STORIES IN LAW SCHOOL: AN ESSAY ON LANGUAGE, PARTICIPATION, AND THE POWER OF LEGAL EDUCATION

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I. LAW SCHOOL—THE PERSONAL AND POLITICAL; SILENCE AND VOICE

In the fall of 1986, the entering law school class at Queen's University was greeted with an orientation address by Professor Toni Pickard.[1] Professor Pickard welcomed the students by saying that law school is part of real life, rather than being a "way-station on the route to something else"[2] and that the students were responsible for being active members of their new community during their tenure. She then introduced the class to the hierarchical organization of law school and warned them about the devaluation of personal knowledge that results from that structure:

> You may, most likely will, find your classes proceeding as if nothing you studied before, nothing you have learned through your life experience, is relevant. They also tend to proceed as if none of the wide differences among your professors' backgrounds, commitments, and life experiences is relevant. This too creates a sense that The Law is There—even a pressure to see it that way—that Law is a thing to be grasped, and each of us has to put our self aside, has to understand It for what It is. But that is not right. It is right that there are certain understandings shared by most of

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[1] Toni Pickard, Is Real Life Finally Happening?, 2 Can. J. Women & L. 432 (1987–88).

[2] Id. at 433.

> those engaged with law—that legal stances, decisions, arguments have a certain self-understanding, and that law teachers are out to impart their own understanding of these self-understandings. But like any individual's understanding of him or herself, these self-understandings are only partial.
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> [These] difficulties work together to create an emotional state which makes it virtually impossible to adopt the cautious, rational, dispassionate, "objective" tone which is the required voice for legal speech. And your sense of being too emotional about it all may prevent you from speaking at all, make you feel even more inadequate—or, if you find your tongue anyway—may cause the others in the room to not hear you well because they hear the "wrong" tone—passionate and risk-taking, "subjective."[3]

Three years later, in June of 1989, Professor Catharine MacKinnon delivered the graduation address at the Yale Law School commencement ceremony.[4] Professor MacKinnon spoke of "what it means to hold the power of law in your hands."[5] As she focused on the situation of women, she challenged the law graduates to redistribute and transform that power:

> Power's latest myth in this area is that the problem of inequality between women and men has been solved. Because now a few women can become lawyers, we all have sex equality. Yet, 44 percent of women are still victims of rape and attempted rape, at least once in our lives; 85 percent of us are sexually harassed on the job; 38 percent of us are sexually abused as children; a quarter to a third of us are battered in our homes. Women who are lawyers are exceptions to none of these. Women still make around half the average male wage. Thousands and thousands of women are still being bought and sold on street corners as and for sex. Pornographers still traffick us and our children, making ten billion dollars a year. We are told that sex inequality is over, when some proud mothers must, statistically, sit here at graduation next to their batterers; when some excited graduates must sit a row or two away from their rapists, relieved to be leaving their sexual harassers, trying not to think about those who molested them as children, who may also be celebrating this moment with them.

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[3] Id. at 437.

[4] Catharine A. MacKinnon, Graduation Address: Yale Law School, June 1989, 2 Yale J.L. & Feminism 299 (1990).

[5] Id. at 299.

> Women especially must live with a division between what we know and what can be publicly acknowledged, between what we know and what the law will tell us back is true.[6]

For every law student, law school lies sandwiched between a challenging welcome and an even more challenging farewell. The welcome may not be delivered by Professor Pickard and the graduation address may not be in Professor MacKinnon's strong words, but the connection between self, law school, and the practice of law that both speakers underscore exists for every participant in legal education. As a student who began law school in the fall of 1986 and received a law degree in June 1989,[7] and as an aspiring law teacher,[8] I want to explore that connection. Both Professors Pickard and MacKinnon ask the members of their audiences to be full participants in their community, be it law school or society at large, and both emphasize the personal nature of the responsibility that accompanies the power of law. For Pickard, there exists the potential for including the voices of students in law school discourse in order to diversify and multiply our understandings of law. For MacKinnon, the power held by law school graduates has the potential for bringing about significant change. From my perspective bridging the experience of student and teacher at law school, I hope to examine some of the ways in which law school is both personal and political.

In carrying out this examination, I ask what it means to participate fully as student and teacher in law school. Personal experience and emotion are traditionally understood to have little part to play in teaching and learning the language of law. Newcomers to the enterprise are expected to immerse themselves in an intellectual exercise that often demands intense personal involvement, but they are not encouraged to bring their personal stories and responses into the classroom. Similarly, as Pickard reminds us, teachers rarely offer stories as a way of enriching the partial understandings taught in law school. As thought process, consciousness, and vocabulary are transformed over three years, law students begin to "think like lawyers" and, upon graduation, begin to "act like lawyers." MacKinnon then challenges them to use their newfound power to listen to voices that may have been silenced and to work towards the *re*transformation of process, conscience, vocabulary, and law.

The themes of participation, silence, personal experience, and voice are found in the emerging discussion of narrative or storytelling in legal

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[6] Id. at 300–01.

[7] I attended neither Queen's nor Yale, but my legal education at University of Toronto was definitely influenced by writings and speeches by Professors Pickard and MacKinnon.

[8] At present I am a J.S.D. candidate and an Associate responsible for teaching a section of the first-year Legal Research and Advocacy course at Columbia Law School.

writing and law teaching, and I intend to focus on that discourse in this paper.[9] The insertion of personal experience into the teaching and learning of law exposes perspectives that previously may have been suppressed. Yet, multiplicity and particularity may lead to paralysis. Unless some connection between personal narrative and institutional change is forged, students may be silenced by "too much" context, unable to find any common and powerful language with which to create standards and offer answers. Precise articulation of the link between personal and political in legal education is impossible in this limited space, but I hope to begin a search for criteria according to which the effectiveness of stories and personal perspective in the law school classroom can be assessed.[10]

II. TEACHING WITH STORIES—PARTICIPATION THROUGH PERSONAL PERSPECTIVE

"[W]hat is most important to me must be spoken."

Audre Lorde[11]

A. What Is Storytelling?

Law school teaches its students fluency in a discourse that their society listens to and respects. At the same time, students learn that some of their reactions and feelings cannot be expressed in a "legal voice."[12] Rejecting that lesson, some participants in law school are pursuing a new genre of pedagogy. Alternatively described as narrative, storytelling, and feminist methodology, this genre of legal education gives significance to emotion and provides a space for multiple experiences and perspectives.[13]

[9] These themes reflect those found in feminist methodology, which grounds theory in the reality of women's lives as told through their own voices.

[10] A similar search is crucial in the area of feminist theory, where the recognition of the multiplicity of women's experiences carries with it the risk of fragmentation.

[11] Audre Lorde, Sister Outsider 40 (1984).

[12] Lucinda Finley, Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning, 64 Notre Dame L. Rev. 886, 903–04 (1989). Finley writes, "There are some things that just cannot be said by using the legal voice. Its terms depoliticize, decharge and dampen. Rage, pain, elation, the aching, thirsting, hungering for freedom on one's own terms, love and its joys and terrors, fear, utter frustration at being contained and constrained by legal language—all are diffused by legal language." Id. at 904.

[13] In this article, I use the terms "storytelling" and "narrative" interchangeably. For a sampling of the development of this genre or methodology of law teaching, see the issues of the *Journal of Legal Education* devoted to Women in Legal Education—Pedagogy, Law, Theory, and Practice, 38 J. Legal Educ. (1988) and to Pedagogy of Narrative: A Symposium, 40 J. Legal Educ. (1990). See also the symposium on legal storytelling in 87 Mich. L. Rev. (1989).

Perhaps the best way to understand what this new genre anticipates and encourages is by reference to Patricia Williams' recently published book entitled *The Alchemy of Race and Rights.*[14] While Williams has much to say about racism and law, and about legal systems, power, and victimization, her book is also important for what it has to say about legal education. Indeed, Williams subtitles the book *Diary of a Law Professor.* The vignettes, emotional reactions, imagination, and poetic entries are not what we might expect from a law school professor's observations and analysis of the practice of teaching. Williams openly shares her vulnerability to evaluations by her students; she worries about connecting her observations with the property and commercial law course materials she covers; and she relies on her own family relationships for much of her analysis. Williams is engaged in the creation of a form of legal writing that will fill the gaps of traditional legal scholarship,[15] and her style is meant to insert self into legal discourse where the individual's presence has been denied or masked.[16] Williams introduces personal experience to legal discourse about race and gender and, in so doing, asks her readers to reconceptualize legal and social responsibility based on previously hidden subjectivities and unexamined claims.[17] Williams reminds us that legal education, along with much of legal discourse, is often divorced from the realities of everyday life.[18] Stories that convey those realities need to be told by both teachers and students.

In acknowledging multiple voices and perspectives, Patricia Williams draws upon tenets of feminist and critical race theory. The call for a more participatory process in the classroom and for the substantive changes that such a methodology might imply is a vital part of feminist legal theory and practice,[19] developed largely in response to the silence of women both in

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[14] Patricia J. Williams, The Alchemy of Race and Rights: Diary of a Law Professor (1991).

