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2004

### Queering Legal Education: A Project of Theoretical Discovery

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Harvard Women's Law Journal

Spring, 2004

**Article****QUEERING LEGAL EDUCATION: A PROJECT OF THEORETICAL DISCOVERY**Kim Brooks [\[FNa1\]](#)Debra Parkes [\[FNaa1\]](#)

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**I. BATTLING CONVENTIONS: WHY ASK ABOUT QUEER LEGAL PEDAGOGY? [\[FN1\]](#)**

By midterm exams in my first year of law school I felt that my life had been taken over by the law--that my real life was being lived out in short moments between Contracts and Property. And that what was real in my life was far less real than the next case I was preparing to conquer. I was, to borrow from Karl Llewellyn, truly "pickled in law," and yet the feeling was much less empowering than *The Bramble Bush* [\[FN2\]](#) had promised.

It was at this moment in my life when I discovered *Desert of the Heart*, [\[FN3\]](#) a 1964 novel written by Canadian author Jane Rule. I stayed up all night before my criminal law exam reading. The characters, women exploring their attraction to each other and the possibility of lesbian relationships, were powerful, real people. Unlike the facts in the criminal cases I had been studying, these characters had full lives, hopes, and dreams. They seemed more real at that point than I did. It was like holding up a mirror and being surprised to see a reflection that looks a little bit like you. [\[FN4\]](#)

It was these kinds of experiences, representative snapshots of our first years in law school and repeated in various incarnations in the testimonials of other gay, lesbian, bisexual, and transgender students, [\[FN5\]](#) that caused us to ask the main question that inspired this Article. As newly appointed law professors, we wondered whether it would be possible to create a learning environment that would not require students and professors to hang their personal skins on hooks outside the door of the law school to be collected (if remembered at all) on the way out. Is it possible to teach law in a way that leaves us feeling like full human beings? [\[FN6\]](#)

As we began to prepare our course materials and lesson plans for our first year of law teaching, we sought out scholarly writing on law school pedagogy. As students, we were sometimes critical of the curriculum and teaching styles used in our law school classrooms. Suddenly faced with the prospect of standing at the front of the classroom, with all the possibilities and pitfalls teaching entails, we looked for guidance.

We sought a pedagogical approach that would include, reflect, and value queer lives but that would also allow us to participate in a larger transformative project addressing oppression based on race, gender, disability, class, and other axes of subordination. With the exception of a few experiential accounts of students and faculty, [\[FN7\]](#) as well as Ruthann Robson's work, [\[FN8\]](#) queer legal scholars have paid little attention to the law school classroom and more attention to the development of queer scholarship. This may tell us something about the viability of the notion of queer legal pedagogy. From early on in the project we worried that discussing queer legal pedagogy would be impossible because its constituency was too diverse, or too small, or that legal education simply lends itself more easily to discussions of content than to discussions of principles or approach. On the other hand, we wondered if the lack of material reflected only that scholars have not focused on the classroom because they have been busy writing about substantive areas of the law. This latter explanation gave us optimism

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about the feasibility of this project.

Having decided to explore the parameters of queer legal pedagogy, our first question was, "Pedagogy for whom?" While some proposals for reform of legal education, such as all-women law schools, [\[FN9\]](#) suggest unique pedagogical approaches based on distinct identities, we did not begin with this vision. Instead, we hoped to develop a queer legal pedagogy that could be used in classrooms regardless of the identities of the participants. We accept that queer students and professors have "multiple consciousnesses" (discussed *infra*, Part II.B.4), and decided to embrace an approach to legal education that would attempt to speak to us in our entireties. In other words, we were convinced there might be something unique about being queer, but at the same time, we were dedicated to reflecting the reality that a range of personal and group characteristics and experiences flavor that uniqueness. We also believed that nonqueer students and professors could use some queering. At the most pragmatic level, students may have queer clients and will need to deal with legal issues that affect the queer community. [\[FN10\]](#) Imagine a family law attorney who felt unable to advise a same-sex couple on adoption rights or a prosecutor who could not appreciate the severity of a gay-bashing crime. More broadly, and perhaps at the foundation of our approach, we were committed to legal education as training for citizenship and to the belief that an understanding of queer issues is essential to civic participation.

We determined that the timing for this project was ideal. North American law schools have experienced an undeniable growth in the presence of queers and queer content in the past decade. A 2003 survey of Canadian and American law schools by the Law School Admissions Council (LSAC) found that of the 171 American law schools that responded, 145 had lesbian, gay, bisexual, and transgender ("LGBT") student organizations, 123 had openly LGBT faculty, and 101 offered courses specific to LGBT issues. [\[FN11\]](#) Of the twelve Canadian law schools that responded, eight had LGBT student organizations, ten had openly LGBT faculty, and eight had courses specific to LGBT legal issues. [\[FN12\]](#) Until 1985, there were no published materials for a course on LGBT legal issues. [\[FN13\]](#) Now, law professors wishing to teach courses on sexual orientation or sexuality and the law can choose from a number of texts and casebooks. [\[FN14\]](#) It is the growth of a queer presence at law schools that makes our question of how to teach law in a way that leaves students feeling fully human more timely now than it was ten years ago. Law schools have begun, in a limited way, to integrate the experience of queer lives into the curricula. Thus, it is particularly important at this juncture to stop and ask how the development of queer legal education should be directed.

This Article proceeds in two parts. Part II discusses the materials we reviewed to inform the development of a queer legal pedagogy. In particular, it examines the categories of queer legal scholarship and highlights the contributions of other "outsider scholars" [\[FN15\]](#) to legal education debates. Early in our research, we found limited material on queer legal pedagogy, and we discovered nothing that posited a theoretical approach. We did, however, find rich resources written by other outsiders to law from which some design principles for queer legal pedagogy might be drawn. We should note at the outset that our goal in this Part of the Article is not to review queer scholarship or outsider approaches to legal pedagogy exhaustively, nor is it to provide a literature review. Instead, our purpose is simply to acknowledge the contributions of these scholars to our understanding of what queer legal pedagogy might be by highlighting some of the fundamental insights in that scholarship.

Part III of the Article proposes eight principles of queer legal pedagogy. Although we conclude that it is premature to suggest an overarching theoretical approach to this pedagogy, we present these eight principles to begin a discussion of what a queer legal pedagogy might look like. We also attempt to apply these principles to the law school curriculum, making some preliminary remarks about how the curriculum might be queered. Finally, the Article concludes with some tentative thoughts about the transformative power of queer legal pedagogy.

## II. SEARCHING FOR GUIDES: WHAT IS QUEER LEGAL PEDAGOGY?

As noted above, we were dismayed but undaunted to find little material available addressing a method for queer legal pedagogy. Given the lack of scholarship, we decided to look elsewhere for material that might be useful in setting out our vision of queer legal pedagogy. We thought that canvassing two bodies of literature would be helpful. First, our review of queer legal scholarship was intended to provide a sense of the range of topics on which queer scholars are focusing. Second, we surveyed material on legal pedagogy to assist us in designing our own pedagogy. Given the volume of this literature, we chose to focus on the writings on legal education from other outsiders. These two sections, addressing what can be learned from queer legal scholarship and what can be learned from other outsider critiques of legal pedagogy, summarize what we decided was most useful from each review.

### A. What Can Be Learned from Queer Legal Scholarship?

We turn first to existing queer legal scholarship, which can be divided generally into five categories. After providing an overview of each type of scholarship, we begin to draw some conclusions about how this scholarship might inform queer legal pedagogy. First, we review some of the experiential accounts of queer law students and law faculty. It seems appropriate to begin by focusing on the stories that queer students and faculty tell about their experiences of learning and teaching in law schools. The stories uncover, at least in part, some of the ways that current approaches to legal education leave students feeling less than fully human.

Second, we address explications of postmodern (or poststructuralist) queer legal theory and explore the tension between that approach and a gay and lesbian equality approach that is often associated with identity politics. We then examine challenges to both of these approaches by transgender and bisexual scholars who advocate for a queer scholarship that addresses the issues posed by a diversity of sexual identities. This area of queer legal scholarship is discussed second because it reveals that queer scholars do not write from a uniform theoretical perspective. In addition, proposing an approach to queer legal pedagogy will necessarily contemplate what queer means.

Third, we turn to scholarship that draws attention to the lack of race and class analysis in queer legal scholarship. The fourth category of scholarship focuses on the more specific project of lesbian legal theory, jurisprudence, and pedagogy. We address these bodies of work at this point because they reveal the absence of particular critiques and perspectives in traditional queer legal scholarship. Any queer legal pedagogy will be incomplete if it is not able to include a diverse constituency. The fifth and final category of scholarship includes articles that either approach particular legal topics from a queer perspective or address queer issues directly. This material reveals that the content depth required to take queer lives seriously in legal education is already available.

#### 1. Experiential Accounts Written by Queer Law Students and Faculty

Experiential accounts underscore the importance of validating and making queer lives present. Those with the courage to write and publish stories about their experiences tend to focus on the absence of, or hostility to, queer perspectives in law school classrooms. The following stories by queer law students and professors are illustrative of a range of scholarship that seeks to uncover the queer experience of law school.

In one article, University of Minnesota law student Scott Ihrig describes how it felt to discuss *Bowers v. Hardwick* [\[FN16\]](#) in his first-year constitutional law class. [\[FN17\]](#) In *Bowers*, a majority of the United States Supreme Court upheld as constitutional a state criminal prohibition on sodomy. [\[FN18\]](#) When Ihrig, a gay man, questioned the professor's summary agreement with the majority's holding and reasoning, the professor cut him off, advising, "Mr. Ihrig, you need to divorce your personal politics from your constitutional law." [\[FN19\]](#) This incident led Ihrig to ask other queer students about their

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experiences in law school and, ultimately, to conduct a mail-in survey, to which thirty-two queer law students from various American universities responded. [\[FN20\]](#) The survey asked open-ended questions about classroom experiences, the atmosphere of law schools, and the role of sexual orientation in the students' study of law. [\[FN21\]](#) A number of the surveyed students described experiences similar to Ihrig's. [\[FN22\]](#) Some even reported acts of open hostility, such as vandalism of queer student group bulletin boards and ostracism by other law students. [\[FN23\]](#)

Ihrig's experiences are also reflected in other accounts written by students. Kevin Reuther, who was openly gay when he entered Harvard Law School, writes of the gay men and lesbians he encountered in the first-year curriculum. [\[FN24\]](#) They all appeared in criminal cases: men convicted of possessing nude photos of boys; unnamed individuals engaged in "criminal homosexual conduct"; Michael Hardwick, who was charged with committing sodomy in his own bedroom; and a "group of lesbians" in a state prison who offered other prisoners the option to "fuck or fight." [\[FN25\]](#) Another gay Harvard Law student, Brad Sears, describes the "isolation" of being surrounded by a heterosexual world, with its "overwhelming power," while at law school. [\[FN26\]](#) He notes that

[i]n the rare instances when issues of race, gender, or sexual orientation came up in discussion, I was amazed with [the other law students'] lack of familiarity with the issues and the terms of the discourse .... They could talk about "those people" and "some of my best friends" who were black or gay without a trace of bitter irony. [\[FN27\]](#)

Students' accounts of their experiences at law school reveal, at a minimum, isolation and even ridicule and ignorance. Queer lives are restricted to particular stereotypes, and some nonqueer students and faculty lack any ability to address legal issues that involve queer identities.

The experience is somewhat different, although often not much better, for queer law professors. Mary Becker at the University of Chicago explains,

Standing at the front of the room does not eliminate either the necessity or pain of being "out" in an environment in which "reasonable" people ... can disagree about whether you are entitled to basic human dignity and respect, whether your speech should be suppressed, whether your most intimate relationships should be criminalized. Being a member of the faculty does not eliminate the discomfort and hurt one feels when discussing whether government can legitimately and reasonably discriminate against you. Sometimes this happens with colleagues who, even if supportive of lesbian and gay rights, may regard the discussion as one delectable course in the wonderful "intellectual feast" that is the law .... Just writing this makes me feel tense and inarticulate. [\[FN28\]](#)

Other narratives by queer faculty similarly reflect the isolation inherent in being the person whose identity and rights have become subjects of academic debate. Being out both at the front of the classroom and with her colleagues caused Kristian Miccio to reflect on the effect that identity has on both teaching and the development of policies in law schools. [\[FN29\]](#) She sees the value placed on teaching law in a detached, objective manner as not only disingenuous, but dangerous. [\[FN30\]](#) She notes that in teaching and practicing law we are not structural equals, yet typically only faculty members from underrepresented groups such as gays, lesbians, and people of color are perceived as having an identity that influences their teaching and interactions with students. [\[FN31\]](#) Miccio reflects that her colleagues express some willingness to hear about issues facing gay and lesbian students when she raises them, but they still consider them her issues and not ones that they are willing to address themselves. [\[FN32\]](#) When ideas that concern sexual orientation are raised, Miccio experiences frustration at being expected to address them alone without the support of other faculty members. [\[FN33\]](#) While she finds this visibility painful at times, Miccio views it as a necessary part of linking academia to the world about which it theorizes. [\[FN34\]](#) Focusing on the stories of queer students and professors is one method of beginning to connect legal pedagogy with the broader experiences of queers.

## 2. Debates over Queer Theory and Identity Politics

Another significant theme in queer scholarship is the extent to which the identity categories associated with the pursuit of queer equality have been useful or problematic to the deconstructive project of queer theory. Very generally, queer theory seeks to demonstrate that all sexual behavior is socially constructed and that sexuality is not determined by biology. Instead, sexuality is understood as a matrix of social codes; sexual difference cannot be disaggregated from culture. Queer legal theory applies this understanding of how sexuality is constructed to law. This conception of sexuality clearly conflicts, at least at some level, with an approach to legal theory that posits discrete, identifiable categories--gay or lesbian. In a recent award-winning student essay, Laurie Rose Kepros states that it is "time for Queer legal theory ... to enter jurisprudence and the law school classroom." [\[FN35\]](#) To Kepros and other queer legal theorists, queer legal theory is not simply about the use of law and legal arguments to improve the lives of people who fall within the familiar gay, lesbian, bisexual, transgender, and transsexual categories. It is a term of art that draws on postmodern theory, specifically deconstruction, to "critique the concept of 'identity' and the identity-based rights discourses that rely on definitional and categorical identity closure." [\[FN36\]](#) Instead of focusing on an equality based on the assumption that the categories of gay and lesbian are relatively stable and viable descriptors of real people who are oppressed by law and other means, queer theory concerns itself with exposing and deconstructing the normative nature of heterosexuality and other dominant gender models. [\[FN37\]](#)

Queer theory is not without its critics among queer legal academics. For example, Robson has argued forcefully for the retention of the category "lesbian," which "postmodernism relegates ... to a precarious position," because postmodernism's proponents see all gendered identities as unstable and contingent, and some even dispute the notion of identity and individual subjectivity. [\[FN38\]](#) Robson is critical of the way these basic elements of postmodernism make lesbianism impossible, [\[FN39\]](#) a conclusion that does not accord with her experience or her politics. However, while she is concerned about the potential erasure of the category of lesbian, she sees the emancipatory potential of postmodern analyses of identity and of social constructionism, essentialism, and modernism. [\[FN40\]](#) She seeks to "insist on the viability of lesbian as a category but refuse its incarceration." [\[FN41\]](#)

An illustration of the tension between queer legal theory and identity politics can be found in Katherine Franke's review of two leading textbooks on sexual orientation and the law, one by William Rubenstein of the University of California, Los Angeles, School of Law and the other by William Eskridge and Nan Hunter, professors at Yale Law School and Brooklyn Law School, respectively. [\[FN42\]](#) Franke notes that the approach of the two books to the subject of queers and the law mirrors the debate between the LGBT equality or identity politics approach and the more postmodern queer theory school. [\[FN43\]](#) The Rubenstein text is organized around aspects of gay and lesbian lives such as work and family. It essentially asks the "gay question," examining the law's effect on queer members of society. [\[FN44\]](#) In contrast, Eskridge and Hunter's text pairs the difficult and, for many, abstract theory of scholars like gender theorist Judith Butler [\[FN45\]](#) with cases that demonstrate the way that the law constructs traits like masculinity and identities such as homosexual. [\[FN46\]](#) The Rubenstein text treats the categories of gay and lesbian as essentially stable and useful for determining the law's impact on people with these identities. The Eskridge and Hunter text examines the way that legal definitions and decisions play a role in constructing and perpetuating the categories themselves. These different theoretical approaches are often constructed as opposing explanations of the nature of gender. The theories are complicated, nuanced, and hotly debated. In constructing a theory of queer legal pedagogy, it seems necessary to consider how both of these foundations of antioppression politics might be accommodated within a pedagogical framework.

