

Reshaping the Narrative Debate

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In *Reshaping the Work-Family Debate: Why Men and Class Matter*, Joan Williams sets out to alter the terms of the public discussion about working, caregiving, and work-family conflicts.¹ Other participants in this Colloquy discuss the ways in which she does a tremendous job of accomplishing this objective.² Whether she intends it or not,³ Williams does something else that is extremely significant: she reframes part of the conversation about the use of narratives in legal analysis and policy-making.

This Essay describes the debate about narrative, or storytelling, in the legal academy. Two decades ago, a pitched jurisprudential battle surfaced in the pages of law reviews about the value of storytelling as legal scholarship.⁴ Since that time, narrative has sifted into academic texts in myriad ways; people are telling stories all over the place.⁵ Importantly also, research is emerging in cognitive neuroscience about the value of stories to human comprehension.⁶ And law schools are beginning to consciously recognize that part of what they do is to train storytellers.⁷

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1. JOAN C. WILLIAMS, *RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER* (2010).

2. See, e.g., Beth A. Burkstrand-Reid, “Trophy Husbands” & “Opt-Out” Moms, 34 SEATTLE U. L. REV. 663 (2011); Laura T. Kessler, *Feminism for Everyone*, 34 SEATTLE U. L. REV. 679 (2011); Ann C. McGinley, *Work, Caregiving, and Masculinities*, 34 SEATTLE U. L. REV. 703 (2011); Lisa R. Pruitt, *The Geography of the Class Culture Wars*, 34 SEATTLE U. L. REV. 767 (2011); Katharine B. Silbaugh, *Deliverable Male*, 34 SEATTLE U. L. REV. 733 (2011).

3. It is difficult to think of the thoughtful, deliberate Joan Williams writing unintentionally, but her focus is on a different theme; it is easy, though, to think of her as being too humble to take credit for other accomplishments.

4. See *infra* text at notes 11–25.

5. See *infra* text at notes 26–47.

6. See *infra* text at notes 48–57.

7. See *infra* text at notes 35–38.

Another narrative phenomenon has also become more pronounced during this same time frame. The overwhelming majority of the information people acquire comes from press accounts rather than reading original materials. The media have a singular ability to prioritize public issues and mold perceptions. Thus, press-constructed stories have become an increasingly powerful tool impelling or obstructing policy change. Stories such as the “boy crisis in education,”⁸ “global cooling,”⁹ and the “litigation explosion”¹⁰ capture the public’s attention, prompt policy discussions, and at times spur legislation. It is this aspect of narrative for which Joan Williams’s methods are particularly illuminating. In the first several chapters of her book, she unpacks the “opt-out narrative” created by the press—the story that says women are choosing to leave the fast track of professional advancement in favor of stay-at-home motherhood. Her methodology of empirically interrogating this storyline is incredibly valuable for academics wondering what to do about media mythology.

Part I of this Essay describes the history of the debate about the value of narrative as legal scholarship. Part II examines the explosion of stories and attention to storytelling both inside and outside the legal academy. It also reviews emerging evidence from cognitive neuroscience about the importance of stories to the ways humans understand the world. In Part III, the Essay centers on media-created narratives and focuses on Joan Williams’s instructive methodology for interrogating press-constructed myths. Moving from dismantling to reconstruction,

8. See, e.g., Elizabeth S. Kisthardt, Comment, *Singling Them Out: The Influence of the “Boy Crisis” on the New Title IX Regulations*, 22 WIS. WOMEN’S L.J. 313, 314 (2007) (discussing the popular media’s proclamation of a “boy crisis” in education and its influence on educational policy and legal guidelines); see also Silbaugh, *supra* note 2, at 739–40, 743–46 (exploring the influence of the “gender achievement gap” on the single-sex education movement).

9. See, e.g., Thomas C. Peterson et al., *The Myth of the 1970s Global Cooling Scientific Consensus*, 89 BULL. AM. METEOROLOGICAL SOC’Y 1325, 1329 (Sept. 2008) (reviewing thirty-five years of climate-change research).

10. Deborah L. Rhode, *Legal Scholarship*, 115 HARV. L. REV. 1327, 1348–49 (2002).

For the last quarter-century, a dominant theme in journalistic coverage of the legal system has been that the United States has too much law, too many lawyers, and too little justice. In mainstream media accounts, America is suffering from an “epidemic” of legal hypochondria, reaching “bubonic plague proportions.” Because stories sell better than statistics, the evidence for such claims is largely anecdotal. . . . For example, a suitor who is fed up when stood up sues his date, a customer who spills hot coffee on herself demands millions from McDonald’s, and a woman who shampoos her poodle and then tries to dry it in a microwave demands compensation for the unhappy outcome. . . . To most scholars, the legal landscape looks quite different. As they note, litigation rates in the United States are not exceptionally high in comparison with prior eras or with other nations not known for contentiousness. Experts estimate that tort liability represents no more than two percent of the cost of American goods and services, and that liability risks absorb only about twenty-five cents of every \$100 in revenue.

Id. (citations omitted).

Part IV circles back to the importance of stories—and the ways academics can develop counternarratives that can help reshape public understandings about work, families, and fairness.