[15] "I hope that the gaps in my own writing will be self-consciously filled by the reader, as an act of forced mirroring of meaning-invention." Id. at 7. For an example of academic scholarship that is more traditional in style than Williams' work but offers a similar message, see T. A. Aleinikoff, A Case for Race-Conciousness, 91 Colum. L. Rev. 1060 (1991).

[16] Patricia J. Williams, Presentation at the Race and Theory Workshop at Columbia Law School (Feb. 12, 1991).

[17] Williams, supra note 14, at 11.

[18] Williams, supra note 16.

[19] Carrie Menkel-Meadow, Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School," 38 J. Legal Educ. 61 (1988). Menkel-Meadow sees teaching as one of the fields of practice to which feminist theory must be applied.

society and in law school.[20] Listening to women and believing their stories and the way in which they are told is central to feminism.[21] Storytelling has also been suggested as a powerful pedagogical tool for understanding the perspectives of members of minority groups and for initiating racial reform. Beyond the effect of promoting group solidarity and encouraging unheard voices, storytelling by members of subordinate groups enriches the listeners' reality and works to destroy entrenched ideologies.[22]

Advocates of the telling of personal stories in law school have different reasons for creating this new methodology. In general, however, they agree that personal experience constitutes one valid source of knowledge. By allowing students to connect stories to their learning of law, teachers share with those students the mantle of leadership and encourage co-operation rather than competition.[23] Further, students can question the authority that places value on certain constructions of information and truth, and can begin to envision alternative structures.[24] According to those who welcome storytelling, the silence of students in a traditional law school classroom signals the need for change in the dimensions of the

[20] See, e.g., Stephanie Wildman, The Classroom Climate: Encouraging Student Involvement, 4 Berkeley Women's L.J. 326 (1988–89). Wildman discusses the silence of women law students observed in law school.

[21] There are innumerable examples of this methodology. Among others, see At the Boundaries of Law: Feminism and Legal Theory (Martha Albertson Fineman & Nancy Sweet Thomadsen eds., 1991); Feminist Perspectives: Philosophical Essays on Method and Morals (Lorraine Code et al. eds., 1988). For a very recent exploration of feminist narrative discourse, see Kathryn Abrams, Hearing the Call of Stories, 79 Cal. L. Rev. 971 (1991). Abrams' article was published after I had written this piece and came to my attention late in the publishing process. I find it a valuable addition to the project of encouraging and critiquing narrative scholarship that I, too, am involved in.

[22] See, e.g., Richard Delgado, Storytelling for Oppositionists and Others: A Plea for Narrative, 87 Mich. L. Rev. 2411 (1989); Gerald P. Lopez, Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education, 91 W. Va. L. Rev. 305 (1989). See also Mari Matsuda, Public Response to Racist Speech: Considering the Victim's Story, 87 Mich. L. Rev. 2320 (1989). Matsuda labels this "outsider jurisprudence."

[23] See Menkel-Meadow, supra note 19, at 80–81. See also Toni Pickard, Experience as Teacher: Discovering the Politics of Law Teaching, 33 U. Toronto L.J. 279 (1983), where Pickard describes the experience of creating an experimental and non-hierarchical course called "Non-Adversarial Lawyering Tasks."

[24] For examples of such envisioning through stories, see Delgado, supra note 22; Lopez, supra note 22; Milner Ball, Stories of Origin and Constitutional Possibilities, 87 Mich. L. Rev. 2280 (1989); Lucie White, To Learn and Teach: Lessons from Driefontein on Lawyering and Power, 1988 Wis. L. Rev. 699 (1988); Williams, supra note 14.

discourse and for the acceptance of personal—and possibly emotional, intuitionistic, nonrational—contributions.[25]

B. Response, Critique, and Challenge

With this short introduction to the contours of narrative, I now want to turn briefly to the responses to and criticisms of storytelling as legal language, especially in the law school. I will start with the "easy" accusations about, or dismissals of, this methodology and then will raise what I see as the hard questions with respect to its effectiveness and relevance. The concrete examples that follow will illustrate the way in which some practitioners of narrative avoid this critique and succeed in the classroom.

I can imagine a range of dismissive reactions to the idea of narrative as part of legal education, mirrored in the composite of rejection letters from respected law reviews that Patricia Williams offers as a postscript to her chapter on "Arm's Length Intimacies." In that composite, we find, first, the response that, while there are some decent ideas in the submitted paper, there is no "good clear statement of what the issue is." Second, the stories and events are "mild and quite ordinary." Third, the piece is "far too personal for any legal publication." Finally, Williams should rewrite the piece as an "objective commentary" or should "consider writing short stories."[26] In the classroom, these responses might be translated into the following reactions: First, that personal reactions and related stories tend to be too fuzzy to decipher and use; second, that they quickly become boring without shedding light on the legal issues raised by the professor; third, that emotions are irrelevant in legal argument; and, finally, that law school is not the appropriate forum for this kind of storytelling. Law students must learn to think, argue, and write clearly and persuasively if they are going to use their education in law practice. Critics might admit that "right" answers don't exist in law. But they will also say that law school gives and should continue to give students the power and skills of articulation with which to argue the merits of any answer and to expose answers that clearly are wrong. Critics may also dismiss a "new" pedagogy

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[25] Such a change in discourse is informed by Carol Gilligan's work on moral reasoning and by the morality of care and connection displayed by Amy in Gilligan's well-known study of Amy and Jake. Carol Gilligan, In a Different Voice (1982). In the legal education context, see, e.g., James Elkins, The Stories We Tell Ourselves in Law, 40 J. Legal Educ. 47, 58 (1990), in which Elkins encourages narrative as a way of engaging the "whole person" in the study of law.

[26] Williams, supra note 14, at 214.

of narrative by pointing out that stories have always been told in the law school classroom. Professors have shared their experiences in practice; students have read facts as described by Justice Cardozo and Lord Denning; and creativity in this regard has always inspired increased interest in the subject matter.[27]

My own concerns about personal storytelling in law school stem largely from my experience as a law student. In my first year, I, like all of my classmates, learned how to read cases, how to identify the holding, how to apply that holding to new facts, how to compare and contrast, how to spot issues, how to discuss those issues fully, and how to arrive at an answer for each hypothetical given to me on an exam. At times the process was frustrating; at times I felt angry and silenced by the judicial decisions in cases that I cared about; at other times I found law school very exciting as I figured out how to play the game and recognized the power that this education was handing to me, regardless of whether I felt I deserved it. In my second and third years, I spent a lot of time uncovering the assumptions and ideologies that grounded the rational language in which I had become fluent. In one class in particular—a course in feminist theory[28]—discussions were often very personal and emotional as we explored various perspectives held not only by different participants but also by different parts of ourselves. This was a class in which we made a "pointed effort to see points of view,"[29] a class in which the professor shared leadership and authority, a class in which we challenged the existence not only of objectivity but also of a generalized women's experience. In telling, reading, and listening to stories, we developed linguistic and analytical skills radically different than

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[27] This range of criticisms reflects a scepticism about not only the pedagogy of narrative but also the theories that rely on actual stories of experience. Because my emphasis throughout this paper is on pedagogy and process, I will not address criticisms of storytelling methodology that are merely extensions of deeper criticism of the substantive change that many of the storytellers advocate.

[28] Feminist Theory, taught by Professor Jennifer Nedelsky, Univ. of Toronto Faculty of Law (1988–89). Thirty students were enrolled in the course, and we sat around a large table for the class. At times, we would divide into three groups and would discuss the material with fewer people. The participants were law students, graduate students in political science, and students in the women's studies program.

[29] Martha Minow, Feminist Reason: Getting It and Losing It, 38 J. Legal Educ. 47, 56 (1988). Minow persuasively argues that it is crucial to pay attention to competing perspectives when trying to analyse and solve legal problems. See also Martha Minow, The Supreme Court 1987 Term—Foreword: Justice Engendered, 101 Harv. L. Rev. 10 (1987).

those with which we had started third year,[30] and we found this new language empowering, exciting, and meaningful.

When I graduated and began a clerkship, I was scared that I had lost the ability to make strong arguments. For each case, the judge expected a bench memo that analysed the legal issues and offered a firm recommendation, and for each application for leave to appeal, the clerk was expected to offer an assessment of the "national significance" of the question posed. Making firm recommendations with respect to difficult appellate cases is, and should be, a daunting task for any clerk, and I was painfully conscious of the need to persuade my judge with ultra-rational analysis. After learning to sympathize with and respect stories that may give only partial responses to large legal questions, some of which came before the Supreme Court of Canada while I was there, I was unsure of my ability to construct careful, rational arguments. To be sure, facts were sometimes influential with respect to judicial decision making, but a clerk could not simply repeat the appellant's story and expect the case to be decided on that basis. I was acutely aware of my task as one of choosing a perspective from a multiplicity of perspectives, believing one version of the law, and therby discounting others.