## 3. Race and Class Critiques of Queer Legal Scholarship and Activism

In recent years, a number of scholars and activists have drawn attention to the degree to which gay and lesbian legal theory



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and political discourse have been dominated by the concerns of white, middle-class gays and lesbians, while ignoring and even undermining critiques rooted in race and class concerns. [\[FN47\]](#) For example, gay activists and academics have paid little attention to the differential racial impact of pursuing same-sex marriage rights. [\[FN48\]](#) Most, but not all, of the leading advocates for same-sex marriage are relatively privileged white men. The voices of lesbians, queers of color, and poor queers who do not see marriage as a way to reduce or end their oppression have been largely absent from the debate around same-sex marriage. [\[FN49\]](#)

A problem related to the exclusion of voices other than those of white, middle-class gays and lesbians is the preoccupation in some queer legal scholarship with the commonality or the presumed common experiences of oppression for queers, an emphasis that "may obscure the realities of people of color and the poor." [\[FN50\]](#) Queer people of color have critiqued the gay and lesbian essentialism of antidiscrimination writing that insists on making analogies between racism and heterosexism to prove that the latter is just as harmful as the former. [\[FN51\]](#) Furthermore, the nature of antidiscrimination analysis as inherently comparative contributes to the tendency toward essentialism, leading to arguments that discrimination on the basis of sexual orientation is analogous to racism and therefore should be subject to strict scrutiny under the Equal Protection Clause. [\[FN52\]](#) Such arguments make invisible queer people who experience both racism and heterosexism. *Romer v. Evans* [\[FN53\]](#) provides an illustration of the real dangers of invisibility for poor queers and queers of color. In that case, the dissent made much of the fact that gays and lesbians are a "politically powerful" class of people who "tend to reside in disproportionate numbers in certain communities [and] have high disposable income." [\[FN54\]](#) As this case demonstrates, poor and minority gays and lesbians, who are not usually politically powerful, are simply not recognized in law--they are made invisible. More conscious scholarship that includes the full range of queer identities will reduce these misperceptions.

Similarly, inadequate attention has been paid to the way that race and class intersect with sexual orientation under the law. [\[FN55\]](#) Stereotypes of black men and women as hypersexual, Latinas and Latinos as hot-blooded, and Asian men as asexual and effeminate play out in cases of violence against people of color who are perceived to be queer. [\[FN56\]](#) This connection may be missed by queer commentators who focus on the homophobia or heterosexism of the crime. [\[FN57\]](#) Recognizing the importance of the intersection between race and sexuality, Darren Lenard Hutchinson describes how [t]he symbolic meaning of the phrase "tongues untied" has grown to identify a small, yet expanding, cultural, intellectual, and artistic "movement" aimed at revealing--or ending the silence around--the interactions of race, class, gender, and sexuality, what one participant in the movement described as "the transformation of silence into language and action." [\[FN58\]](#)

This movement toward a more articulated analysis of the intersection of socially constructed identities must be embraced. Our scholarship and pedagogy must grapple explicitly with the power of stereotypes and seek to complicate our understanding of identity.

Class analysis is also conspicuously absent in queer legal scholarship and pedagogy. Legal approaches to equality often rely on identity categories that do not include class. One of the most powerful narratives in Robson's *Sappho Goes to Law School* is the story of a poor, white woman who applies for a job at a law firm wearing a pink party dress made by her mother. [\[FN59\]](#) Students in Robson's class routinely fail to see any basis for a discrimination claim when the woman is not hired because she dressed inappropriately. Inattention to class not only undermines attempts to use legal tools (such as antidiscrimination law) to fight poverty but also prevents us from questioning and resisting commodification of lesbian identities [\[FN60\]](#) and allows the maintenance of heterosexist structures of family and marriage that reinforce capitalist modes of production and operate to the detriment of low-income members of our communities. [\[FN61\]](#) Gay marriage has been pursued in legal and political arenas by queers with similarly little attention to feminist or class-based critiques of marriage and gender-based economic dependency. [\[FN62\]](#) The consideration of class issues in queer legal pedagogy is necessary to ensure a complete and accurate analysis of queer issues.

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#### 4. Scholarship Advocating a Lesbian Legal Theory, Lesbian Jurisprudence, and Lesbian Pedagogy

In response to the male-centered nature of gay and sometimes queer scholarship, a number of lesbians have begun to develop lesbian legal theory and lesbian jurisprudence. [\[FN63\]](#) While acknowledging the danger of aligning solely with lesbian issues, this scholarship addresses the fear of erasure: if we do not talk about our own lives, who will? Robson's quest for a lesbian jurisprudence demonstrates the possibilities of thinking outside the dominant model of legal education. She demands that we consider a Sapphic Method instead of a Socratic Method in law school teaching. The Sapphic Method values muses and artistic pursuits, not argumentation in the Socratic form. [\[FN64\]](#) Robson does not describe the way that a Sapphic Method would work in practice, but her readers learn that the project of positing a lesbian legal theory is as complex and enigmatic as the shadowy, historical figure of Sappho herself. Themes of narrativity, social justice, redistribution, and oppositional discourse emerge, but the precise contours of the Sapphic Method remain elusive. Robson asserts that "[a]t its most timid, my claim is that we can afford to be more creative than we are presently being in law and literature. At its most bold, my claim is that we cannot afford to be otherwise." [\[FN65\]](#) Robson's vision is a challenging and imaginative one that calls on us to imagine a lesbian Supreme Court justice, while noting that such a "radical" idea is not that radical because it only inserts a lesbian into the existing legal structure. [\[FN66\]](#)

Despite the committed work of the limited number of scholars engaged in the pursuit of developing a lesbian legal theory, the process is ongoing. [\[FN67\]](#) Within this scholarship, there are some attempts to define a lesbian pedagogy or at least to articulate some principles that might be applied in the law school classroom. These steps seem to fall short of a pedagogical method that provides some broader normative guidance in the development of an approach to learning, but they do offer a beginning for our project. For example, Cynthia Petersen has set out seven pedagogical principles for teaching law as a lesbian. She aims to be out to everyone at the law school, to use lesbian cases with lesbian litigants, to use lesbian hypotheticals (even if the information is irrelevant), to provide a critical analysis of the "heterocentricity" of the law (i.e., the invisibility of lesbians in statutes and case law), to analyze critically the heterosexism of law (i.e., the way the law promotes heterosexuality as natural and normative), to evaluate students on their understanding of lesbian hypotheticals through assignments and exams, and to create a space that at a minimum is not hostile to lesbians in the classroom. [\[FN68\]](#) Compared to Robson's radical vision of a Sapphic method, Petersen's seven pedagogical principles seem rudimentary, yet they still provide a glimpse into the extent to which queer voices are marginalized in legal education. Petersen's principles provide a helpful starting place because they set out concrete practices that might be encompassed in queer legal pedagogy. Robson's vision, in contrast, is revolutionary, and its application is undefined. Our project, then, requires imagining how to step out from Petersen and toward Robson.

#### 5. Scholarship That Addresses Particular Legal Issues from a Queer Perspective

The number of articles and books that focus on legal issues from a queer perspective has skyrocketed since the late 1970s. The first law review symposium on sexual orientation, Sexual Preference and Gender Identity, was held in 1979. [\[FN69\]](#) A simple Westlaw search of the articles that contain the words gay, lesbian, bisexual, transgender, transsexual, or queer in the title during the last two years uncovers eighty-four pieces. [\[FN70\]](#) The topics and perspectives covered by the material are wide-ranging, including an analysis of judges' perspectives on sex, [\[FN71\]](#) a review of the constitutional limits on the availability of damage awards to gay state employees under nondiscrimination legislation, [\[FN72\]](#) an assessment of the admissibility of evidence of sexual orientation, [\[FN73\]](#) a critique of the legal regime governing adoption by nonbiological queer parents, [\[FN74\]](#) a discussion of immigration issues confronted by queers, [\[FN75\]](#) and an exploration of the health care discrimination experienced by transsexuals. [\[FN76\]](#) This expanding body of work does not provide any detailed guidelines that might be used to develop a pedagogical approach. However, the scope of the available material shows that a queer legal pedagogy will not be restricted in terms of the content that might be introduced into the classroom. The breadth of subject



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material that is addressed by queer legal scholars suggests that interdisciplinary work is important to the development of a queer legal pedagogy and that we do have the courage to take ourselves seriously.

#### B. What Can Be Learned from Other Outsider Critiques of Legal Pedagogy?

Any project of queer legal pedagogy has much to learn from the other outsider critiques of legal education. Given the comparative lack of material on queer legal pedagogy, we found significant guidance in the work of feminists and critical race theorists. These groups have pointed to ways that dominant methods of law school teaching, curriculum, composition of law schools, and other aspects of legal education operate to reinforce law as a white, patriarchal practice. [\[FN77\]](#)

Critiques of legal pedagogy generally fall into two broad categories: critiques of inadequacy and critiques of subordination. [\[FN78\]](#) Critiques focused on the inadequacy of legal education charge that it does not prepare students for the practice of law because it overemphasizes appellate case law, is artificially divided into seemingly fixed categories like torts and contracts, and has other structural deficiencies. [\[FN79\]](#) Critiques of subordination, however, are more concerned with how law teaching can mask what law is and "how that obfuscation exacerbates the alienation of students of color and women from the study of law itself." [\[FN80\]](#) These critics see the great failing of legal education as the way it privileges and perpetuates existing social, economic, and political hierarchies based on race and gender, all in the name of neutral, objective law. It is this second category of critiques with which we are most concerned.

Critiques of subordination as a category of scholarship are diverse. They include various concerns about, and visions for, legal education. It is therefore difficult to catalogue the lessons to be learned from these scholars, and we do not seek to do so in this section. Rather, we simply point to some themes that emerge in the work of outsider scholars to acknowledge the influence they have had on our queer legal pedagogy project. We draw primarily on critical race and feminist critiques of law and legal education but also note emerging work in LatCrit theory.

This section of the Article proceeds in five subsections, each of which explores a common theme in outsider scholarship on legal pedagogy. First, we discuss some of the empirical and narrative evidence of the experience of legal education for outsiders in law school. A common theme in outsider legal pedagogy is the isolation and alienation experienced by outsider students. Second, we review the continuing power of the neutrality of law. Outsider scholarship on legal pedagogy critiques the understanding that correct legal decisions can be made without attention to their social and political context. Third, we note the importance of outsider narratives and storytelling as methods for including outsider students in their legal education and for deepening the value of legal education for all students. Fourth, we provide a short overview of some of the suggestions outsider scholars have made for the reform of legal education. There is an enormous amount of material on possible changes, and we review a few of the possible options. Finally, we conclude by highlighting some emerging perspectives on and critiques of legal education.

##### 1. Diagnosing the Problem with Traditional Approaches to Legal Education

Isolation, underrepresentation, and underperformance are common outsider critiques of traditional legal education. The feminist critiques of law school education that emerged from three elite U.S. law schools in the late 1980s and early 1990s are well known. Studies at the University of Pennsylvania Law School, [\[FN81\]](#) Boalt Hall School of Law, [\[FN82\]](#) and Yale Law School [\[FN83\]](#) examined gender differences in academic achievement, classroom participation, and attitudes toward being in law school. At these and other law schools, researchers found significant grade disparities between male and female students. At University of Pennsylvania, men were three times more likely than women to be in the top ten percent of their first-year law class. [\[FN84\]](#) Women were also less likely to speak in class [\[FN85\]](#) and more likely to express negative emotional responses to the law school environment and teaching methods. [\[FN86\]](#)

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Students of color have critiqued legal education in a similar vein, [\[FN87\]](#) noting the underrepresentation of African American students among the ranks of high-achieving law students and describing hostile class discussions and allegations that African American students were admitted to law school despite being unqualified. [\[FN88\]](#) Patricia Williams describes her experiences as a student:

My abiding recollection of being a student at Harvard Law School is a sense of being invisible. I spent three years wandering in a murk of unreality. I observed large, mostly male bodies assert themselves against one another like football players caught in the gauzy mist of intellectual slow motion. I stood my ground amid them, watching them deflect from me, unconsciously, politely, as if I were a pillar in a crowded corridor. Law school was for me like being on another planet, full of alienated creatures with whom I could make little connection. The school created a dense atmosphere that muted my voice to inaudibility. [\[FN89\]](#)

Williams's narrative poignantly reveals the isolation of invisibility felt by many outsider law students.

Kimberlé Crenshaw links students' isolation with the way that legal education objectifies, subjectifies, and alienates students of color. [\[FN90\]](#) Objectification occurs when, for example, a student of color is asked in criminal law to evaluate the reasonableness of a (implicitly white) police officer's decision to arrest a black person in a white neighborhood. The student is "essentially required to look back at herself to determine whether her own presence in a white neighborhood would be sufficient cause for her to arrest herself." [\[FN91\]](#) Subjectification arises when students of color are asked to testify to their experiences of racism in a class that is otherwise conducted as though everyone is objective, neutral, and unbiased. [\[FN92\]](#) Finally, students of color often feel alienation due to what is left unsaid in law school classrooms. They may feel that race is an unspoken subtext, or that the choice of topics and problems favor white, middle- and upper-class interests rather than legal issues more relevant to poor communities of color. [\[FN93\]](#)

Accounts of alienated and underperforming women and students of color have prompted calls for rethinking and reenvisioning legal education. Similarly, our attempt to articulate a queer approach to legal pedagogy has been informed and motivated by the negative experiences of queer students in law school.

## 2. Rejecting the Myth of Neutrality

The starting place for many race-based critiques of legal pedagogy is exposing the "norm of perspectivelessness" [\[FN94\]](#) that pervades much of law school teaching and much of the law itself. [\[FN95\]](#) Crenshaw notes that the attempt by many instructors to "posit[ ] an analytical stance that has no specific cultural, political or class characteristics" is not only impossible but troubling, particularly for students of color who must participate in class discussions as though they were "colorless legal analysts." [\[FN96\]](#) The idea that legal decisionmaking can be divorced from its context remains a powerful message that law teachers must resist.

Feminists also challenge the way that law has traditionally been taught as a neutral and objective process. [\[FN97\]](#) Robson describes the process of turning students into neutral lawyers:

Learning to "think like a lawyer," the enunciated goal of legal education, means learning to think like the stereotype of a lawyer as a white, straight, upper-class male, preferably Protestant and able-bodied enough to play golf. Political perspectives are discouraged, and emotions exist to be manipulated. Thinking like a lawyer includes the ability to argue any side of any issue. [\[FN98\]](#)

Students learn that thinking like a lawyer requires viewing the law as an impartial arbiter of divergent viewpoints. They should be able to argue all positions on an issue but also be able to adjudicate which viewpoint is the most persuasive, and in the most extreme cases, correct.

