one), black intellectuals and writers expressed their outrage at both the historical imposture I had created and my presumption. But Jimmy Baldwin remained steadfast to those convictions we had expressed to each other during our nighttime sessions six years before. In the turmoil of such a controversy I am sure that it was impossible for him not to have experienced conflicting loyalties, but when one day I read a public statement he made about the book—'He has begun the common history—ours'—I felt great personal support but, more important, the reaffirmation of some essential integrity." William Styron, *Jimmy in the House*, in Quincy Troupe, ed, *James Baldwin: The Legacy* 43, 46 (Simon and Schuster 1989).

70. Gates, NY Times Book Rev at 29 (cited in note 59).

71. See John Gregory Dunne, *The Secret of Danny Santiago*, NY Review of Books 17, 17 (Aug 16, 1984).

72. Id.

73. Id at 27.

74. Forrest Carter, *The Education of Little Tree* (Delacorte 1976).

75. Gates, NY Times Book Rev at 26 (cited in note 59).

As it turned out, it was a “hoax,” the product of Asa Carter, a cultural impersonator who had been a Ku Klux Klan terrorist, a “gun-toting racist,” and had penned the words for Governor Wallace’s white supremacist speeches. In reflecting over the perversions of “authenticity” Gates muses: “Somehow, one imagines that Asa Earl Carter would have thoroughly enjoyed our critical chagrin.”⁷⁶

Authenticity invokes race to reject the full spectrum of experiences in order to carve out an isolated and favored position. It functions to rationalize a closed intellectual universe thereby deflecting criticisms and evaluation from the “non-authentic” community. As Gates and Baldwin prove, no group monopolizes the human experience. And the sheer volume of cultural impersonation in literature subverts the credibility of authenticity. Cynthia Ozick summarizes the best argument against authenticity: “Literature universalizes. Without disparaging particularity or identity, it universalizes; it does not divide.”⁷⁷

V. Conclusion

The creation of “insiders” and “outsiders” is a form of “othering.” A target group is homogenized into a collective “they” and “they” becomes “the subject of verbs in a timeless present tense, which characterizes anything ‘he’ is or does not as a particular historical event but as an instance of a pregiven custom or trait.”⁷⁸ As Merton notes, it is a technique that has been used to marginalize “theys” on the basis of race and gender.⁷⁹ The victim and voice people are using a form of “othering” as a counter to what they perceive as exclusion by white scholars. It is a political maneuver to insulate “outsider” work from evaluation and criticism by “insiders.” Exclusivity is, however, a failed movement, not proven, and sharply at odds with the principles of inclusion, challenge, and analysis. Even narrative, thought by victim and voice advocates to be the ideal vehicle for exclusion, must bend to the inclusion traditions of writers like Richard Wright and James Baldwin. The best advice comes from Professor Merton: “Insiders and Outsiders in the domain of knowledge, unite. You have nothing to lose but your claims. You have a world of understanding to win.”⁸⁰

76. Id at 27. Then there is the case of Toby Forward. “This Anglican vicar managed to persuade Virago Press that he was, in fact, an Asian woman, and he published a volume of stories for young people under a fictitious name. Even in today’s modern, go-ahead C of E, it seemed unwise for a priest to practice deception for gain. Ethics aside, the scandal also gave rise to some heated debate about the authenticity of his Asian characters. Must a writer share a background to present it with conviction? Or can imagination leap the fence of race, or sex, or age?” Boyd Tonkin, *Other Voices*, *New Statesman & Society* 41 (Nov 12, 1993).

77. Cynthia Ozick, *Art and Ardor* 285 (Knopf 1983).

78. Mary Louise Pratt, *Scratches on the Face of the Country; or, What Mr. Barrow Saw in the Land of the Bushman*, in Henry Louis Gates, Jr., ed, *Race, Writing, and Difference* 138, 139 (Chicago 1986).

79. Merton, 78 *Am J Soc* at 12 (cited in note 20).

80. Id at 44.