This fear of losing the ability to articulate and choose the voices to be heard over others in certain circumstances grounds my concerns in reading Patricia Williams and considering a pedagogy of narrative. Individual stories can lead to a new kind of silence in law. This is the silence implicit in finishing *The Alchemy of Race and Rights*, putting it down, and saying, "I enjoyed those stories, I like the way in which Williams writes, and now I have to get back to the separate task of trying to change the sexist and racist institutions in law," or, "That was interesting, those are her own experiences, I can't disagree with or intercede in someone's personal feelings, and therefore I have nothing to say beyond placing my own personal feelings beside the discourse."[31] The nature of highly individual and personal writing or speaking can negate the possibility of responsive and constructive dialogue.

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[30] For descriptions of similar courses, see, e.g., Patricia Cain, Teaching Feminist Legal Theory at Texas: Listening to Difference and Exploring Connections, 38 J. Legal Educ. 165 (1988); Morrison Torrey et al., Teaching Law in a Feminist Manner: A Commentary from Experience, 13 Harv. Women's L.J. 87 (1990).

[31] These are clearly not the responses intended by Williams. Neither do I believe them to be the responses elicited. Instead, I find Williams' brand of narrative largely effective in triggering and directing constructive reactions, as my later discussion indicates.

This type of silence is not the same as that experienced by participants in traditional law classrooms who never find a connection between the realities of their lives and the doctrine being taught. But it can be just as paralysing. Multiplicity and context can be overwhelming; diversity that ignores important commonalities can be suffocatingly individualistic, especially if the goal of talking about and listening to experience is to empower groups to instigate change.[32] Instead of building new structures that respect multiple and overlapping identities, personal storytelling may lead to communication breakdown and disintegration.[33]

In addition, personal narrative in the classroom carries risks for both professor and students that should be acknowledged. There is a risk of extreme vulnerability—of opening oneself up to pain, rage, very close friendship, or enmity. There is also a risk of exhaustion, both in telling and taking seriously the stories.[34] Most frustrating, however, is the risk of fragmentation. Respect for the authenticity of diverse voices and appreciation for the complexity of every person's connections to different communities may make the task of transforming institutions in law and society insurmountably difficult.[35]

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[32] It is interesting to think about how a critique of liberalism and the centrality of the individual can threaten to break apart based on personal specificity and particularity. This important issue is, however, beyond the scope of this paper.

[33] Feminist and Critical Race Theory criticisms of Critical Legal Studies have underlined this concern in a different context, saying that deconstruction failed to offer avenues of reform. See, as a good example, Kimberle Williams Crenshaw, Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law, 101 Harv. L. Rev. 1331 (1988).

[34] Lorde, supra note 11, at 114–15, observes that "it is the responsibility of the oppressed to teach the oppressors their mistakes" and that this results in a "constant drain of energy."

[35] See Marlee Kline, Race, Racism and Feminist Legal Theory, 12 Harv. Women's L.J. 115, 145 (1989), in which she outlines reasons that feminists, especially MacKinnon, give for not fully recognizing racial differences. These include strategic concerns about fragmentation that Kline disputes. I agree that these concerns should not mean that the voices of women of colour should be ignored. Indeed those voices are crucial if feminism is to respond to all women's experiences. See also Jennifer Nedelsky, Gender, Difference, and Postmodernism: The Challenges of Multiplicity, 89 Mich. L. Rev. 1591 (1991) (reviewing Elizabeth Spelman, Inessential Woman: Problems of Exclusion in Feminist Thought (1988)), for an insightful discussion of how race and class are integral to a conception of gender. Fragmentation is a real possibility, however, if we cannot find a way to reach across our differentiations when such intersection is necessary. With respect to this assertion, Kline agrees that it is important that diverse voices be understood to affect one another. Kline, supra at 148.

While my concerns differ greatly from those of critics sceptical about a theoretical framework in which personal voice, perspective, and particularity matter, the criticisms together pose two important challenges. First, is there an effective place in the classroom for private narratives that begin and end with the individual speaker's experience? Second, do we do a disservice to law students and to the practice of law if we devalue the articulation, evaluation, and productive clash of rational arguments and the search for answers, which go beyond the factual circumstances of one person?

These challenges, and the related risks inherent in storytelling, necessitate a search for some way to assess the significance of participatory narrative in legal education and to find a link between personal stories in the classroom and empowerment of legal practitioners.[36] In my own experience as a law school graduate, the fact that I could speak a second language in law school did not lead to my dissolving in context. Neither did it mean that I abandoned a contextual approach to issues in my "rational" argumentation. As a clerk, I discovered that I was capable of constructing a persuasive analysis of the legal issues with which I was faced, and I often found myself recalling my law school classes as I assessed the strength of the relevant arguments. My fears of not being able to choose an outcome continued for at least the first few months of the year-long clerkship, but did not lead to paralysis. Every memorandum I wrote included a recommendation to allow or dismiss the appeal typed in bold, capital letters. At the same time, I believe that my memoranda were made stronger in certain instances because of my reluctance to disregard the human circumstances at stake in the appeal. I know that on at least one occasion, the emotion that went into my analysis was effective in showing the judge the impact the decision would have. I therefore coped, and succeeded, by finding ways to use each language to enrich the other, and by adding the stories of others to my own frame of reference. Here, I want to explore that process and to ask how and when stories help law students in their study of and preparation for the practice of law.

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[36] The tension between, on the one hand, the desire to value the life experiences and personal stories of law students and, on the other, the significant empowerment that legal education provides for those who wish to effect change in law and society is mirrored in the tension between Gilligan and MacKinnon in feminism. Feminist theory drawn from Gilligan's work suggests that Amy-like morality of care may be desirable as a general substitute for Jake-like reason. But, in a society where reason is linked to power, MacKinnon argues that caring connections will not empower women or change legal institutions.

It would be impossible to set out detailed criteria for or limits on when a story should be told—the impact depends, of course, on the combination of speaker, hearer, and message. But it is important to ask why certain stories are effective as an educational tool and to try to build on that effectiveness. Further, it is important to look for a way to stay centered in the midst of multiplicity. The fact that there are many stories to be told, many experiences and perspectives to be shared, should be empowering rather than paralysing, and there should be some way to translate individual narrative into political and public action. I think of this search as somewhat akin to the search for "middle-range" feminist theory that mediates between the material circumstances of women's lives and the grand realization that law is gendered.[37]

Just as Patricia Williams' book offers arguments that go beyond the particularities of personal experience, narrative method in law school can help students learn how law works and how it might be transformed. If the pedagogy of storytelling is going to be meaningful for law students, we need to find some place for it between private accounts and objective analysis. In order to do this, we need to look at stories that are effective in turning law students into powerful participants in their own legal education and practice.

III. STORIES TOLD AND HEARD

> She involved my vision, my nerve-endings, my memory of experience; she stirred my emotions and thus more deeply stimulated my mind. I learned more from her because she spoke to all of me—she connected. Yes—I understand historical materialism, and if you insist, guys, I'll talk that game, but, you know, I just can't relate to it in the way I can to a story about sisters transcending pain to learn that they're sisters. I learn best when I relate, and it *is* intellectual, this learning process.
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> Lucinda Finley[38]

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[37] Martha L. Fineman, Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship, 42 Fla. L. Rev. 25, 29–30 (1990). According to Fineman, feminist legal thought drifts between grand theory and personal narratives beginning and ending with the presentation of one individual's unique experience. A search for "middle-range" feminist theory is therefore necessary. Id. at 25, 29.

[38] Lucinda Finley, A Vocal (Written) Essay on Silence, In a Bilingual Voice, 1 Newsl. Conf. on Critical Legal Stud. 5, 8 (1987).

Where do we look to find stories such as that described by Finley—stories that teach with both feeling and intellect—and how do we bring them to the law school? What does it really mean to use concrete messages in order to convey the complicated nature of causes and effects in law and the range of often-excluded perspectives? To begin to answer these questions, I offer examples of stories that inform both the methodology of law and legal reasoning and the substance of law in different areas. The work of Patricia Williams serves both as a source of examples throughout and as a framework for understanding how and when narrative pedagogy works in law school.

I start with the stories of law students in response to traditional teaching techniques, many of which suggest a need for a different approach. I then look at stories in law, told in, or inspired by, the classroom, that enrich the students' understanding of the material. Further, I include stories that form the basis of approaches by lawyers and law teachers to concrete problems and suggest that they be transported from the written page or courtroom to law school. The reader will notice that these are usually stories to be told or interpreted by the teacher rather than those of experience related by the students themselves, but they open up the possibility for meaningful participation through personal contribution. In this Part, I describe the stories, aware of the fact that I have chosen examples drawn from a variety of sources meant to show the reader the wide spectrum along which I would define a pedagogy of narrative. In Part IV, I offer a tentative analysis of these examples of narrative as an effective law school teaching technique and the way in which they avoid the risks that personal storytelling carries with it.