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An important function of law teaching by outsiders is to name and be explicit about the confined nature of much legal analysis. Traditional legal analysis requires students to detach themselves and look for narrow legal principles, divorced altogether from the context of the decisions under examination. As one approach to this problem, Chris Iijima urges teachers [\[FN99\]](#) to introduce students to scholarship that "explains how and, more importantly, why that world is so narrow" by reading articles on critical legal pedagogy itself. [\[FN100\]](#)

### 3. Heeding the Call of Stories

Storytelling and narrative constitute an integral part of both feminist [\[FN101\]](#) and critical race theory approaches [\[FN102\]](#) to legal pedagogy. The goal is well framed by Katharine Bartlett, who suggests that a key feminist method is "seeking insights and enhanced perspectives through collaborative or interactive engagements with others based upon personal experience and narrative (consciousness-raising)." [\[FN103\]](#) Richard Delgado also makes the argument that storytelling is important for the cohesiveness of outgroups: "[S]tories create their own bonds, represent cohesion, shared understanding, and meanings. The cohesiveness that stories bring is part of the strength of the outgroup. An outgroup creates its own stories, which circulate within the group as a kind of counter-reality." [\[FN104\]](#) Through the use of stories and narrative, a wider range of experiences can inform legal analysis. Perhaps by seeking to build from personal stories into broader conclusions about civil society, students will begin to understand the individual and institutional power relations that constitute the real legal world.

One of the premises of critical race theory is the inadequacy of dominant legal discourse and theory to convey or address relations of power and oppression in society. Often these power differentials can be unveiled through narrative. Richard Delgado and Jean Stefancic have focused on this function in describing the importance of narrative to critical race theory: Legal storytelling is a means by which representatives of new communities may introduce their views into the dialogue about the way society should be governed. Stories ... may be necessary precursors to law reform. They offer insights into the particulars of lives lived at the margins of society .... Stories ... perform multiple functions, allowing us to uncover a more layered reality than is immediately apparent: a refracted one that the legal system must confront. [\[FN105\]](#)

While some stories are fictional, [\[FN106\]](#) most are autobiographical. [\[FN107\]](#) The autobiographical stories in Williams's *The Alchemy of Race and Rights*, [\[FN108\]](#) for example, are some of the most powerful readings that many students are assigned in law school. Both of us can trace our thinking about the way law legitimizes systemic discrimination to reading, eight years ago in a feminist legal studies class, Williams's account of her racist exclusion from a Benetton's store and the subsequent backlash when she told the story. [\[FN109\]](#) Similarly, Williams's narrative of the way her experience of renting a Manhattan apartment differed from the experience of a white male colleague [\[FN110\]](#) is one we continue to use in leading class discussions about the value of rights discourse to oppressed groups.

Storytelling in law is not new. We are all familiar with the pervasive use of hypotheticals and fact patterns in law school classes and on law school exams, as well as the use of analogies in legal reasoning. However, the use of stories by critical race theorists challenges the dominant legal pedagogy because the stories themselves are intended to tell us important things about the world that we ought to know. [\[FN111\]](#) To return to Williams's stories, they are so powerful because they reveal a personal truth, or experience, and at the same time give students the chance to link the narrative to its larger legal context. After discussing in class Williams's story about being unable to find an apartment to rent in New York, I overheard a student explaining the story to another student in the hall after class. She spoke passionately and with empathy about the story itself and then made the crucial link between Williams's personal story and the larger problem of legal rules against discrimination that look good on paper but are either not enforced or not enforceable in practice.

Storytelling may be more important in the law school classroom than in some other disciplines in academia. Marginalized

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students must feel welcome in a law school environment if they are to learn effectively. Brian Owsley explains that he and most of his African American peers at Columbia University School of Law "were made to feel as interlopers in this precious experience who should be eternally grateful. Despite [their] credentials and academic records, some students still viewed [them] as thieves stealing a more qualified and talented white student's rightful place." [\[FN112\]](#) Bringing stories and narrative into the classroom may help to create new truths, to build empathy and understanding, and to ensure greater inclusion. The privileges afforded to lawyers are great, and lawyers' impact on society can be significant. All lawyers should, therefore, be educated to understand that marginalized groups may experience legal regimes differently.

The use of narrative is not, of course, immune to the pitfalls of legal education. Critics of the use of narrative in outsider scholarship and pedagogy [\[FN113\]](#) make a number of objections relating to accuracy (that students and readers cannot judge the truth of the experience), representation (that the experiences of individual outsiders should not be taken as representative), essentialism (that there is no special voice possessed by outsider scholars that constitutes a unique perspective), objectivity (that it is impossible to critique narrative scholarship without engaging in a personal attack on the narrator), and evaluation (that narrative scholarship does not meet the criteria of excellence used to judge academic scholarship). [\[FN114\]](#) Proponents of narrative have responded to these critiques, [\[FN115\]](#) while voicing some reservations of their own. [\[FN116\]](#) Despite its difficulties, we remain convinced of the importance of narrative strategies to outsider scholarship and pedagogy.

#### 4. Methods and Models for Change

Outsider literature is replete with constructive ideas and methods for revisioning and reforming legal education. Keeping in mind that radical changes in law school pedagogy will likely not be successful in the short run, [\[FN117\]](#) scholars such as Mari Matsuda have developed strategies to encourage students of color and female students to accomplish change within the existing framework while simultaneously challenging that framework. [\[FN118\]](#) Matsuda advocates "multiple consciousness as [a] jurisprudential method"--a process that explicitly acknowledges that outsiders can use different levels of consciousness (as legal formalist, as woman, as person of color) to understand how the law operates and can be utilized. [\[FN119\]](#) To Matsuda, an awareness of multiple consciousness allows her as a woman of color to understand the function and place of traditional skills of legal analysis, while at the same time valuing experience and recognizing oppression. [\[FN120\]](#)

Crenshaw describes how she structured a seminar with the conscious goal of avoiding objectification, subjectification, and alienation of students of color. [\[FN121\]](#) She organized the class to encourage collective work, had students select the reading material and present it to the class, required peer critiques of each presentation, and structured the written assignment in a way that encouraged students to produce publishable work. [\[FN122\]](#) She also made it a goal to improve students' abilities to identify implicit premises and to discuss the descriptive and normative views that informed the cases and academic writing they read. [\[FN123\]](#) She wanted students to be able "to critique the texts in their own voices" as well as to learn ways of discussing cases "that met the logic of the decisions" and responded to the arguments in them. [\[FN124\]](#)

While Matsuda and Crenshaw provide specific pedagogical tools and approaches, feminist legal pedagogy consistently pushes for something more than an "add women and stir" approach that simply incorporates occasional cases or references to gender into the usual curriculum but does not explore "the processes that give rise to [gender's] social meaning and consequences." [\[FN125\]](#) At a practical level, much feminist scholarship argues for a substantial overhaul of legal education such that the different voice of women [\[FN126\]](#) might be heard in law school classrooms and used to make law less hierarchical and adversarial. [\[FN127\]](#) Feminist scholars have argued for the creation of a women-only law school [\[FN128\]](#) that would employ a pedagogy grounded in such critiques. At least one law school has taken many of these recommendations seriously and reports increased success by women and students of color. [\[FN129\]](#)

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However, not all outsider scholars are entirely comfortable with appeals to women's different ways of knowing, particularly when those appeals call for entirely nonadversarial approaches to law and methods based on speaking from experience. Banu Ramachandran argues that feminist critiques of legal pedagogy tend to rely on essentialist accounts of what it is to be a woman that actually "rehabilitat[e] a femininity that has always belonged only to white women." [\[FN130\]](#) For example, she asserts that Lani Guinier's study, *Becoming Gentlemen*, [\[FN131\]](#) essentially assumes that women are feminine before the corrupting influence of law school. [\[FN132\]](#) Similarly, Ramachandran notes that the authors of the Yale study feared that "law school would take away what made us women." [\[FN133\]](#) Yet many of the insults and attacks reported by women law students in these studies were aimed at their apparently masculine traits (such as competing or participating actively in class), and women were often called names such as "feminazi dyke" and "man-hating lesbian." [\[FN134\]](#) Ramachandran suggests that legal pedagogy and the experiences of women at law school should be examined through a postmodern lens that prefers specific and local analyses to grand theories of how oppression occurs. She seeks an approach that looks at the social forces that produce women's experience rather than elevating women's experience itself to meaningful truth. Her suggested method draws on the approach to narrative and experience advocated by Crenshaw in her writing on race consciousness in legal pedagogy. [\[FN135\]](#) In particular, Crenshaw advocates using experience in a way that impresses on students the partial nature of all histories and "explicitly deprivileg[es]" dominant perspectives in order to "demarginalize" the perspectives and experiences of women and people of color. [\[FN136\]](#)

#### 5. Other Outsider Critiques and Theories

There are other significant outsider critiques of legal pedagogy, both established and emerging. An example of the latter is LatCrit theory, which entered legal scholarship in 1995 with a colloquium on critical race theory and Latina/o communities. [\[FN137\]](#) Since that time, an interdisciplinary group of scholars has produced a rich and diverse body of literature that critically examines the social, economic, and legal positions of Latinas and Latinos and theorizes about social and material change for Latina/o communities. [\[FN138\]](#) Its proponents have actively sought to build a community of critical Latina/o scholars, to work in coalition with other outsider scholars, and to combine theory with practice. [\[FN139\]](#) LatCrit scholars have both addressed pedagogy directly [\[FN140\]](#) and created LatCrit conferences and other programs such as the Critical Global Classroom, which brings together law students interested in exploring LatCrit and other outsider theories in a global context. [\[FN141\]](#)

Since the development of LatCrit theory is so current, its proponents have engaged in considerable self-conscious discussion about what it means to articulate an outsider perspective and theory on the law. Francisco Valdes, an active participant in those discussions, describes four functions necessary for a new theory to be successful or, in his words, "to be 'worth it'": (1) the production of knowledge (in an interdisciplinary and critical way), (2) the advancement of transformation, (3) the expansion and connection of struggles, and (4) the cultivation of community and coalition with other outsider groups. [\[FN142\]](#) We find these functions compelling and important to incorporate into our formulation of a queer legal pedagogy.

We cannot conclude this section without noting that some critiques of law and law schools are so broad-based that they do not lend themselves to obvious pedagogical solutions. In the Canadian context, Patricia Monture-Angus, a Mohawk woman and former law professor, has articulated a powerful critique of the way that the legal system and legal education oppress Aboriginal people. [\[FN143\]](#) A queer legal pedagogy should consider and address the experience of Aboriginal people (both queer [\[FN144\]](#) and straight) as participants in legal education and as objects of legal regulation. We should listen to the voices of people like Monture-Angus who have "grown impatient with Canadian law as a solution to the problems that Aboriginal peoples, both as nations and as individuals, face." [\[FN145\]](#) However, it is hard to know how to incorporate such a view in a legal pedagogy. This difficulty reveals that while tinkering at the edges of legal education may resolve some issues for some outsiders, it will take a much more transformative project to make legal education a locus of social justice. As a first

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step toward that goal, we set out below our current thinking on at least some elements of a queer legal pedagogy.

### III. EIGHT PRINCIPLES OF QUEER LEGAL PEDAGOGY

Although there is a significant body of work on both queer legal theory and outsider legal pedagogy, there is an absence of material that attempts to bridge these two bodies of literature. In considering what might constitute queer legal pedagogy, we began with two restricting principles. First, we decided that given the lack of literature and debate, it is premature to define queer legal pedagogy precisely. [FN146] Second, we hoped to develop a pedagogical method that would not require us to choose between what are often construed as the two dominant approaches to understanding queer theory and the law. [FN147] We wanted to create a pedagogy that could accommodate both strategically employing "queer" as a category of identity and challenging the notion of a fixed identity to deconstruct the homo-hetero dichotomy. [FN148] We felt that we should mine the tensions between these approaches rather than adopt one approach at the expense of the other. At a basic level both theories can be used to advance social justice, and we hope that the different lenses for understanding queer lives might assist legal scholars, law students, and lawyers to open up new possibilities in particular legal contexts.

Despite our conclusion that it is premature to define queer legal pedagogy precisely, we propose normative criteria to form its basis. In developing this section of the Article, we divided the idea of a queer legal pedagogy into eight normative principles. These principles are not distinct and are often interdependent. Our intention is not to define queer legal pedagogy so much as it is to give that concept character and scope.

Just as we intend our articulation of eight normative principles of queer legal pedagogy to operate as a starting point for discussion, in applying these principles to a particular element of legal education, that is, curriculum, we intend simply to illustrate how we might rethink the law school curriculum in a queer way. By focusing on the effect of a queer legal pedagogy on only the curriculum, we have sidestepped the larger imaginative project of reinventing law school. Applying the normative principles to the entire law school experience, as opposed to simply one element of it, would suggest a radical reconceptualization of legal education. This smaller project focused on the law school curriculum seems more appropriate as a first attempt to articulate and apply the principles and as an invitation to further discussion.

This section outlines the eight normative principles we suggest might be employed to give some meaning to a queer legal pedagogy. The first two principles--"Centering Queer Experience in All of Its Diversity" and "Denaturalizing Heterosexuality"--are uniquely queer. We formulated these principles in direct response to reports by queer students that they feel alienated and marginalized by their law school experiences. They address, very specifically, our conclusion that legal education should be queered for all participants.

The third and fourth principles--"Cultivating Community and Coalition" and "Seeking Connections Between Disciplines"--aim to broaden the application of this pedagogical practice. While developing a queer legal pedagogy will inevitably require focus on the unique experiences of queerness, that focus cannot come at the exclusion of broader communities. Lawyers, whether queer or not, often work in coalition with others and must learn to understand legal issues in their broader contexts.

Principle five--"Advancing Progressive Transformation"--addresses more directly some of the multiple consciousness concerns raised in our discussion of centering queer experience. Most law students and many clients have encountered objectification, subordination, or alienation based on their personal attributes and experiences. Legal education should explore the discriminatory experiences of various groups, and lawyers should be encouraged to see connections among the social justice concerns of all participants in society. Related to examining the experiences of others, principle six--"Embracing Activism As Method"--encourages students to be more than passive learners. Legal education provides



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enormous power, and students should be encouraged to use their knowledge beyond the classroom.

Principle seven--"Uncovering Perspectives"--reflects a common critique of legal education. We include it in our list because the myth of objectivity is so powerful that any pedagogical approach must consistently and consciously seek to undermine that myth. Legal education and law are situated within social and political contexts that must be explored.

Finally, principle eight--"Responding to Changing Contexts, Periods, and Climates"--reflects our conclusion that queer legal pedagogy must remain dynamic. Without review and reconsideration, queer legal pedagogy will lose its transformative potential. These principles, if taken seriously, would change the law school curriculum for the better.

#### 1. Centering Queer Experience in All of Its Diversity

My Tax class begins on time, as usual. A glance at the course outline reveals that the topic is the effect of relationships on income tax liability. The professor reviews arguments for and against couples filing joint returns and explores when income might be attributed to a particular individual on the basis of the parties' relationship. I am taking notes but am not personally vested in any of this material. Although it is not articulated, I understand that "couples" means "heterosexual couples." None of these rules will ever apply to me. The professor seeks to provide an illustration. She says, "So, imagine that I am married ...." There is a long pause. She starts laughing. A few of us around the room start laughing. The sound is so liberating. We either know, or suspect, that she is a lesbian. She says, "Well, that example is not going to work. Imagine instead that X is married ...."