A. Understanding Law School Students

Stories that take students seriously and prompt change in legal education are a natural example of the effectiveness of personal voice in law. Women students at both Yale Law School and Boalt Hall School of Law have taken on the daunting project of presenting students' responses to the law school experience.[39] I offer a summary of both of these projects in order to show how they use students' stories and responses—about, but not in, the classroom—to suggest that a change in pedagogy is needed. They are effective as commentary on legal education in general; indeed, the concerns expressed in the literature on narrative and storytelling to a large extent

[39] Catherine Weiss & Louise Melling, The Legal Education of Twenty Women, 40 Stan. L. Rev. 1299 (1988) [hereinafter Yale study]; Suzanne Homer & Lois Schwartz, Admitted but Not Accepted—Outsiders Take an Inside Look at Law School, 5 Berkeley Women's L.J. 1 (1990) [hereinafter Boalt Hall report].

mirror those of the students at Yale and Boalt Hall. While not primarily meant to be used as effective teaching tools themselves, the stories do hold out that potential in certain circumstances.

The Yale study uses narrative methodology to illustrate the alienation felt by women law students in the law school classroom. The authors asked twenty women a number of open-ended questions and then compiled an essay from these interviews, documenting the alienation from self, the law school community, the classroom, and the content of legal education. Explicitly writing "to further understanding of our experiences, to urge change, and to help others who have experienced law school in a similar way to move beyond self-doubt,"[40] the authors use the stories to show the difference between a methodology of "connected knowing" and the methodology of "separate knowing" currently at the roots of legal education.[41] The interviews of the women included questions such as: What were your impressions of law school during the first few weeks? What do you feel best, and worst, about having done in law school? How do you feel about becoming a lawyer? Have you ever spoken to a faculty member after class? How connected do you feel to your peers in this community? How did you participate in the classroom?[42] The Yale report includes the requisite charts that show average participation rates by women and men in nineteen courses surveyed. But it is the personal responses to the questions that stand out[43] and that encourage the reader to think of her own experience in law school:

> I volunteered in about week three, and he [the professor] cut me off and went on. I felt very hurt and shut out. . . . That was a turning point, my first real problem in a class. He cut me off because he likes to get class going by initiating debate between polar positions. I don't take polar positions, so what I said didn't fit in. . . . He didn't interrupt me midstream, but he totally ignored me. I knew I shouldn't take it personally, but I was hurt.[44]

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[40] Yale study, supra note 39, at 1299.

[41] Id. at 1304–05. The authors draw on the works of Gilligan, supra note 25, and of Belenky, Clinchy, Goldberger & Tarule, Women's Ways of Knowing (1986), to ground their premise that men and women experience law school differently. The "separate vs. connected" knowing model comes from Belenky et al., and suggests that separate knowing has built into Western education an adversarial model of thinking and teaching.

[42] Yale study, supra note 39, at 1360–62.

[43] When I read the piece, I tend, at first, to skip the commentary and just read the stories as they're told, and then to come back later to the "analysis."

[44] Yale study, supra note 39, at 1339.

> Legal writing is a style which would not have been tolerated in my college. It devalues ideas, and there is a crazy value on curtness and posturing. You make unsteady arguments seem sound because of how you say them. . . . I got a sense you were supposed to pare away all the blurry edges and confusion to get to a core. Slam, slam, to the conclusion.[45]

When gathered together, the stories conveyed in the Yale essay seem to favour a change in legal education by encouraging cooperation, non-adversarial participation, and the recognition of many-sided approaches to legal problems. Especially when read in conjunction with the empirical study carried out at Boalt Hall, the particularity of the stories evolves into a coherent and unified message. In that study, the authors set out to supplement the nonempirical literature that suggested that women and people of colour experience law school differently from their white male colleagues.[46] By collecting answers to direct questions, the authors offered a way to convey the significance of the personal stories. The questionnaire, designed to test primarily for gender differences, asked about career plans and goals, nature of the academic experience at Boalt, psychological and emotional reactions to law school, academic performance, and demographic background (college, politics, parental education, family situation).[47] In response to statements on the questionnaire, students were asked to agree or disagree along a continuum. In the final section of the questionnaire, students were asked to give additional comments.[48]

The Boalt Hall report has a number of significant things to say about the centrality of gender and ethnicity in the experience of law school participants. I would point especially to two findings of the study that, in tandem with a collection of personal narratives, may promote increased attention to the issue of diversity in the law school. First, the authors

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[45] Id. at 1354.

[46] Boalt Hall report, supra note 39, especially at 21–24. The authors based their study on Mari Matsuda's theoretical model that women and people of colour maintain a multiple consciousness and that this enhanced consciousness can appropriate and transform their social and political agenda. The authors say that they also believe that sexual orientation is a critical factor to law school experience but that it was not addressed in their study. Id. at 5 n.5.

[47] Id. at 56–74.

[48] "We fully believed that many of the stories that women tell of their experiences ring true in a way that statistical data cannot. We valued these stories and hoped to establish that they were not merely the sentiments of a highly vocal minority of women. Thus, we decided to incorporate this popular wisdom by concluding the survey with an open-ended question." Id. at 24. The focus of the study, however, was on empirical data.

found a significant grade differential between women and men, showing that women with substantially similar qualifications to their male peers were not performing as well in the first year.[49] The authors offer a number of practical and theoretical reasons for this, one of which suggests that silence in the classroom and an inability or refusal to participate is mirrored in exams which present hypotheticals and require "conventional legal thinking" for success.[50] Second, the statistics showed that women and students of colour "suffer substantially diminished self-esteem in comparison to white male students at Boalt."[51] Feelings of incompetence, lack of confidence, and dissatisfaction are therefore found not only in personal anecdotes but also in broader surveys of the law school population.

Why are the stories valuable in the general assessment of law school and law students? The combination of subject matter and the method used to explore it makes the stories of law students appealing. Anyone concerned with the quality and goals of legal education must surely listen to the voices of the student clientele. The methodology of narrative provides a forum for responses that have no other specifically law school-related or -sponsored outlet. The stories, in conjunction with further surveys, analyses, and data collections, suggest a pattern, an experience shared by students who also share certain characteristics and group memberships. In general, the stories are effective because they are told and gathered in order to consider the need and direction for change. That is, the stories of individual students are not left as personal anecdotes of the emotional and intellectual reactions to the law school experience. Instead, the studies suggest a way in which narrative can be built upon to provide a wider picture, and how the retelling of the story of legal education can begin.

How do we move from a participant's individual experience to a broader survey, and ultimately, to a transformation of the narrative of law students *qua* law students? Patricia Williams tells a story about exams in law school that shows how we can make such a transition.[52] Williams talks about a first-year student who came to her in tears over a criminal law exam problem, based on Othello, which used race in a "peculiarly

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[49] Id. at 39–41.

[50] The authors suggest that a "counter-code of silence" has developed in law school whereby "outsider" students have made a postive decision not to participate. Id. at 40.

[51] Id. at 43. The observation appears in the results of the section related to perceptions of the self and the law school.

[52] Williams, supra note 14, at 80. Williams tells this story in her chapter entitled "Crimes Without Passion." It is this chapter that she discussed at the Workshop on Race and Law, supra note 16.

gratuitous fashion."[53] Williams skillfully takes the reader past the personal story of this one law student which, while important as an introduction and an indication of the emotions involved in the issue, does not give us a handle on the extent of the problem or the way to find a solution. She reviews a number of exams from different law schools that use race, gender, and violence in hypothetical problems but then ask students not to address or challenge the stereotypes they find. Williams tries to articulate the inappropriate nature of the exams and distinguish those fact situations from what she terms the "appropriate introduction of race, gender, class, social policy, into law school classrooms."[54] By including the memorandum which she prepared and circulated at the law school where the incident occurred, Williams shows the reader a way in which to move beyond the mere reading of a particular problem, with facts which are disturbing from a gender and race perspective, and on to the formulation of a constructive response.

Williams' account adds an important element to the surveys of law students already discussed. Here we have a concrete example of how thinking, arguing, and writing "like a lawyer" could be altered to take account of the sensitivities and perspectives of members of the class who identify with hypothetical characters. Williams forces the reader to question whether requiring students to construct a defense for the authors of a "hate-filled polemic entitled `How To Be a Jew-Nigger,'"[55] the text of which is set out in the exam, is the only or most effective way to test their understanding of the First Amendment. Indeed the reader, and presumably any law teacher or student, might ask whether alienation, lower academic performance, and dropping self-esteem might be related to such a test of academic success. As Williams herself points out, however, the risk of being accused of censorship and limitation on academic freedom runs high in a law school, and both students and professors need to find a way to be sensitive to specific complaints and also to work towards a more generalized solution.[56]

While this section of Part III has not focused on stories in the classroom, in the way that the next section will, I do want to suggest that these stories

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[53] Williams, supra note 14, at 81.

[54] Id. at 90.

[55] Id. at 84. This example is one of the exam questions Williams discovers in her collection.

[56] For example, the April 1991 Association of American Law Schools (AALS) newsletter includes a President's Message entitled "The Law School and Moral Education," in which Robert Gorman talks about sensitivity and respect in light of the racial, ethnic, and gender diversity among students at law school.

may be brought to a classroom discussion that deals directly with the experience of law school students. While such a discussion may not take place in most substantive law school courses, I have made room for such a session in the first year Legal Research and Advocacy course that I teach at Columbia Law School. In fact, this past fall, the last session of the course consisted of a discussion of the first-year experience based on the students' reading of the Yale study and the Patricia Williams chapter referred to above.[57] I attached a series of questions[58] to the reading in order to prompt consideration of their relevance to the Columbia first-year experience and, in class, tried to create a forum in which students could share their stories and reactions. I found that, while a number of students were reluctant to comment, saying that they felt it was still too early in their legal education to assess their experience, others were eager to participate. Several students were pleasantly surprised in their first few months and found their professors interesting and supportive. Others were dismayed in finding that the coursework was uninteresting and the issues raised uninspiring—these students worried about their future in law. Still others were specifically critical of the way in which perspectives were missing from law school discussions, and hoped that a spring course entitled Legal Perspectives would allow them to see something more of what the readings for this session had introduced. I would not attempt to present unified

[57] The students were given a packet of four readings and, while encouraged to read all four, were expected to have read two by the time the class met. The readings were 1) Duncan Kennedy, The Hierarchy of Legal Education, in The Politics of Law (David Kairys ed., 1982); 2) Yale study, supra note 39; 3) Williams, supra note 14; 4) James D. Gordon III, How Not to Succeed in Law School, 100 Yale L.J. 1679 (1991). I taught three groups, each of which consisted of approximately twenty students. This was the second time that I taught the course. In the first year (1990), I handed out different readings (Kennedy, supra; Ruth P. Knight, Remembering, 40 J. Legal Educ. 97 (1990)) and led a similar discussion. I changed the materials, retaining the Kennedy piece, based on a decision not to hand out any pieces that were written from a student's perspective and, instead, to ask students to formulate their own stories.

[58] The questions were intentionally open-ended and included: Does Kennedy speak to you and your experiences as a first-year student at Columbia? Do the stories related by Weiss and Melling sound familiar? Do you think that law school does/must/should feel competitive and individualistic? Can it be empowering through co-operation as fellow students rather than power-conferring through individual success as a lawyer? Do Williams' accounts of law school ring true? What are students supposed to learn in a law school classroom? Try to think of specific examples or situations this semester where you wondered what you were doing here and tried to analyze, or even establish, your feelings about being a law student.

findings from this short discussion, but I think that the class discussion encouraged first-year students to stop for a few moments in order to consider their own reactions and those of their classmates. By grounding the session in relevant articles, such as the Yale study and the chapter from Patricia Williams' book, I hoped to encourage students to read and take seriously stories other than their own, and to reassess their experiences based on those stories.

B. Persuasion, Imagination, and Transformation

In this section, I focus on the classroom in looking for narrative that succeeds in legal education. Law teachers want their students to understand a particular area of law. They want to ensure not only that the students know the relevant legislation and read the relevant cases, but also that they understand the conflicts, discrepancies, and direction of change in that area of the law. To that end, professors introduce perspectives that students might not have considered and that enrich the discussion. Those perspectives may come from a number of sources, including stories which thereby become effective teaching tools.

Stories can persuade students that a fact situation creates a "hard case." In a labour law course, one professor uses a story in order to convey the difficulties involved in plant closings.[59] Professor Joseph Singer wanted his students to appreciate the moral, economic, and doctrinal arguments that could be made on behalf of the workers and to challenge deference to the notion of a free market. He wanted them to empathize with the victims of an unregulated plant closing.[60] Professor Singer had tried to tell the stories of the workers themselves in previous years but his students had found it difficult to relate to that perspective. Therefore, he told a fictional story about the law school failing one third of the first-year class in response to societal concerns about the competence of the bar. In the story, the class brings a lawsuit demanding that the school allow the students to graduate according to the rules in effect when they were admitted. Singer then asks whether the students have any rights. As the classroom discussion turns to managerial prerogatives, freedom of contract, and deference to the legislature, the students argue reliance, trust,

[59] Joseph W. Singer, Persuasion, 87 Mich. L. Rev. 2442 (1989).

[60] Id. at 2448. Singer points out that students could not competently represent management or the workers without an understanding of the complex issues and of the sympathy that a judge might have for the workers' claims.

expectations, disappointment, and abuse of good faith. At the end of the exercise a relationship has been created between the students and the employees. The students have been forced to clarify what they really think about plant closings by taking into account the vulnerability and dependence of the steelworkers:

> The situation sense of most of my students in response to plant closings was that this was an area of life appropriately left to the "free market," meaning the relative bargaining power of the parties. It took the closer-to-home example of the law school to enable them to realize that they often expect economic actors to comply with general norms of trust. The example forced them to realize that self-reliance is not the only norm that drives the market; nor do they think it should be.... This realization changed them. It did this partly by bringing them in touch with their own values. But, perhaps more important, it changed them by bringing them in touch with others. It remade their relationship with those others.[61]

According to Professor Singer, this was clearly a successful example of using narrative in the classroom.[62] Professor Singer wanted to create a relationship of empathy or identification between the students and the parties in order to bring perspectives otherwise ignored into the law. Learning therefore moved from an abstract to a concrete level.

Another example of persuasion through storytelling occurs in a family law course where Professor Martha Fineman asks the students to keep a journal recording their personal responses to the material.[63] In Family Law, students have natural relationships to the parties in the casebook: everyone has personal experience as a member of a family. By keeping a journal or diary, students identify with the classroom discussion in a way that they might otherwise be able to avoid. Of course, one might ask whether it is ever possible to avoid personal responses to family law

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[61] Id. at 2457.

[62] A necessary question here is why this use of narrative succeeds, when it might be suggested that only the direct story of the workers told by the workers themselves would be appropriate. I recount Professor Singer's story to indicate that stories do not necessarily have to be told by the person or group that has actually experienced them in order to be effective. Indeed, the student editors at the *Columbia Journal of Gender and Law* commented to me after their first reading of this article that this example was extremely effective. This suggests to me that identifying with a story is a crucial factor and that a story in the affected person's own words may not be necessary for such identification.

[63] Family Law, taught by Professor Martha Fineman, Columbia Law School (Spring 1991).

issues. In my second year of law school, while I was taking Family Law, my parents were going through a divorce. It was very difficult not to get emotional over some of the course material and impossible not to compare the facts of my family situation with those in the cases. A journal would have given me a forum to explore my feelings and reactions to family law and, if required by the professor, would have legitimated my identification with the issues presented and discussed in the classroom. The journals in Professor Fineman's course encourage students to explore on a personal level the complexities of defining a family and the obligations within it and to recognize the significance of the connection between personal and legal issues.

This is a very different kind of storytelling in that the professor does not ask students explicitly to share their journal entries in the classroom; the stories that the students examine in class are those found in the cases and newspaper clippings that the professor reads aloud. However, the students' narratives, written in private journals, do have persuasive value in the learning of family law. Professor Fineman's technique convinces the students of the fundamental nature—both in society in general and in their lives—of the legal picture of the family, as asking the class to engage itself merely with the course materials could not. Here is a situation in which the professor allows her analyses of cases and family law policy to be tested against over one hundred individual stories. The fact that the journal is a requirement of the course, to be read by Professor Fineman at the end of the term, means that the conversation in the class includes questions and comments reflecting the students' interaction with the material. The professor thus invites the students to join her as active participants in envisioning changes to present stuctures and rules.

Patricia Williams, too, uses stories—both her own and those of others around her—to persuade her students, her audiences, and her readers. Williams tells the story of the sale of her great-great-grandmother at the age of eleven to a wealthy white lawyer in order to explain her interest in the "intersection of commerce and the Constitution."[64] She imagines her twelve-year-old great-great-grandmother giving birth to a child who automatically belonged, as a piece of property, to his owner-father, and uses her family history to ground her teaching of property and commercial law, private ownership and public control, rights, need, power, and powerlessness.[65] Williams uses stories of homeless people in the subways, and the way in which passers-by unconsciously rationalize the conditions

[64] Williams, supra note 14, at 17.

[65] Id., especially the chapter entitled "Gilded Lilies and Liberal Guilt (a reflection on law school pedagogy)" at 15–43.

of humanity, to urge her students to think about civil rights and economic liberties.[66] In one of her most memorable stories, she talks about being forbidden entry to a Benetton's store in Manhattan:

> I pressed my round brown face to the window and my finger to the buzzer, seeking admittance. A narrow-eyed, white teenager wearing running shoes and feasting on bubble gum glared out, evaluating me for signs that would pit me against the limits of his social understanding. After about five seconds, he mouthed "We're closed," and blew pink rubber at me. It was two Saturdays before Christmas, at one o'clock in the afternoon; there were several white people in the store who appeared to be shopping for things for *their* mothers.[67]

One of Williams' responses to this incident was to stick a poster, recounting her experience, to the window of the store that evening. The poster constituted her personal narrative offered to the public. But it is the response that her story, told over and over again, is meant to invoke in her audience that is, of course, more significant. The student, the listener, the reader is asked to include this perspective in her understanding of liberal neutrality and the reality of racism. Williams does not offer tidy conclusions; nor does she pretend that she is portraying some mythical "real black experience."[68] As a law teacher, however, she succeeds at challenging already-established "solutions" by persuading those who cling to them to take her narrative seriously, to accept the complicated, many-sided nature of the questions and, implicitly, the answers.