A queer legal pedagogy that does not take queers seriously nor place queer lives at least temporarily as the focus of attention would be, well, not queer. Centering queer experience means moving it in from the shadowy margins of what is either not discussed or is only the subject of criminal cases. [\[FN149\]](#) There is something about having a presence that reminds us that we are real. [\[FN150\]](#) In the story above, it was recognition that made the moment so liberating, particularly in contrast to what had just seconds before felt like erasure. To feel fully human requires students and professors to feel like they are connected to others--to their lives and experiences--and to feel that their human potential can be fulfilled. One of the goals of legal education should be an opportunity to see yourself in those experiences, reflected in the cases you read, the discussions in class, the professors who teach you, and the students around you. [\[FN151\]](#) As Adrienne Rich describes:

When those who have power to name and to socially construct reality choose not to see you or hear you, whether you are dark-skinned, old, disabled, female, or speak with a different accent or dialect than theirs, when someone with the authority of a teacher, say, describes the world and you are not in it, there is a moment of psychic disequilibrium, as if you looked into a mirror and saw nothing. Yet you know you exist and others like you, that this is a game with mirrors. It takes some strength of soul--and not just individual strength, but collective understanding--to resist this void, the nonbeing, into which you are thrust, and to stand up, demanding to be seen and heard. [\[FN152\]](#)

As academics, our visibility and invisibility can be powerful for both ourselves and our students. Our ability as professors in the classroom to express ourselves as fully as possible provides a voice that might otherwise be absent and potentially grants students some freedom to be themselves in the classroom. Queer experience must be centered because we cannot accept the invisibility of our lives. Narrative will, therefore, necessarily play a part in our understanding of queer pedagogy. [\[FN153\]](#) Our stories reveal that legal education is impoverished when it is based only upon the experiences of dominant groups and that it will be improved by the infusion of queer experiences. [\[FN154\]](#)

There are, however, three caveats to the centering of queer experience. First, it cannot result in our commodification and exploitation. [\[FN155\]](#) There are already significant corporate and other market forces that shape and commodify our understanding of who we are, and we must be conscious of the way approaches to legal pedagogy may do the same.

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Companies selling alcohol or cologne may be able to sell more of their products if they place floats with "hard-bodied boyz" in Pride parades around the country; jean distributors may be able to sell more jeans if their product is sported by two straight-looking women entwined. [\[FN156\]](#) Those saleable images represent one small subset of queer experience and certainly do not reflect the way that queer lives intersect with legal regulation. [\[FN157\]](#)

Second, queer experience must be understood in its diversity. Too often the public portrayal of "queer experience" becomes the experience of economically privileged queers in a manner that is not only inaccurate but also may undermine our political and legal goals. [\[FN158\]](#) Instead, we need to be ever conscious of which voices are missing and to seek proactively to understand the fullness of queer lives.

Third, queer students, staff, and faculty cannot be expected to perform for their classmates and professors. [\[FN159\]](#) Bringing queer experiences to the law school table cannot mean that queer students feel pressured to bring their stories to class for observation by others, acting as stunt artists who perform at the break in a sporting match but are forgotten when the real players resume their positions.

It is difficult to imagine what a law curriculum that centered queer experience might look like. Centering queer experience in legal education would affect not only the substance of the material reviewed but also the format of knowledge. In terms of the content covered in a law school curriculum, focusing on queer lives offers rich substance: it was queer activists who pressed for changing conceptions of the family, who made visual representations that broadened our understanding of what constituted art (and whether it should be censored), and who altered dramatically public understandings of sex. [\[FN160\]](#) In these areas and others, centering queer experiences will result in different policy approaches and suggest different solutions to legal dilemmas.

Emphasizing the value of storytelling and narrative in the law school curriculum provides one method of centering queer experience. A variety of outsider scholars recommend this process of gathering and providing evidence of the particular experiences of marginalized groups, [\[FN161\]](#) which may play a unique role in queer legal pedagogy in particular. According to Kris Franklin and Sara Chinn:

Unlike our heterosexual counterparts, lesbians do not have, from childhood on, access to the wealth and detail of cultural narrative to construct our understanding of our lives: at the very least we have to shape, massage and even deform those well-worn stories of development, maturation, family, romance, and community before we can recognize them as our own. [\[FN162\]](#)

In other words, as queers we have had to create our own group histories and cultures; our own immediate families do not pass them on to us. Thus, using storytelling as a method is particularly vital to centering queer experiences because it assists with this creative and constructive process.

In employing storytelling techniques, caution should be used. Stories and narrative may help us to explore our histories, discover our perspectives, and raise otherwise invisible legal issues. Stories cannot, however, act as answers or provide the only source of inquiry. Stories are inherently personal, and, while they may afford the benefits listed above, stories themselves are unlikely to result in much legal transformation. Thus, we need to focus not only on the lives and experiences of the queer students, faculty, and staff at the law school, or on the lives and experiences of the queer people featured in the available cases, but also on the lives of all queer peoples. We need to recognize the diversity of human, and queer, experiences and ensure that it is not just the ideal plaintiffs and privileged members of the legal community whose lives become the center of our pedagogical approaches. These experiences and stories must then be linked meaningfully to the development and interpretation of law.

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## 2. Denaturalizing Heterosexuality

The Equity Committee, a group of students who volunteer to provide equity-related services at the law school where I work, facilitates one class a year with the first-year students. The activity the committee has planned this year is to take students through a series of statements that are designed to raise issues about race, gender, and sexual orientation. As each statement is read aloud by the facilitator, the students are asked to raise their hands if the statement speaks to their experience. The opening question: "Has anyone ever asked you if you are heterosexual?"

This principle of queer legal pedagogy seeks to undermine two precepts that underscore heterosexism. [\[FN163\]](#) The first is that heterosexuality is a preferred form of social organization, and the second is that particular and different gender roles should be adopted by men and women. More fundamentally, this principle examines how legal education reinforces the categories of "male" and "female" and questions the value of those categories in various contexts. Changing the precepts on which heterosexism rests is a significant challenge because legal education often assumes and reinforces heterosexuality as natural and preferable. As an example of the first precept, the assumption that all legal actors are heterosexual is so ingrained that it is axiomatic. [\[FN164\]](#) No one needs to be told that the woman in the hypothetical is heterosexual, and no one asks. The power of the question posed by the students on the Equity Committee--"Has anyone ever asked you if you are heterosexual?"-- is rooted in the shock of an inquiry that is never made. The assumption of heterosexuality is an insidious form of queer invisibility and heterosexism that, in addition to denying the existence of queers, fails to prepare law students for practice. [\[FN165\]](#)

In line with the second precept, the legal actors in the cases studied in law school are often clearly and stereotypically gendered. Despite the growth of feminist approaches to legal education, we rarely complicate our conceptions of what men and women are and do. We infrequently (if ever) seriously challenge these categories in the classroom. In addition, if the inclusion of transgender in the now familiar acronym LGBT is to be employed honestly, a queer legal pedagogy will necessarily wrestle with the stability of categories such as male, female, masculine, feminine, gay, and straight. The inclusion of transgender people in social and legal movements for LGBT equality upsets the dominant gay rights discourse that argues sexual orientation is about sexual object choice rather than about challenging gender normativity and heteronormativity. [\[FN166\]](#)

Denaturalizing heterosexuality requires that we alter our use of the heterosexual norm as a goal against which we measure queer equality in the classroom. Our materials should not posit a straight utopia for queers. For example, a discussion of whether queers should be able to marry legally should not be the starting point for a discussion of the equality of queers. Instead, we might ask about the kinds of intimate relationships humans (but particularly queers and other marginalized groups) form. Once we have explored what the answers to those questions might be, we would then ask whether there are legal forms that should legitimize those relationships. [\[FN167\]](#) We might also develop more complicated hypotheticals that include more diverse sexualities, inquiring into whether sexual orientation should affect our analysis. Finally, we should be explicit about our identity assumptions. For example, in designing questions about sexual assault, we might raise questions about the sexual orientation of the victim and consider how that information might inform our understanding of desirable legal and policy responses.

## 3. Cultivating Community and Coalition

Four women of color come up to my office to ask questions together after class. It turns out they have formed a study group. Their questions are interesting and challenging. We talk for some time before they leave. When the course is over, I stop one of them in the hall to ask how the study group worked. She recounts a number of occasions where one or two members went out of their way to help the others understand the material and suggests that the experience was invaluable in getting through the course.

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Many queer students note the exclusion they feel in their legal education. Yet, as queer people, we are able to form strong communities and to act in coalition with other outsiders in other areas of our lives. We need to end the alienation that queer (and other marginalized) students feel in their legal education and draw on the skills we have as creators of community and coalition. [\[FN168\]](#) This principle is important not only so that students are integrated participants in their legal education but also so they develop the community and coalition-building skills that will be essential in practice. [\[FN169\]](#) We should also remain conscious about our understanding of the communities we privilege when giving meaning to this principle. [\[FN170\]](#) In other words, it is important to remain vigilant about working to include marginalized communities.

The traditional law school curriculum is primarily focused on students sitting in a classroom while a professor lectures about a particular subject. An approach that cultivated community and coalition instead would seek to make meaningful connections among students and between students, staff, and professors at the law school. Students would work more often in teams and could complete at least part of their course requirements by working in communities-- taking on cases, writing with other academics or students, or working on projects with grassroots or nongovernmental organizations. We would all be part of a learning environment that emphasized not only individual talent but also the ability to work well in groups. The narrative above provides an example of the most basic way communities are formed in law school. Many students report that it is this kind of group work that makes their law school experience meaningful and their success possible.

#### 4. Seeking Connections Between Disciplines

I go with a friend to talk to one of my favorite professors in law school about enrolling in an independent study course under her supervision. We have talked about possible topics before approaching the professor and have decided on a thoroughly researched, traditionally drafted paper that examines welfare regimes. We think that proposing to write a joint paper is pretty radical. The professor is not interested. She says that we can do a substantial paper in any number of courses and asks why we would bother undertaking an independent study. She suggests, instead, that we explore the relationship between new legislation that transfers funding for welfare, education, and health from the federal to state governments and the operation of grassroots poverty organizations. For research, she suggests in-depth interviews with poverty activists and an attempt to link their responses with social science and political economy literature.

It is important to see the connections between law and other studies of human behavior and regulation. In part, such recognition and awareness will ensure that we avoid a queer "love in" with the law--an orientation that leaves us focused only on our legal status as queers and not on our position as participants in broader society. Much of what we read of ourselves in the papers and see of ourselves in the news involves discussion of the legal gains (and sometimes losses) of queer peoples. [\[FN171\]](#) Law, however, cannot be the only avenue through which we seek social justice. We must make sure that we link legal research with research in other disciplines that examines the experiences of queers and other marginalized groups. [\[FN172\]](#)

In addition, exploring the links between law and other disciplines adds depth to the policy analysis that resolving any legal problem requires. The use of interdisciplinary work helps lawyers to understand the complex human relationships from which legal issues arise. [\[FN173\]](#) For students who decide to enter private practice, this kind of education is required to understand the circumstances under which their clients' legal problems emerge. For students who choose to work for the government in policy development or for public advocacy groups, understanding the relationship between law and other disciplines is also essential. The independent research highlighted in the narrative above was an invaluable learning experience. As students, we had the opportunity not just to learn about the new legislation but also to examine its real impact on a particular marginalized community. That experience enriched our knowledge about the diversity and complexity of the effect of legal regulation on marginalized populations. Finally, we were exposed to some of the unique problems that arise at the nexus of intersecting identities and how legislation affects these issues. For example, we saw that the legislation had

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particular effects on queers living with low incomes.

This principle requires that curricula include material from disciplines other than law. Law cannot be divorced from the society in which it operates and that it helps to construct. K. L. Broad's ethnographic research on transgender activism in the United States in the 1990s indicates that the process of constructing and defining a collective transgender identity was a key aspect of that activism, as was the envisioning of transgender rights. [\[FN174\]](#) The ethnographic research alone provides a fuller account of a legal strategy that analysis of laws and precedents could not achieve. Insights of this kind will enrich law school discussions of rights-based antisubordination strategies. It is only through exploring these other disciplines that queer lives can take their place in the classroom.

#### 5. Advancing Progressive Transformation

As a student, I developed an interest in prisoners' rights. I decided to write a paper critiquing the policy and practice of incarcerating women in men's prisons. As part of my research, I obtained permission to interview two women serving time at a men's maximum security penitentiary. One interviewee was notorious for having been only the second woman in Canada designated a "dangerous offender." While her sentence was later overturned, at the time I read with interest the sentencing judge's reliance on a psychiatrist's report calling the woman "homosexual and sadistic" and the "female equivalent of a male lust murderer." I soon discovered that the criminalization of this young woman and her treatment by police, as well as by court and prison officials, could not be understood by reading cases in which her sexuality and actions were luridly (and inaccurately) described. She was an Aboriginal woman who had lived on the street and worked in the sex trade since she was twelve years old. Her life bore few similarities to my own relatively privileged one. Yet after meeting her and working alongside her and others for justice and equality for women prisoners for the past seven years, I am convinced that my freedom is inextricably bound up with hers.

There will be no meaningful advancement of queer equality through pedagogy if the social justice of all peoples is not meaningfully advanced. According to Valdes: "[A]s legal scholars, we possess a unique structural capacity for theorizing social reality and law's relationship to it: as critical legal scholars devoted to social justice, we have the responsibility to exercise that capacity to articulate frameworks of effective anti-subordination resistance." [\[FN175\]](#) If we fail to take seriously the equality claims of other marginalized peoples, we will be implicated in their continued oppression. As a result, queer legal pedagogy has an obligation to advance progressive transformation. [\[FN176\]](#)

Legal education should train students to deal effectively with complex social justice claims. Law school often does little to prepare future lawyers to meet and advocate for a woman like the one described in the narrative above. Understanding and assisting her required more than an application of axiomatic legal principles like the presumption of innocence and the goals of sentencing. It involved an inquiry into the way her race, gender, sexuality, disability, social status, and actions of resistance and survival played roles in her oppression by the law. Trying to imagine a penal policy that would address this woman's needs and experiences proved impossible. Advocating for her led to a fundamental rejection of our society's reliance on punishment, particularly imprisonment, as a response to behavior characterized as criminal.

Queer students, as an often marginalized group, have a small window on the world of discrimination. Understanding one's own position of subordination may provide an impetus to understand and advance the social justice claims of others. Yet such a response is not automatic. Working on the basis of their own experiences, queer students and professors often fail to develop any real commitment to pursuing social justice for other oppressed groups. Unless we are committed to each other, however, the law is unlikely to promote freedom for any of us.

In addition to the advantage of training better lawyers, advancing the progressive transformation of other marginalized

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groups will ensure the inclusion of queers in the advancement of social justice. Elvia Arriola brings these insights into the classroom, asking what it means for our teaching and scholarship "to commit oneself to a relentless view of sexuality as intimately connected to issues of race, class, gender, abilities, culture, and so on." [\[FN177\]](#) She presents a challenge to queer law teachers as we prepare course materials:

What I am talking about here is confronting the cognitive dissonance that may resonate in our imagined person of color who is queer and activist and who then picks up our materials, or decides to visit our class one day. If they look at our materials and don't see themselves or their experiences, then our teaching materials are limited. If the assumptions a writer or teacher makes about any point on gender and sexuality does not create the possibility for their experience--if, for example, I cannot feel myself reflected in the writings as a Chicana lesbian, then those materials are limited; and our challenge is not to discover who is wrong and who to blame, but rather, how can we change that? [\[FN178\]](#)

Arriola's challenge is one we must take up, actively working to eliminate the cognitive dissonance that results from exclusion and invisibility. We can begin by asking Matsuda's "other question" [\[FN179\]](#) of our own materials, looking for ways that our teaching may unwittingly marginalize certain experiences and identities. A theory and practice of queer legal pedagogy should actively develop a multidimensional analysis of subordination, avoid a LGBT essentialist account of discrimination, and bring these insights and stories into the classroom in a way that links the academy with activism.