Listening to unheard stories can provide the necessary empowerment to transform specific institutions in law. My final two examples of narrative, coming from teachers who know where and how stories can be powerful in law, show that potential.[69] First, I turn to Catharine MacKinnon and the methodology upon which she builds her feminist theory and her call for change. While initially it may seem surprising that MacKinnon's work should be held up as an example of effective storytelling, given the rational,

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[66] Id. at 27.

[67] Id. at 44–45.

[68] Among the questions often asked of Williams are, "What makes [her] experience the real black one anyway?" and, "Isn't it possible that another black person would disagree with [her] experience?" Id. at 51.

[69] I have chosen these two from a number of possibilities. For another especially strong example, see Lucie E. White, Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G., 38 Buff. L. Rev. 1 (1990), in which due process doctrine makes room for the story of a welfare recipient, told in her own words.

articulate, and forceful language in which she speaks, MacKinnon claims that the strength of her brand of "unmodified" feminism[70] lies in the women's voices that create it. Thus, MacKinnon's work to legislate an anti-pornography ordinance was successful at the political level because of the highly personal stories told by women who had been victimized by pornography. Concrete words and pictures had informed the sense of pornography's harm to women found in the model anti-pornography law created by MacKinnon and Andrea Dworkin.[71] Those same words persuaded both the Minneapolis and Indianapolis city councils to pass the proposed legislation.[72]

In a similar and perhaps more successful way, MacKinnon has been largely responsible for the development of the law against sexual harassment of women in the workplace.[73] Here too, MacKinnon based her work on individual stories and listened carefully to the perspectives of women employees with respect to words and actions that previously had been perceived as harmless. In her writing, speaking, and arguing before courts,[74] MacKinnon retold the narratives until she transformed the general understanding of discrimination on the basis of sex under Title VII. Sensitivity to particular stories led the way to the recognition of a more general phenomenon which in turn demanded a remedy in law. According to MacKinnon, "What law school does for you is this: it tells you that to become a lawyer means to forget your feelings, forget your community, most of all, if you are a woman, forget your experience."[75] She demands that

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[70] Catharine A. MacKinnon, Feminism Unmodified: Discourses on Life and Law (1987).

[71] The MacKinnon/Dworkin Model Anti-Pornography Law, Appendix A, Forum on Pornography, 20 New Eng. L. Rev. 759 (1984–85).

[72] See Paul Brest & Ann Vandenburg, Politics, Feminism, and the Constitution: The Anti-Pornography Movement in Minneapolis, 39 Stan. L. Rev. 607 (1987). Brest and Vandenburg relate the story of the passing of the ordinance. The hearings which council members attended featured the stories of women victimized by pornography. Notable absences from the hearings were representatives from the pornography industry, the civil liberties lobby, and the radical right. The Minneapolis ordinance was subsequently vetoed by the mayor, and the Indianapolis ordinance was challenged and struck down in court as a violation of the First Amendment protection of expression. American Booksellers Ass'n Inc. v. Hudnut, 598 F. Supp. 1316 (Ind. 1984), aff'd, 771 F.2d 323 (7th Cir. 1985), aff'd, 106 S.Ct. 1172 (1986) (summary affirmance).

[73] Catharine A. MacKinnon, Sexual Harassment of Working Women: A Case of Sex Discrimination (1979); MacKinnon, Sexual Harassment: Its First Decade in Court (1986), supra note 70, at 103.

[74] MacKinnon was co-counsel for Mechelle Vinson in Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986).

[75] MacKinnon, supra note 70, at 205.

an emphasis be placed on experience,[76] but she also demands that this be translated into powerful action. As she urges students to listen and respond to stories that they may share, MacKinnon uses her teaching as a strong reminder that the methodology of narrative can be extremely effective in practice.

The second example of transformative storytelling that I want to consider is that found in Mari Matsuda's work on hate speech. Matsuda takes a new look at First Amendment jurisprudence "armed with stories from human lives."[77] She relates racist incidents—in the workplace, on university campuses, in neighborhoods—and explores the effects of those hate messages on members of the victimized groups. In gathering these stories, Matsuda challenges the First Amendment's version of free speech. She introduces a perspective that denies the belief that racist incidents are random, isolated, and inconsequential.[78] Building on this perspective, she then offers a definition of actionable racist speech derived directly from the stories she has told.[79] Matsuda does not end her argument with this proposal. Instead, she takes seriously the difficulty of certain cases and offers a tentative analysis based on the context in which the hate speech arises and the degree of harm it causes.[80] By relying on actual experience, Matsuda appeals to the legal system to rewrite First Amendment doctrine in a way that offers some redress to the victims of racist hatred.

Matsuda's use of stories provides strong support for the effectiveness of a pedagogy that incorporates narrative. While she respects the specificity of personal experiences, Matsuda is careful to convey the importance of hearing these stories as a collection rather than as isolated, individual incidents. Her methodology encourages a sensitivity to the members of

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[76] Criticism has been aimed at MacKinnon for relying on grand theory, Fineman, supra note 37; for making the claim that coercion is a paradigm of heterosexual relations, Kathryn Abrams, Ideology and Women's Choices, 24 Ga. L. Rev. 761 (1990), among others; and for failing to recognize the differentiation of women's experiences, Kline, supra note 35.

[77] Matsuda, supra note 22, at 2322. Matsuda writes that "stories are a means of obtaining the knowledge we need to create just legal structure." Id. at 2325 n.32.

[78] Id. at 2331.

[79] The three identifying characteristics of racist hate speech suggested by Matsuda are: "1) The message is of racial inferiority; 2) The message is directed against a historically oppressed group; and 3) The message is persecutorial, hateful, and degrading." Id. at 2357.

[80] Id. at 2361–73. Matsuda addresses the cases of the "angry nationalist," the non-white racist, the "dead-wrong social scientist," and campus racism, among others.

groups subjected to racist hate speech; it persuades the listener to take account of perspectives that have not been part of an already complicated area of the law; it evokes and supports a response of imagination and, in the case of most listeners, identification; and it argues with the law on its own terms, showing that an analysis enriched by actual experience might transform First Amendment discourse. A law school discussion of freedom of speech that moves from the stories Matsuda tells to the sharing of the students' own stories and emotional reactions might well transform the teaching of First Amendment doctrine in a similar way.

IV. WHY DO WE LISTEN?

What do the stories described above share that makes them compelling in legal education? Why do these examples of this methodology persuade and sensitize the audience and transform areas of law and law school? How do they avoid the difficulties of particularism, frustration, and fragmentation? I see several characteristics of these narratives that make them effective and, indeed, essential in the classroom.

First, these narratives create and strengthen a special relationship between the speaker and listener. For example, when the Yale and Boalt Hall students are given a forum in which to make their voices heard by each other and by the institution in which they are participants, they reach out to listeners who in turn are asked to respond. A relationship already exists, of course, between the student body of a law school and the members of the teaching faculty. The methodology of storytelling may alter the details of that relationship. A new story begins to emerge such that the professor at the front of the lecture hall or at the head of a seminar table is no longer always the authoritative speaker. Valid concerns over the students' feelings of being silenced in the classroom do not mean that the students themselves should become the new authorities based on their personal, pre-law school experiences. Rather, valuable perspectives gleaned from narrative are introduced when students, as listeners, relate to the voices of those affected by certain rules, policies, and principles in law. That relationship may be created by asking students to consider the experience of sexual harassment from the perspective of women employees. Alternatively, a hypothetical story forcing students to identify with the voices of workers in danger of losing their livelihood also creates a relationship that demands understanding and responsiveness. Finally, students may be invited to move from the role of listener to that of speaker as they reflect upon and share their own reactions to racism against the communities to which they belong, and add to their First Amendment analysis the perspectives of those who are the targets of hate speech.

A second characteristic shared by these narratives is a weaving together of emotion and reason. This is a genre of teaching and speaking that conveys passion; it is a genre of listening that involves compassion. This is a context in which the reactions of students to law school exams are a cause for concern; the feelings of a student whose parents are going through a divorce at the same time that she is learning about family law are validated as relevant to the course; and the legal definition of harm is reconsidered with respect to the protection of free speech. It would be misleading and incorrect, however, to label the pedagogy of narrative as purely emotional. Yes, stories and personal reactions evoke sympathies, but those who value this methodology in law teaching and who are successful at using it reach beyond this response. The listener should not merely hear the story, nor is it enough if her response is one of sympathy. Rather, she is expected to pay attention to what the speaker is trying to achieve with the story and, if the speaker is persuasive, to support that position or join forces in working in that direction.