Confronting our privileges, as this principle requires, can be challenging. While we may decry the lack of support from colleagues for queer-positive initiatives, we may not notice when, for example, our teaching methods or choice of examples perpetuate stereotypes about Aboriginal people or people with disabilities. As Mary Louise Fellows and Sherene Razack reflect:

[P]resuming innocence, each of us is consistently surprised when we are viewed by other women as agents of oppression. The difference impasse, as the confronting of our different socially produced locations might be called, emerges on a daily basis in our relations with each other as women and as members of diverse communities and, more generally, in how we understand social change. [\[FN180\]](#)

Our collective advancement, through law or other means, will require each of us to recognize, and in many cases abandon, the practices we have adopted that lead to the oppression of others.

We need to think seriously about the content and structure of the curriculum and its effect on all marginalized peoples. Seeing the faces and hearing the experiences of queer and other marginalized peoples in our legal education is a good beginning, but it is not enough. We need the material we read and the people we see in our law schools to be firmly rooted in feminist, antiracist, anti-ableist approaches and conscious of sites and mechanisms of oppression. This is an enormous task. It requires that legal educators undertake to understand their own privilege and to consider how their practices interfere with learning in the classroom. We suspect that this principle is the most contentious of all eight, the one that we are farthest from achieving, and the one that would require the most radical reform of legal education. It would be a start, however, simply to raise consciousness about how power operates in the classroom and to begin to link the social justice aims of law to our academic material in a meaningful way.

## 6. Embracing Activism as Method

There is one other lesbian (that I know of, anyway) in my year at law school. She floats on the periphery of our classes and social events. She is unfailingly political, but not in any public way in class. I have heard her give paper presentations though and know that she chooses topics like "How Canada's Aboriginal Policy Discourages Active Citizenship." She is often dragging a legal aid file with her, and I see her making calls to clients in the legal aid room between classes. One Thursday, I pick up a copy of the local queer newspaper--she's on the front cover. She's been participating at a lesbian "kiss-in" at a



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downtown shopping center.

This principle of queer legal pedagogy recognizes the significance of activist and grassroots action as a legitimate method of learning. Gay, lesbian, bisexual, and transgender peoples have all had long histories of social activism. We have worked on the front lines of the AIDS epidemic, sought to end violence against women, taken to the streets to fight for our right to social spaces, fought for equality in the workplace, and demonstrated in response to police raids of bars, bathhouses, and homes (most famously at Stonewall). These activities all have a "legal" dimension--they are undertaken with at least some hope that the law and culture may adjust to reflect queer lives. Not only should queer legal pedagogy recognize the importance of these acts of resistance, but it should also promote activism through praxis. [\[FN181\]](#) Praxis means translating the theory that students learn in law school into practical experiences. Encouraging students to use their knowledge in ways that promote activism will assist them in ultimately converting their legal knowledge into action. Insights gained from critical race scholarship can inform our attempts to link the academy with activism. Such a multidimensional analysis of oppression [\[FN182\]](#) looks for both patterns and particularities among sources of discrimination and can be powerful in critical coalition building [\[FN183\]](#) and other activist work.

Schools increasingly emphasize practical experience by offering courses that allow students to work on legal aid cases or practice mediation skills. [\[FN184\]](#) This principle of queer legal pedagogy demands more student participation in civil society by valuing the actions of students and faculty who become involved in grassroots and activist attempts to change public policy. When students and faculty participate in such activism and in legislative lobbying, for example, they learn skills that are useful and critical for legal practice, such as oral advocacy, experience with the nature of power relations, and the ability to work with others. [\[FN185\]](#) Students also gain a firsthand sense of the translation of legal theory into practice.

#### 7. Uncovering Perspectives

In property law, we're discussing Aboriginal land claims. The professor has raised one of the leading cases in the area, which contains an extremely offensive depiction of Aboriginal peoples. The class discusses the legal nuances of the decision for some time, with white students dominating the discussion. No one raises the passage or its effect on the legal decision. We have managed to pretend that that part has no bearing on the remainder of the decision, which we parse with some care. A few of us are standing outside the classroom when the class ends. One of our friends, an Aboriginal woman, comes out of the room enraged at us for abandoning her in the class--for failing to raise the important issues about the judge's characterization of the plaintiffs in the case and the effect of his characterization on the legal reasoning.

As we noted earlier, the call to neutrality in law is a powerful one. [\[FN186\]](#) It is used to disguise the fact that real things happen to real people in law. In developing these principles, we wondered how we could, in Jane Schacter's words, "pose[ ] ... relatively abstract, doctrinal question[s] without losing sight of the excruciatingly human dimension of ... case[s]." [\[FN187\]](#) In designing a queer legal pedagogy we need to ensure that students are not required to pretend that they lack identities beyond the classroom. Instead, those identities should be used powerfully to advance arguments for equality in society.

This principle requires resisting the idea that the law school curriculum is neutral and, instead, calls us to recognize when the material we study and teach must be unpacked to expose particular ideologies and assumptions. [\[FN188\]](#) It requires questioning what makes us believe that certain decisions are correct. If a court's holding is in line, for example, with the Constitution, we need to question whether the decision is still correct if it undermines our social justice goals. Where the law is applied to an individual plaintiff in accordance with established precedent or legislation, we should ask whether it matters that a marginalized group may suffer as a result of the decision. The story above highlights how painful neutrality can be. We need to make sure that students are not abandoned or forgotten in class discussions. We must also explore how assumptions

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that underlie judges' reasoning affect their interpretation of the law. Finally, this principle requires us to examine the cases and articles that constitute our "legal canon" and to consider the assumptions that underlie our choices of which cases to teach and the cases themselves.

The principle that perspectives must be uncovered fits well with a number of the other principles. In our view, fundamental to an acceptance of the role of narrative in queer legal pedagogy is a recognition that legal discourse and pedagogy are neither neutral nor objective (nor lacking in stories). When told, these stories provide competing texts that may challenge dominant narratives and ultimately change the nature of traditionally used texts altogether.

#### 8. Responding to Changing Contexts, Periods, and Climates

I am at a meeting of a women's organization. The members have recently had an application for a position on their board from a transgender woman. They are trying to figure out if "woman" in their governing documents includes a transgender woman. This is a question that has not been asked of the organization before, and it strikes me as a question I should be able to answer easily given my legal training. However, what we might have learned about queers in law school ten years ago does not help to answer this question--any issues confronted by transgender people simply weren't addressed.

These principles of queer legal pedagogy cannot and do not make any claim to paradigmatic status. Our theory and practice of queer legal pedagogy must reflect changing contexts, periods, and climates. What seems like a good pedagogical approach now may not be as useful in five years. We need to ensure that we are always open to change. For example, while we might agonize about what exactly we mean by the word "queer" (Do we mean a particular identity? Do we mean an approach to transcending that particular identity?), our current theoretical climate suggests that asking questions about what we mean by that word is part of centering queer experience. However, the influence of this question on what we teach in the classroom might not be as relevant in ten years as it is now.

This principle also requires the active use of imagination. When discussing the value of a lesbian Supreme Court Justice, Robson states,

the desire for a lesbian Supreme Court Justice also exhibits a startling lack of imagination .... It is ... difficult for us to imagine the most radical changes, changes that are not merely inserting lesbian interests into the existing structure. Imaginings that do not take for granted a Supreme Court, or even a constitutional system, or even the "rule of law." [\[FN189\]](#)

It will take imagination to re-envision legal education in a more thorough way so that queers are not just inserted but included.

The perspectives on and methods of creating queer legal pedagogy will necessarily grow and evolve as progress is made. One way to avoid the stagnation of queer legal pedagogy is to resist a queer canon in our curricula. [\[FN190\]](#) In other words, instead of developing a set of materials that are viewed as the essential queer law building blocks, we should aim to keep fresh the choices of articles, thoughts, theories, and contexts at the center of the curriculum. While a canon is helpful because it ensures there is a common ground for debate among legal thinkers, it can stifle new ideas. Because queer legal theory is still in its relative infancy, we have the advantage of not having to break old molds. Instead, we are free to continue to explore how queer legal pedagogy may affect our strategies for the broader goal of social justice.

#### IV. FINDING OUR OWN GROUND: TRANSFORMING LEGAL EDUCATION

Despite various proposals to change and re-envision traditional legal education, North American law students have been educated in much the same way for well over one hundred years. This is the case despite the rapid development of the common law, innumerable statutory changes, and a significant demographic change in both the students who attend law

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school and the professors who teach them. [\[FN191\]](#) Given the unchanged nature of legal education, we conclude by recalling Jane Rule. *Desert of the Heart* begins with a call to reconsider conventions. Rule reflects that "[c]onventions, like cliches, have a way of surviving their own usefulness. They are then excused or defended as the idioms of living. For everyone, foreign by birth or by nature, convention is a mark of fluency." [\[FN192\]](#) Our concern as law students was that in many ways we were foreigners in our own legal educations. As law professors, we have not entirely escaped that feeling of alienation, but we do see some potential, and responsibility, to address it. With this Article, we began the project of asking how to find ground that is our own.

Our commitment to this transformative project is in part a commitment to the idea that law school educates citizens. Regardless of the form of the future legal work undertaken by graduates, law schools are charged with educating people who will become role models and leaders in their communities. It is an obvious point, but one that is often underappreciated: law students are future local politicians, volunteers at homeless or women's shelters, and government lobbyists. Whatever politics such citizens choose to embrace, at a minimum they should be aware of, and understand the effects of, law on less powerful individuals and groups.

Despite these lofty commitments and hopes, we notice that, after teaching now for two years, we feel even less equipped to be grappling with this project than we were as students. The pull to conform to traditional methods of teaching law is strong, and the immediate rewards (good evaluations, merit pay, and tenure) are great. [\[FN193\]](#) It turns out, perhaps surprisingly, that it is as tempting (or even necessary) to hang our personal skins on hooks outside the door of the law school now as it was when we were students. Yet despite the difficulty we feel in implementing these principles even in a modest way in our own teaching, we believe that our inquiry into the nature of queer legal pedagogy is necessary and timely. As Kristian Miccio states, "I am first and foremost a law teacher. My teaching is informed by the whole of me-- and this includes my sexual orientation as well as my gender. Denying the effect that identity has on our teaching and law is at once disingenuous and dangerous." [\[FN194\]](#) We hope, therefore, that this Article will begin a discussion that may alter the theory and practice of legal education in the future.

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[\[FN1\]](#). Assistant Professor of Law, University of Manitoba. We wish to thank Brenna Bhandar, Ruthann Robson, and Ros Salvador for their helpful comments on earlier drafts of this Article; participants at the 2002 Seattle University conference, *Assimilation and Resistance: Emerging Issues in Law and Sexuality*, for their thoughtful reflections on a preliminary version of this Article; Mona Pollitt-Smith for her research assistance; and Orysia Semotiuk and Cheryl Sluis for their patience with this project.

[\[FN2\]](#). We use this term to include teaching and learning by, for, and about people who identify as gay, lesbian, bisexual, transgender, two-spirited, gender transgressive, or queer (collectively described here as "queer"). "Queer legal scholarship" is used in a similarly expansive way to describe scholarship that seeks to address and theorize the experiences of the previously listed groups in society and their relation to law; it is not limited to the more specific postmodern or poststructuralist account of the production of gender and sexual identity.

[\[FN3\]](#). In chapter VI of *The Bramble Bush*, Llewellyn outlines the task of law students: "To do the work is not: to do the classes. Rather must you immerse yourself for all your hours in the law. Eat law, talk law, think law, drink law, babble of law and judgments in your sleep. Pickle yourselves in law--it is your only hope." KARL N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* 110 (1930).

[\[FN3\]](#). JANE RULE, *DESERT OF THE HEART* (1964, reissued 1986).

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[FN4]. At times throughout the Article we draw on our own experiences to support some of the arguments we make and to provide concrete examples. These stories are not intended to act as paradigmatic illustrations of the experiences of all queers. To distinguish our narratives from the rest of the text, they have been offset and italicized.

[FN5]. For example, a first-year student at Harvard Law School tells a story of emerging utterly demoralized from a contracts exam and going to a gay bar, where he danced all night instead of studying for his next exam. He recounts, [t]hat night, the seedy gay bar I walked into took on new meaning. All of those gay men dancing, just dancing, in the face of the world outside seemed like a courageous act of rebellion, showed an incredible endurance and vitality .... As I danced in the center of that dingy basement throbbing with shirtless men and colored lights, I started to regain some sense of who I was and why I had come to law school.

Brad Sears, *Queer L*, 1 NAT'L J. SEXUAL ORIENTATION L. 234, 246 (1995), at <http://www.ibiblio.org/gaylaw/issue2/sears.html>.

[FN6]. A fortuitous thing happened as we spent time reading and thinking about pedagogy. We became more self-conscious about our own methods and approaches to legal education, legal scholarship, and the practice of law. This result was perhaps not unforeseeable. See Katharine T. Bartlett, [Feminist Legal Methods](#), 103 HARV. L. REV. 829, 831 (1990) (explaining that "[a]s feminists articulate their methods, they can become more aware of the nature of what they do, and thus do it better. Thinking about method is empowering. When I require myself to explain what I do, I am likely to discover how to improve what I earlier may have taken for granted. In the process, I am likely to become more committed to what it is that I have improved.").

[FN7]. See *infra* Part II.A.1.

[FN8]. E.g., RUTHANN ROBSON, *SAPPHO GOES TO LAW SCHOOL: FRAGMENTS IN LESBIAN LEGAL THEORY* (1998) [hereinafter ROBSON, *SAPPHO GOES TO LAW SCHOOL*].

[FN9]. See Jennifer Gerarda Brown, "To [Give Them Countenance](#)": *The Case for a Women's Law School*, 22 HARV. WOMEN'S L.J. 1 (1999).

[FN10]. For a discussion of the importance of understanding the stories of clients, particularly marginalized clients, see, for example, Carolyn Grose, [A Field Trip to Benetton ... and Beyond: Some Thoughts on "Outsider Narrative" in a Law School Clinic](#), 4 CLINICAL L. REV. 109 (1997).

[FN11]. A link to the data on the survey is available through the LSAC website, <http://www.lsac.org/lisac/lgbt-frameset.html>. For a discussion of the processes involved in this and other LSAC surveys, see Janice Austin et al., *Results from a Survey: Gay, Lesbian, and Bisexual Students' Attitudes About Law School*, 48 J. LEGAL EDUC. 157 (1998). See also Francisco Valdes, *Tracking and Assessing the (Non)Inclusion of Courses on Sexuality and/or Sexual Orientation in the American Law School Curriculum: Reports from the Field After a Decade of Effort*, 1 NAT'L J. SEXUAL ORIENTATION L. 149, 151 (1995), at <http://www.ibiblio.org/gaylaw/issue2/valdes2.html>. Valdes reported that from 1990 to 1995, the number of law schools offering courses or seminars primarily focused on lesbian and gay issues increased dramatically, from thirteen schools offering fourteen primary courses to forty-four schools offering forty-eight primary courses. *Id.* This data was gathered from all 176 law schools belonging to the American Association of Law Schools at that time. *Id.*

[FN12]. See LSAC website, *supra* note 11.

[FN13]. In 1985, Roberta Achtenberg, then Directing Attorney of the National Center for Lesbian Rights, edited a treatise

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that was a topical compilation of cases dealing with the rights of gay men and lesbians. ROBERTA ACHTENBERG, *SEXUAL ORIENTATION AND THE LAW* (1985). Katherine Franke notes that when she went to law school in 1983, no classes on sexual orientation were offered at her law school or any other American law school. She and some other gay and lesbian students created an independent study course and self-taught the material. Katherine M. Franke, [Homosexuals, Torts, and Dangerous Things](#), 106 *YALE L.J.* 2661, 2665-66 (1997).

[FN14]. E.g., WILLIAM N. ESKRIDGE, JR. & NAN D. HUNTER, *SEXUALITY, GENDER, AND THE LAW* (1997); WILLIAM B. RUBENSTEIN, *CASES AND MATERIALS ON SEXUAL ORIENTATION AND THE LAW* (2d ed. 1997). In the Canadian context see, for example, DONALD G. CASSWELL, *LESBIANS, GAY MEN, AND CANADIAN LAW* (1996); Kathleen A. Lahey, *Are We 'Persons' Yet? Law and Sexuality in Canada* (1999); Bruce MacDougall, *Queer Judgments: Homosexuality, Expression, and the Courts in Canada* (2000).

[FN15]. By "outsiders" we mean members of groups that have not historically been powerful in society or have not traditionally been the ones fashioning, teaching, or adjudicating the law. When we talk about "outsider scholars" we mean generally, critical race theorists, feminists, and those concerned with class oppression and subordination based on disability, along with theorists broadly characterized as queer. Mari Matsuda was one of the first to use the term "outsider jurisprudence" to refer to the work of feminists and scholars of color. See Mari J. Matsuda, [Public Response to Racist Speech: Considering the Victim's Story](#), 87 *MICH. L. REV.* 2320, 2323 (1989). Matsuda consciously speaks of "outsiders" instead of "minorities" because the latter term "belies the numerical significance of the constituencies typically excluded from jurisprudential discourse." [Id. at 2323 n.15](#).

[FN16]. [478 U.S. 186 \(1986\)](#).

[FN17]. Scott Ihrig, [Sexual Orientation in Law School: Experiences of Gay, Lesbian, and Bisexual Law Students](#), 14 *LAW & INEQ.* 555, 555-59 (1996).

[FN18]. [478 U.S. at 186](#) (Michael Hardwick was charged with violating Georgia's antisodomy statute when a police officer entered his home with an expired arrest warrant (relating to a failure to pay a ticket for drinking outside the Atlanta gay bar where he worked) and observed Hardwick and another man engaging in oral sex.). In a long-awaited decision, the U.S. Supreme Court recently overruled Bowers in [Lawrence v. Texas](#), 123 *S. Ct.* 2472 (2003).

[FN19]. Ihrig, *supra* note 17, at 558.

[FN20]. *Id.* at 559 n.25.

[FN21]. *Id.* For more details of the study, please see the survey questions and demographic characteristics of respondents in *id.* at 566-67, 589 app. 2.

[FN22]. One student stated, "I sat through two lectures of mind-numbing right wing ideology when the conservative professor called on the class rel [i]gious zealot and a [W]est-[P]oint-grad-and-squared-away officer to discuss Bowers and related penumbra rights cases. The treatment was, to say the least, less than understanding." *Id.* at 573. The Bowers case and how it was handled in classes was mentioned by ninety-two percent of respondents. *Id.* at 571. As noted by Ihrig, it has become the "gay case" of (American) law schools. *Id.*

[FN23]. *Id.* at 568.

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[FN24]. Kevin S. Reuther, *Dorothy's Friend Goes to Law School*, 1 NAT'L J. SEXUAL ORIENTATION L. 253, 253 (1995), at <http://www.ibiblio.org/gaylaw/issue2/reuther.html>.

[FN25]. *Id.*

[FN26]. Sears, *supra* note 5, at 236.

[FN27]. *Id.*

[FN28]. Mary Becker, *Becoming Visible*, 1 NAT'L J. SEXUAL ORIENTATION L. 146, 146-47 (1995), at <http://www.ibiblio.org/gaylaw/issue2/mbecker.html>.

[FN29]. See G. Kristian Miccio, [Closing My Eyes and Remembering Myself: Reflections of a Lesbian Law Professor](#), 7 COLUM. J. GENDER & L. 167 (1997).

[FN30]. *Id.* at 182.

[FN31]. See *id.*

[FN32]. *Id.* at 180. At the time of writing her article, Miccio was teaching at Rockefeller College of Public Affairs and Policy, State University of New York at Albany.

[FN33]. *Id.*

[FN34]. *Id.* at 182.

[FN35]. Laurie Rose Kepros, [Queer Theory: Weed or Seed in the Garden of Legal Theory?](#), 9 LAW & SEXUALITY 279, 280 (2000).

[FN36]. *Id.* at 283-84.

[FN37]. For examples of the burgeoning field of queer legal theory, see CARL STYCHIN, *Towards a Queer Legal Theory*, in *LAW'S DESIRE* 140 (1995); see also William N. Eskridge, Jr., [A Social Constructionist Critique of Posner's Sex and Reason: Steps Toward a Gaylegal Agenda](#), 102 YALE L.J. 333 (1992); Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 CAL. L. REV. 3 (1995). An example of the approach of these scholars is provided by Mariana Valverde, who states: When I say "queer," I am not invoking and reiterating the gay-straight binary: queer is not another word for gays .... Gays can name themselves and can thus be easily identified; "queer," by contrast, does not name an identity, deviant or normalized. Queer politics begins where Foucault's analysis of homosexual identity formation ends. Mariana Valverde, [Justice as Irony: A Queer Ethical Experiment](#), 14 LAW & LITERATURE 85, 95-96 (2002).

[FN38]. ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 8, at 7.

[FN39]. *Id.* (citing Jacquelyn N. Zita, *Male Lesbians and the Postmodernist Body*, in *ADVENTURES IN LESBIAN PHILOSOPHY* 112, 112 (Claudia Card ed., 1994)).

[FN40]. *Id.* at 44. Robson uses the example of class action legal procedures on behalf of disadvantaged groups, noting that the concept of multiple plaintiffs is itself a postmodern challenge to the individual nature of litigation while also relying on



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categories or "classes" of people. She argues that determining an appropriate class (including subclasses) under the procedural rules involves elements of modernism, postmodernism, social constructionism, and essentialism. *Id.* at 64-69.

[FN41]. *Id.* at 44. In a similar vein, K. L. Broad, who describes herself as a "white ... middle class ... gender bending dyke," argues that postmodern critiques of universalism, foundationalism, and essentialism are useful to critical theorizing and can inform a more complicated politics of identity "whereby collective political and cultural identities are constructed through political struggle and commitment." K. L. Broad, [Critical Borderlands & Interdisciplinary, Intersectional Coalitions](#), 78 *DENV. U.L. REV.* 1141, 1143 (2001).

[FN42]. Franke, *supra* note 13 (reviewing RUBENSTEIN, *supra* note 14 and ESKRIDGE & HUNTER, *supra* note 14).

[FN43]. Franke argues that the text by Nan Hunter and William Eskridge employs an approach that examines law as "a regulatory practice that has the power to create lesbian, gay, bisexual, transgendered, and heterosexual subjects." Franke, *supra* note 13, at 2673.

[FN44]. *Id.* at 2669.

[FN45]. ESKRIDGE & HUNTER, *supra* note 14, at 280-82. Judith Butler is a professor of comparative literature and rhetoric at the University of California, Berkeley, and the author of leading texts such as *Gender Trouble: Feminism and the Subversion of Identity* (1990) and *Bodies That Matter: On the Discursive Limits of "Sex"* (1993).

[FN46]. Franke, *supra* note 13, at 2673.

[FN47]. See, e.g., Darren Lenard Hutchinson, [Beyond the Rhetoric of "Dirty Laundry": Examining the Value of Internal Criticism Within Progressive Social Movements and Oppressed Communities](#), 5 *MICH. J. RACE & L.* 185 (1999); Darren Lenard Hutchinson, [Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse](#), 29 *CONN. L. REV.* 561, 563 (1997) [hereinafter Hutchinson, *Out Yet Unseen*] (providing that in "dominant gay and lesbian culture and scholarship ... issues of racial and class subordination are neglected or rejected ... and a universal gay and lesbian experience is assumed"). This work builds on the similar critical analyses of feminist legal theory, such as Kimberlé Crenshaw's work on the "structural intersection" of race and gender in the law's treatment and construction of women of color. See Kimberlé Williams Crenshaw, [Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color](#), 43 *STAN. L. REV.* 1241 (1991).

[FN48]. Hutchinson, *Out Yet Unseen*, *supra* note 47, at 583-601.

[FN49]. Hutchinson suggests that "[g]ays and lesbians of color, if their writings are a reliable indication, have been generally ambivalent towards the same-sex marriage issue." *Id.* at 593.

[FN50]. *Id.* at 602.

[FN51]. See Urvashi Vaid, *VIRTUAL EQUALITY: THE MAINSTREAMING OF GAY AND LESBIAN LIBERATION* 187 (1995); see also Darren Lenard Hutchinson, [Identity Crisis: "Intersectionality," "Multidimensionality," and the Development of an Adequate Theory of Subordination](#), 6 *MICH. J. RACE & L.* 285, 298-301 (2001).

[FN52]. See Darren Lenard Hutchinson, [Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Anti-Racist Politics](#), 47 *BUFF. L. REV.* 1, 41-42 (1999) [hereinafter Hutchinson, *Ignoring the Sexualization of Race*].

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[FN53]. [517 U.S. 620 \(1996\)](#) (striking down a Colorado constitutional amendment that banned the state from enacting laws to protect gay men, lesbians, or bisexuals from discrimination).

[FN54]. [Id. at 636, 645.](#)

[FN55]. See, e.g., Francisco Valdes, [Queer Margins, Queer Ethics: A Call to Account for Race and Ethnicity in the Law, Theory, and Politics of "Sexual Orientation,"](#) 48 HASTINGS L.J. 1293 (1997).

[FN56]. See, e.g., Theresa Rafeale Jefferson, *Toward a Black Lesbian Jurisprudence*, 18 B.C. THIRD WORLD L.J. 263, 284-87 (1998) (discussing media and legal coverage of a case in which an unidentified "Black lesbian social activist" was raped and later accused of staging the event as a publicity stunt by the courts and media who hypersexualized her "in a manner consistent with the construction of Black women as essentially unrapeable").

[FN57]. See, e.g., Hutchinson, *Ignoring the Sexualization of Race*, *supra* note 52, at 21-33 (discussing evidence of racism and stereotypes of Asian American men in the highly publicized beating of a Vietnamese American man which was viewed by gay rights advocates and his own lawyer as homophobic but not racist).

[FN58]. Hutchinson, *Out Yet Unseen*, *supra* note 47, at 562-63.

[FN59]. ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 8, at 206.

[FN60]. Robson, discussing her anxiety about the rift between class and sexuality, states:

At one point I could comfortably express both class and sexuality concerns within the rubric of lesbianism, believing that lesbian legal theory could address both class and sexual minority concerns .... Such a coincidence of interests gradually dissipated, but the fracture is most revealed by the discovery/invention of lesbians as a "market" segment, an innovation with which lesbians and gay men have colluded.

*Id.* at 209.

[FN61]. Robson cites the potential economic disadvantages of marriage, such as the attribution of income from one partner to another, disintitling low-income people from welfare benefits. *Id.* at 212.

[FN62]. See Susan Boyd & Claire Young, ["From Same-Sex to No Sex"?: Trends Towards Recognition of \(Same-Sex\) Relationships in Canada,](#) 1 SEATTLE J. FOR SOC. JUST. 757, 778-79 (2003).

[FN63]. The most significant contributor to this literature is Ruthann Robson. See, e.g., ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 8; RUTHANN ROBSON, *LESBIAN (OUT)LAW* (1992) [hereinafter, ROBSON, *LESBIAN (OUT)LAW*]. See also Mary Eaton, *At the Intersection of Gender and Sexual Orientation: Toward Lesbian Jurisprudence*, 3 S. CAL. REV. L. & WOMEN'S STUD. 183 (1994); Kris Franklin & Sara E. Chinn, *Lesbians, Legal Theory and Other Super Heroes*, 25 N.Y.U. REV. L. & SOC. CHANGE 301 (1999); Jefferson, *supra* note 56; Christine A. Littleton, *Double and Nothing: Lesbian as Category*, 7 UCLA WOMEN'S L.J. 1 (1996).

[FN64]. ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 8, at xv.

[FN65]. *Id.* at 130.

[FN66]. Ruthann Robson, [The Specter of A Lesbian Supreme Court Justice: Problems of Identity in Lesbian Legal Theorizing,](#) 5 ST. THOMAS L. REV. 433, 457-58 (1993).

**(Publication page references are not available for this document.)**

[FN67]. Eaton says that "any attempt to lay out a full-blown theory of lesbian jurisprudence is, at least at this stage, not only premature, but also doomed to obfuscate a set of identificatory relations that is very complex and cannot be anticipated in advance." Eaton, *supra* note 63, at 187.

[FN68]. Cynthia Petersen, *Living Dangerously: Speaking Lesbian, Teaching Law*, 7 *CANADIAN J. WOMEN & L.* 318, 323-28 (1994).

[FN69]. *Sexual Preference and Gender Identity: A Symposium*, 30 *HASTINGS L.J.* 799 (1979). The symposium was held in San Francisco in the aftermath of the assassination of openly gay public official Harvey Milk. It contained articles such as Rhonda Rivera, *Our Straight-Laced Judges: The Legal Position of Homosexual Persons in the United States*. *Id.* In her opening remarks to a 2001 symposium, Nancy Ota noted that even before the 1979 Hastings symposium, law reviews contained isolated articles on gay rights issues. Nancy K. Ota, "Family" and the Political Landscape for Lesbian, Gay, Bisexual and Transgender People (LGBT) Opening Remarks: [Queer Recount](#), 64 *ALB. L. REV.* 889, 891-92 (2001) (citing, among other examples, Roger M. Fritts & Favor R. Smith, Comment, *Deviate Sexual Behavior: The Desirability of a Legislative Proscription*, 30 *ALB. L. REV.* 291 (1966) (addressing the problems associated with proscribing private same-sex sexual activity)).

[FN70]. The period researched was from January 1, 2002, to January 1, 2004. Of course, it might be reasonable to assume that despite the richness of queer scholarship, it is rarely published in the most prestigious law journals, and the articles are infrequently cited. See William N. Eskridge, Jr., [Outsiders-Insiders: The Academy of the Closet](#), 71 *CHI-KENT L. REV.* 977 (1996) [hereinafter Eskridge, *Outsiders-Insiders*] (discussing trends in legal citations and scholarship written by authors having minority sexual orientations).

[FN71]. Julie A. Greenberg, *What Do Scalia and Thomas Really Think About Sex? Title VII and Gender Nonconformity Discrimination: Protection for Transsexuals, Intersexuals, Gays and Lesbians*, 24 *T. JEFFERSON L. REV.* 149 (2002).

[FN72]. William D. Araiza, *Enda Before it Starts: Section 5 of the Fourteenth Amendment and the Availability of Damages Awards to Gay State Employees Under the Proposed Employment Non-Discrimination Act*, 22 *B.C. THIRD WORLD L.J.* 1 (2002).

[FN73]. Peter Nicholas, ["They Say He's Gay": The Admissibility of Evidence of Sexual Orientation](#), 37 *GA. L. REV.* 793 (2003).

[FN74]. Melanie B. Jacobs, [Micah Has One Mommy and One Legal Stranger: Adjudicating Maternity for Nonbiological Lesbian Coparents](#), 50 *BUFF. L. REV.* 341 (2002).

[FN75]. Desiree Alonso, Note, [Immigration Sponsorship Rights for Gay and Lesbian Couples: Defining Partnerships](#), 8 *CARDOZO WOMEN'S L.J.* 207 (2002).

[FN76]. Kari E. Hong, [Categorical Exclusions: Exploring Legal Responses to Health Care Discrimination Against Transsexuals](#), 11 *COLUM. J. GENDER & L.* 88 (2002).

[FN77]. This work is voluminous. See, e.g., Frances Lee Ansley, *Race and the Core Curriculum in Legal Education*, 79 *CAL. L. REV.* 1512 (1991); Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 4 *S. CAL. REV. L. & WOMEN'S STUD.* 33 (1994) [hereinafter Crenshaw, *Toward a Race-Conscious Pedagogy*]; Susan Homer & Lois Schwartz, *Admitted but Not Accepted: Outsiders Take an Inside Look at Law School*, 5 *BERKELEY*

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WOMEN'S L.J. 1 (1989).