This brings me to a final quality found in these examples of narrative pedagogy. While difficult to define, this is a sense of a coherent outlook that accepts multiple perspectives but has some way of translating particular stories into broader analyses. The methodology moves past one person's individual report and looks for commonalities upon which to build and goals for which to strive. In general, it expands and revises the language of law from a confining vehicle of already-established power to an empowering and visionary vehicle of understanding and potential change. Within this broader discourse, one need not transform stories into traditional argumentation in order to "argue" persuasively.

How do the examples illustrate how the language of narrative works in this way? The Yale and Boalt Hall studies allow personal anecdotes to count in legal education and academia, but they are effective because they go beyond those stories to a generalized call for change. The experiences are a starting point for understanding the difficulties and the impact of the rational language of law. Their collection and interpretation moves them beyond the personal recollections of the law students to a retelling of the law school experience that argues for a renewed look at traditional legal education. In the stories Williams tells, we are invited to rethink racist assumptions and consequences of everyday actions. MacKinnon looks for experiences shared by all women and urges her students and readers to take seriously the stories she relates and to construct new law from those stories. Matsuda collects anecdotes, incidents, and reports, using them to show the contours of the harm caused by hate speech. It is not necessary to agree on the substance of a response to these narratives in order to

agree that they constitute a powerful signal to all participants in legal education.

Effective narrative in the law school is thus a methodology that personalizes the scrutiny of a particular problem, connects personal stories to the learning of law, and enriches discussion through new perspectives. In respecting the struggles, fears, and hopes of those affected by the way in which law works, it offers the potential for some systematic accusation that calls for change.[81]

A distinction can thus be drawn between a pedagogy of narrative and private storytelling. Making this distinction may expose this analysis to the criticism that I am choosing which voices should be heard and, therefore, am carrying out an exercise fundamentally at odds with narrative methodology.[82] That is, if stories offering multiple perspectives are to be encouraged, doesn't a requirement of objective or purpose result in favouring some substantive perspectives over others before hearing them all? In the legal education context, however, it is important to make such a distinction. The story, whatever its form, needs to be connected to the area of law to which it offers a previously unheard perspective. The classroom should be a place where that connection—whether made by student, teacher, or storyteller—can be explored and articulated. Some stories, by contrast, are purely personal and unique, and as such lose their effectiveness in law school.[83]

Personal or private storytelling, by focusing on the "I" of the speaker in a way that exaggerates the significance of that perspective in legal discourse, loses its effectiveness. The personal can be political, but narratives that simply start and end with a private and unique experience without inviting any response or seeking any commonalities can be both frustrating and silencing. Instead of teaching people to listen attentively to the stories of others, these narratives may lead each participant in the classroom simply to arrive and leave with the same one personal perspective. Alternatively, students may be able to repeat the stories of their classmates but not find ways to use those stories in discussing legal issues.

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[81] Abrams, supra note 76, at 798–800, describes narrative accounts in feminist thought and points to these characteristics.

[82] I, however, do not want to choose on the basis of political substance or that of the identification of the speaker, and I believe that avoiding that kind of choice is possible.

[83] These stories may of course have literary or poetic value, or the telling of them may have important psychological or therapeutic consequences, but they lack the critical impact that would make them a legitimate and necessary tool of legal education.

I fear that we do a disservice to law students if we make the classroom a forum for the infinite number of stories that participants have to tell.[84] In fact, the ensuing frustration might be similar to that associated with one traditional, always-told story that becomes somehow established and therefore is left untouched. Further, personal storytelling may serve not to enlighten and enrich, but rather to deflect energies away from looking for and finding workable solutions to different problems in law. If stories do no more than expose vulnerabilities while at the same time contributing to a *loss* of vision,[85] then they lose their potential for empowerment. A speaker may feel that a story is necessary because it signifies a new "way of seeing,"[86] but the listeners or law students need to know what they are looking at. The risk of telling a personal story in a law school classroom should be coupled with cooperative feedback and support. When law students take that risk without an accompanying constructive discussion, and the story is left isolated,[87] the students have no way of using stories in their learning of law.

I want to distinguish personal storytelling that fails to overcome valid concerns about narrative in law school from that used in the context of a course where students are explicitly seeking theoretical and practical changes in law. Feminist theory courses, for example, may involve reading lists highly unusual in law school given their inclusion of novels and poetry and may also involve discussions that seem circuitous in their approach to legal issues of concern to feminists.[88] However, the sharing of a highly personal experience such as that of abortion or rape, while private

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[84] Fineman, supra note 37, at 41, writes about the "trend toward excessive reliance on the individual characteristics of the speaker to legitimate discourses." Individual, personal stories are placed beyond criticism because of their "authenticity." This action has the effect of displacing a necessary focus on ideology and change.

[85] See Paul Spiegelman, Integrating Doctrine, Theory and Practice in the Law School Curriculum: The Logic of Jake's Ladder in the Context of Amy's Web, 38 J. Legal Educ. 243, 266–69 (1988), for a discussion of how "Amy-like" problem solving may result in increased vulnerability and loss of a vision of connection.

[86] Elkins, supra note 25, at 53. Elkins tells of growing up and learning his own farm story, hard work story, Christian story, and Democrat story. Id. at 49–52. I am not sure that he succeeds at connecting these stories to the rest of the article except insofar as he shows that these are examples of "stories we tell."

[87] See Ball, supra note 24, at 2281, where he writes that "[e]ssential and powerful though it is, narrative is not of itself redemptive."

[88] This was the case in my own experience. See supra note 28. See also Patricia Cain, supra note 30, at 181, where she urges law teachers in courses such as the one she teaches to avoid controlling the telling of personal stories by insisting that they relate to each other. The connections are difficult to see in advance, she says.

and vulnerable, can also transform a law school discussion of either issue.[89] Students require a safe place for such sharing to take place, and we should encourage a classroom environment that allows such interaction as part of a larger grappling with legal institutions and reform.[90]

In order to underline the distinction between effective pedagogical storytelling and private storytelling, I return to Patricia Williams and the way in which she shifts to the political instead of drowning in the personal. Given my tentative guidelines for assessing the effectiveness of narrative in the classroom, the reader may ask how Patricia Williams' highly personal relating of experience, dreams, ideas, fears, and excitement avoids my concerns. Is it not disconcerting and overly specific to be bounced from a story about Williams as a little girl arguing with her sister about whether the highway was purple or black[91] to dreams of polar bears,[92] to a children's television show on chicken farms,[93] and then to the story of Williams' godmother's death?[94] Williams expects a great deal of her students and her readers as she presents them with layered, multi-dimensional teachings. She clearly leaves gaps in her stories and asks her listeners to lend their voices in telling other stories and refining their observations and analyses of their society. But Williams does not lose her balance as she moves through vignettes and snapshots of her life, legal arguments, and her understanding of property, rights, and the Constitution. Indeed, she uses her narrative style to move in a definite direction even as she recognizes, and forces her audience to recognize, the always-shifting contours of her vision and their own visions. The complexity of perspective might feel fragmented at times, and indeed, the journal-like format contributes to that

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[89] These examples are not chosen for their dramatic nature but rather because I have been in, and have heard of, Feminism and Law courses in which a participant shares her experience of having an abortion or of being raped (University of Toronto Law School, Columbia Law School).

[90] These stories, like the ones I referred to earlier as examples of successful uses of pedagogical narrative, are more akin to "windows" through which seminar participants can glimpse reconstructed institutions than to "mirrors" which only offer an exact reflection of what was said. This window/mirror distinction is drawn from H. Jefferson Powell, Transparency, Opacity and Openness in Narrative, 40 J. Legal Educ. 161, 162–63 (1990). Powell disputes the argument that the object of reading is to understand and react to the specific narrative (i.e., text as opaque mirror) rather than to look for information about something else (text as window). He argues that legal arguments cannot be defined as opaque narrative.

[91] Williams, supra note 14, at 149.

[92] Id. at 207, 236.

[93] Id. at 181.

[94] Id. at 229.

feeling.[95] Williams, however, never leaves her readers and students for very long without showing them how this complexity relates to her analysis of law. Thus, for example, her story about being shut out of Benetton's might be purely private and, in that respect, difficult to introduce to law students, if it weren't for the way in which Williams' experience explicitly speaks to her analysis of affirmative action.

Williams takes very seriously her responsibility as a teacher, and her diary indicates that this is a law professor very much in control in the classroom. Thus, the personal style of writing and teaching used by Williams does not turn classroom discussions into a forum for student sharing of experience and emotion. Rather, by suggesting the existence of many perspectives, it encourages students to begin to think about where they can insert their own voices in the theory and practice of law. The use of stories by those like Williams and other law teachers who know law, and know where stories are powerful in the context of law, helps participants learn, appreciate, and use legal languages both of argument and narrative.