[FN78]. Chris K. Iijima, [Separating Support from Betrayal: Examining the Intersection of Racialized Legal Pedagogy, Academic Support, and Subordination](#), 33 *IND. L. REV.* 737, 744-59 (2000).

[FN79]. See, e.g., Colloquium, [Legal Education Then and Now: Changing Patterns in Legal Training and the Relationship of Law Schools to the World Around Them](#), 47 *AM. U. L. REV.* 747 (1998); John S. Elson, [Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia](#), 64 *TENN. L. REV.* 1135 (1997).

[FN80]. Iijima, *supra* note 78, at 751.

[FN81]. LANI GUINIER ET AL., *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* (1997).

[FN82]. Homer & Schwartz, *supra* note 77.

[FN83]. Catherine Weiss & Louise Melling, [The Legal Education of Twenty Women](#), 40 *STAN. L. REV.* 1299 (1988).

[FN84]. GUINIER ET AL., *supra* note 81, at 28. These numbers emerged even when both male and female students shared identical entry-level credentials. *Id.* Similarly, at Boalt Hall one in six first-year men received a grade in the top ten percent of his contracts class, while the rate for women in that group was only one in sixteen. Homer & Schwartz, *supra* note 77, at 30. However, a review of Stanford students' first-year performance revealed no such disparity. See Janet Taber et al., [Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates](#), 40 *STAN. L. REV.* 1209, at 1239-40, 1243 (1988).

[FN85]. GUINIER ET AL., *supra* note 81, at 130 n.86. Men in the Pennsylvania study reported asking questions almost twice as often as women. *Id.* There appears to be evidence of this trend at all law schools, not just the elite schools examined in these studies. See, e.g., Elizabeth Mertz et al., *What Difference Does Difference Make? The Challenge for Legal Education*, 48 *J. LEGAL EDUC.* 1, 45 (1998) (reporting that "men spoke more frequently than women and for longer periods of time" in six of eight classrooms in both elite and nonelite schools).

[FN86]. Women in the Pennsylvania study were five times more likely than men to seek professional help for law school concerns. GUINIER ET AL., *supra* note 81, at 49. A study of nine Ohio law schools found that women were more than twice as likely as men to agree with the statement that "[b]efore law school I thought of myself as intelligent and articulate, but often I don't feel that way about myself now." Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 *J. LEGAL EDUC.* 311, 328 (1994).

[FN87]. See, e.g., Brian Owsley, [Black Ivy: An African-American Perspective on Law School](#), 28 *COLUM. HUM. RTS. L. REV.* 501 (1997) (providing a recent experiential account written by an African American student at Columbia University School of Law).

[FN88]. *Id.* at 547-48.

[FN89]. PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 55 (1991) [hereinafter WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS*].

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[FN90]. See generally Crenshaw, *Toward a Race-Conscious Pedagogy*, *supra* note 77.

[FN91]. *Id.* at 38.

[FN92]. *Id.* at 40-44.

[FN93]. *Id.* at 44-46.

[FN94]. *Id.* at 35. Crenshaw uses this term to describe how "many law school classes are conducted as though it is possible to create, weigh and evaluate rules and arguments in ways that neither reflect nor privilege any particular perspective or world view." *Id.*

[FN95]. *Id.*; see also Richard Delgado, [When a Story is Just a Story: Does Voice Really Matter?](#), 76 VA. L. REV. 95 (1990). Richard Delgado has delineated some major themes of critical race theory, many of which relate directly to a critique of law school pedagogy:

(1) an insistence on "naming our own reality"; (2) the belief that knowledge and ideas are powerful; (3) a readiness to question basic premises of moderate/incremental civil rights law; (4) the borrowing of insights from social science on race and racism; (5) critical examination of the myths and stories powerful groups use to justify racial subordination; (6) a more contextualized treatment of doctrine; (7) criticism of liberal legalisms; and (8) an interest in structural determinism--the ways in which legal tools and thought-structures can impede law reform.

*Id.* at 95 n.1.

[FN96]. Crenshaw, *Toward a Race-Conscious Pedagogy*, *supra* note 77, at 35-36, Judith Greenberg has also written about the erroneous assumptions that both the legal system and law school pedagogy are color-blind. See Judith G. Greenberg, *Erasing Race from Legal Education*, 28 U. MICH. J. L. REFORM 51, 55 (1994).

[FN97]. See, e.g., Bartlett, *supra* note 6, at 862-63 (noting that "[f]eminists have found that neutral rules and procedures tend to drive underground the ideologies of the decisionmaker, and that these ideologies do not serve women's interests well. Disadvantaged by hidden bias, feminists see the value of modes of legal reasoning that expose and open up debate concerning the underlying political and moral considerations.").

[FN98]. ROBSON, *LESBIAN (OUT)LAW*, *supra* note 63, at 181.

[FN99]. Iijima's words are directed specifically to instructors in academic support programs, but we think they are relevant to all law teachers. See Iijima, *supra* note 78, at 740-41.

[FN100]. *Id.* at 779.

[FN101]. See, e.g., Bartlett, *supra* note 6; CATHERINE MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989); Patricia Cain, [Stories from the Gender Garden: Transsexuals and Anti-Discrimination Law](#), 75 DENV. U.L. REV. 1321, 1325-29 (1998).

[FN102]. See, e.g., *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (Kimberlé Crenshaw et al. eds., 1995); DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987). Natsu Saito Jenga sees strengthening potential for Asian American law teachers in storytelling:

First, we can add a substantive dimension--our narrative--to the discourse and encourage others to add theirs. Second, aided by the diversity within Asian American communities and by our "outsider" status, we can present alternate ways to view not

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only conflicts within a race- and class-based hierarchy, but the hierarchy itself. And finally, we can define ourselves in ways which are not limited by the structures we are given.

Natsu Saito Jenga, [Finding Our Voices, Teaching Our Truth: Reflections on Legal Pedagogy and Asian American Identity](#), 3 *ASIAN PAC. AM. L.J.* 81, 81 (1995).

[FN103]. Bartlett, *supra* note 6, at 831.

[FN104]. Richard Delgado, [Storytelling for Oppositionists and Others: A Plea for Narrative](#), 87 *MICH. L. REV.* 2411, 2412 (1989).

[FN105]. Richard Delgado & Jean Stefancic, *Derrick Bell's Chronicle of the Space Traders: Would the U.S. Sacrifice People of Color If the Price Were Right?*, 62 *U. COLO. L. REV.* 321, 328 (1991). *Chronicle of the Space Traders* is a science fiction story told to law students by leading critical race theorist Derrick Bell. In the parable, extraterrestrial invaders land in the United States and announce that they have come to make an offer: if all African Americans are given up to the invaders, the invaders will leave in America the contents of the spaceships, namely enough gold to retire the national debt, a magic chemical to cleanse skies of pollution, and a limitless supply of safe, clean energy. After heated public debate, a national referendum is approved, and all African Americans are "sold" to the extraterrestrials. See DERRICK A. BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 158-94 (1992).

[FN106]. See, e.g., BELL, *supra* note 105.

[FN107]. See, e.g., RICHARD DELGADO, *THE RODRIGO CHRONICLES: CONVERSATIONS ABOUT AMERICA AND RACE* (1995); PATRICIA J. WILLIAMS, *THE ROOSTER'S EGG* (1995).

[FN108]. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS*, *supra* note 89.

[FN109]. See *id.* at 44-51. Williams describes receiving the second edit of her Benetton's story, which had been accepted for publication by a law review:

All reference to Benetton's had been deleted because, according to the editors and the faculty adviser, it was defamatory; they feared harassment and liability; they said printing it would be irresponsible. I called them and offered to supply a footnote attesting to this as my personal experience at one particular location and of a buzzer system not limited to Benetton's; the editors told me that they were not in the habit of publishing things that were unverifiable.

*Id.* at 47.

[FN110]. *Id.* at 146-48. Williams describes how she (an African American woman) and a white male colleague were both looking for a Manhattan apartment at the same time. She wanted a formal lease as evidence of her status as a rights-bearer, while her left-leaning, white male colleague opted for an informal tenancy arrangement and was generally critical of liberal rights discourse. *Id.*

[FN111]. Delgado, *supra* note 95, at 95.

[FN112]. Owsley, *supra* note 87, at 515.

[FN113]. See, e.g., Anne M. Coughlin, [Regulating the Self: Autobiographical Performances in Outsider Scholarship](#), 81 *VA. L. REV.* 1229, 1231-32 (1995) (arguing that "reliance on autobiography may establish authorial subjectivity as the new form of unassailable dogma, the new tale that wags our legal discourse"); Daniel A. Farber & Suzanna Sherry, [Telling Stories Out](#)



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[of School: An Essay on Legal Narratives, 45 STAN. L. REV. 807 \(1993\).](#)

[FN114]. See ROBSON, SAPPHO GOES TO LAW SCHOOL, *supra* note 8, at 95-99 (summarizing the objections to outsider narratives and responding to each).

[FN115]. See Richard Delgado, On [Telling Stories In School: A Reply to Farber and Sherry, 46 VAND. L. REV. 665 \(1993\)](#); Marc A. Fajer, [Authority, Credibility, and Pre-Understanding: A Defense of Outsider Narratives in Legal Scholarship, 82 GEO. L.J. 1845](#); Martha Minow, Differences Among Difference, 1 UCLA WOMEN'S L.J. 165, 166 (1991); see also ROBSON, SAPPHO GOES TO LAW SCHOOL, *supra* note 8, at 95-99.

[FN116]. See, e.g., ROBSON, SAPPHO GOES TO LAW SCHOOL, *supra* note 8, at 99- 109. Her concerns include that narratives may be inevitably heterosexual and masculine, that they may simply confirm the stereotypes others hold and not achieve empathy, that they may lead to solipsism that keeps us separate from one another and obscures power relations, and that only the "good" narratives might be told. *Id.* at 100-07.

[FN117]. See, e.g., Iijima, *supra* note 78, at 772 n.138 (noting the backlash against outsider scholarship and critiques of law school pedagogy).

[FN118]. Mari J. Matsuda, [When the First Quail Calls: Multiple Consciousness as Jurisprudential Method, 14 WOMEN'S RTS. L. REP. 297, 298-99 \(1992\).](#)

[FN119]. *Id.* at 298.

[FN120]. *Id.*

[FN121]. Crenshaw, Toward a Race-Conscious Pedagogy, *supra* note 77, at 38, 41-45.

[FN122]. *Id.* at 50-51.

[FN123]. *Id.* at 50.

[FN124]. *Id.*

[FN125]. Deborah L. Rhode, [Missing Questions: Feminist Perspectives on Legal Education, 45 STAN. L. REV. 1547, 1564 \(1993\).](#)

[FN126]. Much of this work draws explicitly or implicitly on the theory of feminist psychologist Carol Gilligan. See CAROL GILLIGAN, A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982).

[FN127]. See, for example, the relatively early work of Carrie Menkel-Meadow, Portia in a Different Voice: Speculations on a Women's Lawyering Process, 1 BERKELEY WOMEN'S L.J. 39 (1985), and the more recent work by Susan Sturm, which argues that legal education should abandon the "gladiator model" in favor of a method that will produce "flexible synthesizers, integrators, and collaborators who work in teams." Susan P. Sturm, [From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession, 4 DUKE J. GENDER L. & POL'Y 119, 131, 134 \(1997\).](#) Similar recommendations have been made in the Canadian law school context. See, e.g., Julie Macfarlane, A Feminist Perspective on Experience-Based Learning and Curriculum Change, 26 OTTAWA L. REV. 357 (1994).

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[FN128]. See Brown, *supra* note 9, at 5 (stating that the purpose of a women-only law school is to address "three central problems [for women] in legal education: alienation, silence, and underachievement"); see also Sara Osborne, [These Are Not Our Rules: A Public Interest and Women Oriented Law School To Improve the Lives of Women Both Within and Outside the Legal Profession](#), 46 *HOW. L.J.* 549 (2003) (arguing for a law school that focuses on women's issues but is not women only).

[FN129]. See Judith D. Fischer, *Portia Unbound: The Effects of a Supportive Law School Environment on Women and Minority Students*, 7 *UCLA WOMEN'S L.J.* 81, 82-83 (1996). Fischer teaches at Chapman University School of Law, a small law school in Orange County, California, founded in 1994 "with the vision of educating human lawyers in a student supportive environment." *Id.* at 83. Fifty percent of the Chapman faculty are women and twenty-one percent are described by Fischer as minorities. *Id.* at 95. Specific programs implemented to respond to criticisms of legal education included faculty mentorship, tutoring programs with supplemental classes, small class sizes, and a low faculty-student ratio (18:1). *Id.* Surveys and focus groups of Chapman students conducted by Fischer have convinced her that women and students of color are performing significantly better at Chapman than at more conventional law schools. *Id.* at 114.

[FN130]. Banu Ramachandran, [Re-Reading Difference: Feminist Critiques of the Law School Classroom and the Problem With Speaking from Experience](#), 98 *COLUM. L. REV.* 1757, 1778 (1998).

[FN131]. GUINIER ET AL., *supra* note 81.

[FN132]. Ramachandran, *supra* note 130, at 1789.

[FN133]. *Id.* at 1786 (citing Weiss & Melling, *supra* note 83, at 1321).

[FN134]. *Id.* at 1787. Ramachandran notes that Guinier chalks up this homophobic name-calling to "anti-intellectual camaraderie" but fails to account for why this sort of camaraderie takes such a gendered form. *Id.* at 1788.

[FN135]. See *id.* at 1791.

[FN136]. *Id.* at 1783, 1791; see also Crenshaw, *Toward a Race-Conscious Pedagogy*, *supra* note 77, at 43.

[FN137]. Elizabeth M. Iglesias, *Foreword: International Law, Human Rights, and LatCrit Theory*, 28 *U. MIAMI INTER-AM. L. REV.* 177, 177 n.1 (1997).

[FN138]. See Francisco Valdes, [Under Construction: LatCrit Consciousness, Community, and Theory](#), 85 *CAL. L. REV.* 1087, 1089 n.2 (1997) [hereinafter Valdes, *Under Construction*].

[FN139]. See, e.g., Symposium, [Class in LatCrit: Theory and Praxis in a World of Economic Inequality](#), 78 *DENV. U.L. REV.* 467 (2001) (revealing the breadth and diversity of LatCrit scholarship). For other symposia, see <http://www.latcrit.org> (subsequent annual symposia include: *Latinas/os and the Americas: Centering North-South Frameworks in LatCrit Theory* (2001); *Coalitional Theory and Praxis: Social Justice Movements and LatCrit Community* (2002); *City and the Citizen: Operations of Power, Strategies of Resistance* (2003)).

[FN140]. See Daniel G. Solorzano & Tara J. Yosso, [Maintaining Social Justice Hopes Within Academic Realities: A Freirean Approach to Critical Race/LatCrit Pedagogy](#), 78 *DENV. U. L. REV.* 595 (2001).

[FN141]. Elizabeth M. Iglesias and Francisco Valdes, [LatCrit at Five: Institutionalizing a Postsubordination Future](#), 78

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[DENV. U. L. REV. 1249, 1316 \(2001\).](#)

[FN142]. Valdes, Under Construction, *supra* note 138, at 1093-94.

[FN143]. See Patricia Monture-Angus, Standing Against Canadian Law: Naming Omissions of Race, Culture, and Gender, in *LOCATING LAW: RACE/CLASS/GENDER CONNECTIONS* 76 (Elizabeth Comack ed., 1999). In addition to the oppression of the law itself, Monture-Angus points to, among other things, the fact that "Aboriginal ways of knowing and understanding," including storytelling, currently have no place in mainstream legal methodology and practice. *Id.* at 87.

[FN144]. See, e.g., *TWO-SPIRIT PEOPLE: NATIVE AMERICAN GENDER IDENTITY, SEXUALITY AND SPIRITUALITY* (Sue-Ellen Jacobs et al. eds., 1997).

[FN145]. Monture-Angus, *supra* note 143, at 76.

[FN146]. We have come to a similar conclusion to the one reached by Mary Eaton in relation to a lesbian jurisprudence. See Eaton, *supra* note 63, at 187.

[FN147]. See discussion *supra* Part II.A.2.

[FN148]. See generally Franke, *supra* note 13.

[FN149]. See *supra* text accompanying note 25.

[FN150]. Iijima makes the additional point that students need to see professors with backgrounds similar to their own or they may question their ability to contribute to the profession. Iijima, *supra* note 78, at 756.

[FN151]. The pressing desire to feel "real" as a person in law and legal education can be seen by looking at the number of articles written by queer students and queer law professors about their experiences as students and teachers. See, e.g., Becker, *supra* note 28; Ihrig, *supra* note 17; Miccio, *supra* note 29; Reuther, *supra* note 24; Sears, *supra* note 5.

[FN152]. Adrienne Rich, Invisibility in Academe, in *BLOOD, BREAD, AND POETRY* 199 (1986).

[FN153]. See William N. Eskridge, Jr., [Gaylegal Narratives](#), 46 *STAN. L. REV.* 607, 614-20 (1994) (arguing that "gaylegal narratives" have at least three substantial values: (1) informational value ("we are here, there, and everywhere"), (2) value to test general, abstract propositions in the context of concrete cases, and (3) value in demonstrating connections and interrelationships among separate policies).

[FN154]. See Ruthann Robson, [Beginning from \(My\) Experience: The Paradoxes of Lesbian/Queer Narrativities](#), 48 *HASTINGS L.J.* 1387, 1399-1400 (1997).

[FN155]. See David M. Skover & Kellye Y. Testy, [LesBiGay Identity as Commodity](#), 90 *CAL. L. REV.* 223 (2002).

[FN156]. For examples of successful marketing campaigns directed at "LesBiGays," see [id.](#) at 231 nn.42-50.

[FN157]. As Skover and Testy put it: "[B]y playing to succeed in the image game, LesBiGays are increasingly celebrated within the mythmaking machines of the commercial entertainment culture, despite being continuously censured within the policymaking mechanisms of the political and legal culture." [Id.](#) at 250.

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[\[FN158\]](#). ROBSON, SAPPHO GOES TO LAW SCHOOL, *supra* note 8, at 209 (warning that "our place in the dominant market economy effectively commodifies lesbianism as a style (which can be purchased) rather than as a politic (which must be lived)").

[\[FN159\]](#). For example, Crenshaw criticizes the practice of putting minority students on the spot when issues of race and ethnicity arise. See Crenshaw, *Toward a Race-Conscious Pedagogy*, *supra* note 77, at 41.

[\[FN160\]](#). As Eskridge notes:

[G]ay lives have been on the cutting edge of American society for decades; families of choice, shock art, racial integration, and safer sex are developments where gay culture moved much faster than straight culture. The legal issues presented by gay lives are equally avant-garde and provide a richer tapestry on which scholars can work. Eskridge, *Outsider-Insiders*, *supra* note 70, at 983.

[\[FN161\]](#). See discussion *supra* Part II.B.3.

[\[FN162\]](#). Franklin & Chinn, *supra* note 63, at 312-13 (reviewing ROBSON, SAPPHO GOES TO LAW SCHOOL, *supra* note 8). The authors conclude that at least part of the power of Robson's text is that it "opens up the possibility of lesbians telling our own stories." *Id.* at 313.

[\[FN163\]](#). This principle is inspired in part from Ramachandran's discussion of how our understanding of gender roles may pervert our ability to see the operation of homophobia in legal education. See Ramachandran, *supra* note 130, at 1789-90 (noting that "[o]ne strategy, therefore, for interrupting the operation of this power of naturalized gender roles that can disadvantage or oppress women is to denaturalize heterosexuality and the content of gender roles by demarginalizing homosexuality and other gender-transgressive behavior"). For a discussion of how normalized assumptions inherent in legal education affect the academic performance of students of color and women, see Iijima, *supra* note 78. See also Nancy J. Knauer, *Heteronormativity and Federal Tax Policy*, 101 W. VA. L. REV. 129 (1998).

[\[FN164\]](#). Various scholars have noted the "heterosexual presumption" that pervades society and law. See, e.g., Leigh M. Leonard, *A Missing Voice in Feminist Legal Theory: The Heterosexual Presumption*, 12 WOMEN'S RTS. L. REV. 39 (1990); Devon W. Carbado, [Straight Out of the Closet](#), 15 BERKELEY WOMEN'S L.J. 76, 109-11 (2000).

[\[FN165\]](#). Muneer Ahmad describes how the assumption of heterosexuality made by students in a legal ethics exercise caused them to miss probative evidence in a hypothetical sexual assault case. See Muneer Ahmad, *Homophobia in the Halls of Justice: Sexual Orientation Bias and Its Implications within the Legal System: The Ethics of Narrative*, 11 AM. U.J. GENDER SOC. POL'Y & L. 117, 119-20 (2003).

[\[FN166\]](#). See Shannon Minter, *Do Transsexuals Dream of Gay Rights? Getting Real About Transgender Inclusion in the Gay Rights Movement*, 17 N.Y.L. SCH. J. HUM. RTS. 589 (2000). Minter discusses the emergence of the current, nontransgender gay rights discourse about sexual object choice from early-twentieth-century struggles in which gender inversion played a major role. Minter cites Leslie Feinberg's work on the role of "gender outlaws" in the Stonewall riots, as well as Lillian Faderman's description of the working-class butch-femme culture of the 1950s and 1960s that included highly visible, gender-transgressive (masculine) dress that was decried by middle-class lesbians who advocated "behavior and dress acceptable to society." *Id.* at 621 n.14, 605-06 (citing LILLIAN FADERMAN, *ODD GIRLS AND TWILIGHT LOVERS: A HISTORY OF LESBIAN LIFE IN THE TWENTIETH CENTURY* 180 (1991)). See also Taylor Flynn, [Transforming the Debate: Why We Need to Include Transgender Rights in the Struggles for Sex and Sexual Orientation Equality](#), 101 COLUM. L. REV. 392 (2001) (arguing that intolerance of gender nonconformity is a common thread in discrimination

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against gays, lesbians, transgender people, and straight people who are perceived as gender nonconforming).

[FN167]. In this process we may make surprising discoveries--for example, that the category "family" should be abandoned altogether. See ROBSON, *SAPPHO GOES TO LAW SCHOOL*, supra note 8, at 153-70.

[FN168]. This principle is derived in part from Valdes's conclusion that, for legal theory to work, it must embrace and perform the function of cultivating community and coalition. See Valdes, *Under Construction*, supra note 138, at 1091; see also Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 *STAN. L. REV.* 1183 (1991) [hereinafter Matsuda, *Beside My Sister*]. Matsuda has written about the necessity of seeing the interconnection of all forms of subordination and about a tool that she calls "ask[ing] the other question." *Id.* at 1189. She says, "When I see something that looks racist, I ask, 'Where is the patriarchy in this?' When I see something that looks sexist, I ask, 'Where is the heterosexism in this?' When I see something that looks homophobic, I ask, 'Where are the class interests in this?'" *Id.* See also Iijima, supra note 78, at 772.

[FN169]. See, e.g., Catherine Gage O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 *CLINICAL L. REV.* 485 (1998).

[FN170]. See Bartlett, supra note 6, at 855. Bartlett describes the difficulty encountered by many feminists in connection to community identification:

Feminist practical reasoning differs from other forms of legal reasoning ... in the strength of its commitment to the notion that there is not one, but many overlapping communities to which one might look for "reason." Feminists consider the concept of community problematic, because they have demonstrated that law has tended to reflect existing structures of power.

*Id.*

[FN171]. For example, the issue of same-sex marriage is currently in the news in Canada. At the time of this writing, courts in three Canadian provinces had found the common law definition of marriage unconstitutional as a violation of the equality rights of gays and lesbians, and same-sex marriage is now legal in both Ontario and British Columbia. See, e.g., *Halpern v. Canada*, [2003] 65 O.R.3d 161. The Canadian government has not appealed these rulings and has, instead, drafted legislation changing the definition of marriage from "one man and one woman to the exclusion of all others" to "two persons to the exclusion of all others." Proposal for an Act Respecting Certain Aspects of Legal Capacity for Marriage for Civil Purposes, Order in Council P.C. 2003-1055, <http://www.samesexmarriage.ca/legal/on-guard.htm> (last visited Mar. 18, 2004); see also Press Release, Canada Department of Justice, Reference to the Supreme Court of Canada (July 17, 2003) (referring to the draft bill to the Supreme Court of Canada for an advisory opinion), [http://canada.justice.gc.ca/en/news/nr/2003/doc\\_30946.html](http://canada.justice.gc.ca/en/news/nr/2003/doc_30946.html) (last visited Mar. 18, 2004).

[FN172]. See, e.g., Jane S. Schacter, *Poised at the Threshold: Sexual Orientation, Law, and the Law School Curriculum in the Nineties*, 92 *MICH. L. REV.* 1910, 1915 (1994) (reviewing RUBENSTEIN, supra note 14). Schacter discusses the power of Rubenstein's approach, noting that his casebook reflects the pedagogical choice to be interdisciplinary. That aim is obvious from the organization of the book alone, which discusses areas of law based on where they fit into gay and lesbian lives, such as working or parenting, instead of segregating them into traditional legal categories.

[FN173]. See WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS*, supra note 89, at 7- 8. Williams deals with the power of interdisciplinary work:

The advantage of [an interdisciplinary] approach is that it highlights factors that would otherwise go unremarked .... [and] can serve to describe a community of context for those social actors whose traditional legal status has been the isolation of oxymoron, of oddity, of outsider .... I would like to write in a way that reveals the intersubjectivity of legal constructions, that

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forces the reader both to participate in the construction of meaning and to be conscious of that process.

Id.

[FN174]. Broad, *supra* note 41, at 1151.

[FN175]. Francisco Valdes, Afterword: [Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality, and Responsibility in Social Justice Scholarship or Legal Scholars as Cultural Warriors](#), 75 *DENV. U. L. REV.* 1409, 1415 (1998).

[FN176]. This principle is derived from Valdes's conclusion that for legal theory to work it must embrace and perform the function of the advancement of transformation. See Valdes, *Under Construction*, *supra* note 138, at 1093.

[FN177]. Elvia R. Arriola, *Respiro Libre: Coming Home to a Latina Lesbian Self: Race and Sexual Orientation in Legal Scholarship*, 4 *NAT'L J. SEXUAL ORIENTATION L.* 5, 7 (1998), at [http:// www.ibiblio.org/gaylaw/issue6/Arriola.htm](http://www.ibiblio.org/gaylaw/issue6/Arriola.htm).

[FN178]. Id. at 8.

[FN179]. Matsuda, *Beside My Sister*, *supra* note 168, at 1189.

[FN180]. Mary Louise Fellows & Sherene Razack, *Seeking Relations: Law and Feminism Roundtables*, 19 *SIGNS* 1048, 1048-49 (1994).

[FN181]. An emphasis on praxis is found in the work of many outsider scholars such as Valdes and Robson. See, e.g., Valdes, *Under Construction*, *supra* note 138, at 1139 (noting the importance of maintaining LatCrit scholarship's practical commitment to Latina/o communities); ROBSON, *LESBIAN (OUT)LAW*, *supra* note 63.

[FN182]. See Hutchinson, *Out Yet Unseen*, *supra* note 47, at 640. Hutchinson describes "multidimensionality" as a methodology by which to analyze the impact of racial and class oppression (and other sources of social inequality) upon sexual subordination and gay and lesbian experience and to cease treating these forces as separable, mutually exclusive, or even conflicting phenomena .... Multidimensionality exposes the various layers of social power that inform heterosexism and homophobia.

Id. at 566, 640; see also Crenshaw, *supra* note 47, at 1244 (discussing the need for law to understand and address the complex "intersectionality" of oppression experienced by women of color).

[FN183]. See Matsuda, *Beside My Sister*, *supra* note 168, at 1189 (arguing that "working in coalition forces us to look for both the obvious and nonobvious relationships of domination, helping us to realize that no form of subordination ever stands alone").

[FN184]. The significance of clinical legal education to skills-building and learning was recognized by the MacCrate Report in 1992. See AM. BAR ASS'N SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR, *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT - AN EDUCATIONAL CONTINUUM. REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* 238 (1992) ("Clinics have made, and continue to make, an invaluable contribution to the entire legal education enterprise. They are a key component in the development and advancement of skills and values throughout the profession. Their role in the curricular mix of courses is vital."). An example of a program that seriously attempts to integrate academic lawyering with practice is the City University of New York School of Law Lawyering Program. See CUNY School of Law, Curriculum Information, available at <http://>



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[www.law.cuny.edu/OurPrograms/curricinfo/index.html](http://www.law.cuny.edu/OurPrograms/curricinfo/index.html).

[FN185]. See generally Jane H. Aiken, [Provocateurs for Justice](#), 7 *CLINICAL L. REV.* 287 (2001) (discussing the relationship between clinical education and social justice).

[FN186]. See Crenshaw, *Toward a Race-Conscious Pedagogy*, supra note 77, at 35. Crenshaw notes:

[B]ecause of the dominant view in academe that legal analysis can be taught without directly addressing conflicts of individual values, experiences, and world views, these conflicts seldom, if ever, reach the surface of the classroom discussion. Dominant beliefs in the objectivity of legal discourse serve to suppress the conflict by discounting the relevance of any particular perspective in legal analysis and by positing an analytical stance that has no specific cultural, political, or class characteristics. I call this dominance mode "perspectivelessness."

Id.; see also Martha Minow, *Feminist Reason: Getting It and Losing It*, in *FEMINIST LEGAL THEORY: POSITIONING FEMINIST LEGAL THEORY WITHIN THE LAW* 47 (Frances E. Olson, ed., 1995).

[FN187]. Schacter, supra note 172, at 1913.

[FN188]. See Mary O'Brien & Sheila McIntyre, *Patriarchal Hegemony and Legal Education*, 2 *CAN. J. WOMEN & L.* 69, 80 (1986). The authors note:

[P]erhaps the most damaging forms of education are the ones which claim not only to be "value free," but which fetishize objectivity as such .... It is therefore essential to pay attention to curricular content and theories of knowledge if we want to posit legal education as a specific instance of ideological training, for curriculum may obscure the actual social relations which constitute malfeasance, crime, legislative acts, and elusive justice itself.

Id.

[FN189]. Robson, supra note 66, at 457-58. Franklin and Chinn capture Robson's emphasis on the power of the imagination. According to them:

Robson wants her readers to participate in a kind of limitlessness of possibility, and cut themselves loose from the strictures of pre-existing legal constructs. This, for her, is the promise of lesbian legal theory, and of theorizing more generally. The trajectory of theory is more than just a set of intellectual points--it can provide a map to alternative ways not just of thinking but of acting in the world.

Franklin & Chinn, supra note 63, at 319 (reviewing *ROBSON, SAPPHO GOES TO LAW SCHOOL*, supra note 8).

[FN190]. Katherine Franke makes a similar call to avoid adopting a uniform approach to teaching queer law. See Franke, supra note 13, at 2677.

[FN191]. Frances Lee Ansley, [Race and the Core Curriculum in Legal Education](#), 79 *CAL. L. REV.* 1511, 1515-16 (1991).

[FN192]. *RULE*, supra note 3, at 5.

[FN193]. See Christine Boyle, *Teaching Law As If Women Really Mattered, or, What About the Washrooms?*, 2 *CAN. J. WOMEN & L.* 96, 109-11 (1986) (recounting the fears that bar academics from deviating from traditional methods of legal education).

[FN194]. Miccio, supra note 29, at 182.

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