V. A PARADIGM OF PARTICIPATION—BILINGUALISM AND THE FLUIDITY OF BOUNDARIES

> The perspective we need to acquire is one beyond those three boxes that have been set up. It is a perspective that exists on all three levels and eighty-five more besides—simultaneously. It is this perspective, the ambivalent, multivalent way of seeing, that is at the core of what is called critical theory, feminist theory, and much of the minority critique of law. It has to do with a fluid positioning that sees back and forth across boundary, which acknowledges that I can be black and good and black and bad, and that I can also be black and white, male and female, yin and yang, love and hate.
>
> Nothing is simple. Each day is a new labor.
>
> Patricia Williams[96]

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[95] On my first reading of *The Alchemy of Race and Rights*, supra note 14, I definitely found some of the passages fragmented and was dubious about the connection between some of Williams' stories and her analysis of race and/or rights in the United States. In fact, that first reading had much to do with my attempt to articulate in this article the way in which storytelling could and should be effective. On re-reading the book, I began to realize how Williams was giving me a lot of work to do, but that I could only become an effective reader and listener if I took on the challenge. Careful listening to the stories, and attention to the way in which Williams ties them together and relates them to her arguments, gave me an understanding of her perspectives on race and rights and an ability to explore her vision of change.

[96] Id. at 130.

True participation in the legal education process and in the practice of law requires effective voice. As both students and teachers have shown, that voice may be heard in the form of concrete stories or narrative. This is a language very different from that of rational, abstract analysis, but it is a no less valid mode of communication and expression.[97] Further, at its strongest, it can introduce multiple perspectives while also providing a sophisticated critique.

I end my observation of effective pedagogical narrative by proposing "bilingualism" as an appropriate model for enhanced participation in law school. This proposal requires that two approaches or languages be used throughout legal education. While preserving the value of both, we reach for a synthesis that acknowledges the power of diverse experience and of unified critique. I cannot pretend that this is a clear-cut model; neither can I offer a simplified bilingual dictionary. Rather, I can merely start to envision a process which crosses a number of fluid boundaries, conceived and often still perceived as rigid. In some ways, a model that recognizes and permits the intersection and overlapping of these boundaries is inexplicable, indescribable, and even "alchemical."[98]

Bilingualism works as a model with this potential. In my own experience, my ability to understand, speak, and think in the languages of English and French has enriched my listening, learning, and self-expression. Especially as a Supreme Court of Canada clerk, at the same time that I was trying to synthesize my knowledge and appreciation of rational arguments and experiential stories, my bilingualism allowed me not only to converse with co-clerks and other employees, but also to comprehend more fully some of the cases before the court. Simple translation of the arguments offered by the Attorney General of Quebec, for example, cannot always convey the position being put forward. Further, I found that, in order to understand my colleagues from Quebec, it was crucial that I improve my skills in French, not because they were not fluent in English, but because language carries with it culture and perspective that cannot be translated fully. Bilingualism is not officially required of all Supreme Court of Canada clerks. But, in a national institution that represents an officially bilingual country, a comprehensive ability to work in law at the Supreme Court level seems to me to require a dissolution of the boundary between French and English.[99] Bilingualism as a model for participation in law school also works across and dissolves boundaries.

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[97] Of course, it is no less bound up by social context and constraint either.

[98] Williams, supra note 14, uses alchemy as a metaphor for the connection between race and rights and for the transformation of law.

[99] Canada also has two legal systems—common law and civil law—and a truly comprehensive grasp of national law and the work of the Supreme Court requires knowledge of both systems, as well as of both languages.

The first such boundary is that between the language of stories and the language of rational argument.[100] While some supporters of narrative pedagogy might advocate substituting it for rational argument, I suggest that neither language is sufficient. Instead, law students need fluency in both voices. Coexistence of two languages requires the kind of perspective Patricia Williams describes. That is, legal education works on a number of levels and through a number of methodologies. Storytelling gives us a sense of the multi-faceted consciousness that we all share, and the use of narratives can be a powerful way of emphasizing to law students the complexity of the issues they face and the society in which they live. Yet, confrontation on an abstract, rational level sometimes can be met most effectively with powerful, articulate counterarguments. In teaching law students and preparing them for such confrontation, law school can offer a framework for knowing when and how voices of experiences can transform the nature of arguments, making them all the more powerful.

This potential intersection between the two languages should be sought throughout law school. Integration of the actual experiences of individuals and groups into a classroom discussion can be extremely effective at helping students articulate their analyses of legal issues. If the stories are encouraged with the objective of looking for answers, they become extremely useful critical tools. Thus, the second boundary that can be made more permeable is the one which isolates the methodology of narrative in certain substantive courses. We should encourage integration of stories into courses when they would be useful in understanding the area of law being taught. It is important not to wall off those subjects that explicitly center around listening to silenced voices. While that methodology might be a fundamental part of classes in feminism and critical race theory, it need not be isolated as a language that cannot be heard in the rest of law school nor, by extension, in the practice of law.

The third boundary is that between the welcoming words of Professor Pickard and the graduation address by Professor MacKinnon. While personal experience should be valued more highly in the traditionally hierarchical law school classroom as Pickard suggests, MacKinnon's appeal to the graduating class assumes that law students will continue to hold the power that has traditionally been bestowed upon them. That power may in fact be necessary if lawyers are to take on MacKinnon's challenge and work to change oppressive institutions in society. The pluralism of the student body does not deny the common, shared reality of a legal education.

[100] Finley, supra note 38, writes in a "bilingual voice" in order to dissolve this boundary.

If we care about the value of narrative in law school, concerns about the silencing of individual reactions in law school do not mean that classrooms should be transformed into fora for the sharing of personal experiences. Those experiences are not a substitute for knowledge of the tensions and directions of the area of law being examined. It is true, of course, that the sharing of individual, often emotional responses may complement and further the law's potential for empowerment. One of the goals of a process of legal education that appreciates multiple perspectives is helping students assess the ways in which such empowerment can happen. Dismantling the barrier between explicitly recognizing the self in law school and working together to forge connections and effect change insures that the call for participant voice does not result in disintegration.

Law school is much more than a "way-station to something else."[101] It is a place that offers challenge, connection, and collectivity; it involves three years of personal growth, change, responsibility, and increased ability; and it is a forum for imagining new answers and re-envisioning law. A recognition of multiplicity in approach, experience, and solution is vital for law students. Yet, we can't let personal stories stop discussion in the classroom. Just as the fact that each woman has unique experiences—some of which are tied to race, class, religion, and culture—does not mean that commonalities cannot be found in the context of feminism; the fact that there are multiple perspectives on any legal problem does not excuse lawyers from choosing one of many answers when that is appropriate and necessary. Stories can help immeasurably in directing that choice but, in a society where reason and power go hand-in-hand, the desired solution often has to be forcefully argued by those who have graduated from law school.[102]

A story of two graduating students at Columbia Law School may help illustrate this model of bilingualism. In the final session of a course[103] in which students taught each other as much as or more than the professor taught them, two women—one African-American and one Asian-American[104]—reflected upon their legal education in their last class of law

[101] Pickard, supra note 1, at 433.

[102] If society and law have been designed for "Jake," then law students who envision change take on the admittedly exhausting task of knowing how to think like both Jake and Amy even if they are intent on creating Amy-like institutions.

[103] Families, Poverty, and Law seminar, taught by Professor Martha Fineman, Columbia Law School (April 25, 1991).

[104] I specify this because the students explicitly integrated their personal experience of being women and members of their particular communities into their stories.

school. One said that she had found it extremely important to have learned the rules in law and to have gained the ability to define issues and articulate arguments. She felt that her legal education had made her stronger and more committed to the projects she cared about and that she was prepared to work for change as a lawyer. The other said that she had found her legal education deforming and crippling. Experience had been ignored, there had been no room for stories, and she felt that her voice had been lost rather than strengthened at law school. Both students were telling the "truth" about legal education. Both students were also explicitly assessing that legal education in light of their particular experiences, identity, and connections. Further, both care about working towards the eradication of sexism and racism in our society.

As I listened to their stories, and thought about my own and those of many of my law school colleagues, the lines between the pedagogy that had given the first woman strength, and that which would have given the second a forum for connecting herself to her learning, blurred. A move from unilingualism to bilingualism in legal education might mean that both of these third-year students would graduate better able to achieve their goals. In order to have that result, however, integration of the two languages or approaches must not damage the strength of either. The stories Patricia Williams tells, the methodology Catharine MacKinnon emphasizes, the experiences Mari Matsuda relates, along with increased responsiveness to student contributions in the halls and classrooms of law school, begin to illustrate the workings of such integration. Knowledge of the law and the way in which it evolves is necessary; investigating and appreciating different perspectives directs that evolution.

A paradigm of true participation in legal education calls for a mix of methodologies—an ability to engage in legal reasoning and, at the same time, transform it through storytelling. We can ask law to respond to each of us in all our particularities and we can look at how it does so. But we also have to take the responsibility of making connections and participating in new visions. The process of defining participation is, by nature, evolutionary. As we work out the meaning of the participation of law students in their education, we slowly work out what it means to create new standards and solutions from many, many voices.