I. THE STORYTELLING DEBATE IN THE LEGAL ACADEMY

More than twenty years ago, some groundbreaking theorists in the legal academy made a case for legal scholarship to incorporate the stories—the lived experiences—of outsiders.¹¹ Neutral legal principles, they observed, were not really neutral; those legal rules encompassed racist and sexist norms. Traditional scholarship for centuries had excluded the perspectives of subordinated groups—voices from “the bottom.”¹²

The stories contributed by feminists and critical race theorists found a home in some of the most prestigious law reviews in the country. They revealed the types of discrimination faced by people outside the mainstream—biases associated with dress, language, accent, or “foreignness.”¹³ The stories described the experiences of a black man who was prohibited from buying a suburban home even though he could afford it.¹⁴ They told about the brutality of police intimidation¹⁵ and the phenomenon of Driving While Black.¹⁶ The stories illuminated stereotypes of third- and fourth-generation Asian-Americans: “You speak such good English.”¹⁷ They told of maternal-wall discrimination: the attorney who returned from maternity leave and was given the work of a paralegal, and

11. See, e.g., Kathryn Abrams, *Hearing the Call of Stories*, 79 CALIF. L. REV. 971 (1991); Richard Delgado, *Campus Antiracism Rules: Constitutional Narratives in Collision*, 85 NW. U. L. REV. 343 (1991); Richard Delgado, *On Telling Stories in School: A Reply to Farber and Sherry*, 46 VAND. L. REV. 665 (1993); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411(1988) [hereinafter Delgado, *Storytelling*]; William N. Eskridge, Jr., *Gaylegal Narratives*, 46 STAN. L. REV. 607 (1994); Charles Lawrence III, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, 1990 DUKE L.J. 431; Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320 (1989) [hereinafter Matsuda, *Public Response*]; Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989).

12. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 324–26 (1987).

13. See Margaret E. Montoya, *Mascaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185 (1994); Juan F. Perea, *The Black/White Binary Paradigm of Race: The “Normal Science” of American Racial Thought*, 85 CALIF. L. REV. 1213 (1997).

14. Eleanor Marie Brown, Note, *The Tower of Babel: Bridging the Divide Between Critical Race Theory and “Mainstream” Civil Rights*, 105 YALE L.J. 513, 513 (1995).

15. Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism*, 42 U. MIAMI L. REV. 127, 156 & n.89 (1987).

16. David A. Harris, *The Stories, the Statistics, and the Law: Why “Driving While Black” Matters*, 84 MINN. L. REV. 265 (1999).

17. Margaret Chon, *On the Need for Asian American Narratives in Law: Ethnic Specimens, Native Informants, Storytelling and Silences*, 3 ASIAN-PAC. AM. L.J. 4, 6 (1995).

who said, "I had a baby, not a lobotomy."¹⁸ Gay and lesbian legal theorists told stories too, so that their relationships would no longer be invisible in law—such as stories of losing a "domestic partner" in the 9/11 tragedy and the need for workers' compensation benefits for the family.¹⁹ Personal stories like these enriched understandings of the situations of disempowered people.²⁰

The storytelling movement met major resistance from traditional theorists. Stories, said opponents, are not an appropriate methodology of legal scholarship. One of the primary critiques was that stories posed problems of reliability and validity: stories are, in many respects, nonfalsifiable, and they might not be representative of universal experiences.²¹ To the extent that they describe personal experiential truths, the argument went, personal stories contain subjective impressions and cannot be verified.²² Opponents also argued that stories are not analytical—they present a one-sided, emotionally painted view of a situation.²³ Other skeptics suggested something of the opposite—that narratives even failed on the psychological front because outsiders did not have a unique perspective.²⁴ In the view of objectors, stories were irrational, emotional, unverifiable, and incendiary.

What was the outcome of the narrative battle over the past couple of decades? In important dimensions, stories changed the way legal academics thought about scholarship. People in the legal academy began to understand something scholars in other disciplines had known for a long time—that people comprehend events in narrative form.²⁵ Storytelling became part of a reconstructive project of reimagining law. The next part of this Essay turns to the ways narrative is now both embedded and blossoming in legal theory.

18. Deborah L. Rhode, *Myths of Meritocracy*, 65 *FORDHAM L. REV.* 585, 588 (1996).

19. John O. Enright, Comment, *New York's Post-September 11, 2001 Recognition of Same-Sex Relationships: A Victory Suggestive of Future Change*, 72 *FORDHAM L. REV.* 2823 (2004).

20. Angela Onwuachi-Willig, *Foreword: This Bridge Called Our Backs: An Introduction to "The Future of Critical Race Feminism,"* 39 *U.C. DAVIS L. REV.* 733, 736–37 (2006).

21. See Daniel A. Farber & Suzanna Sherry, *The 200,000 Cards of Dimitri Yurasov: Further Reflections on Scholarship and Truth*, 46 *STAN. L. REV.* 647 (1994); Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 *STAN. L. REV.* 807 (1993).

22. See Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 *VA. L. REV.* 1229, 1281–82 (1995).

23. DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* 37, 99–102 (1997).

24. See Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 *HARV. L. REV.* 1745, 1778–87 (1989).

25. Nancy Levit & Allen Rostron, *Calling for Stories*, 75 *UMKC L. REV.* 1127, 1128 (2007).

II. IT'S STORIES, ALL THE WAY DOWN

Philosopher William James once explained what an “absolute moralist” believed by describing a series of rocks, one rock resting atop another foundational one: “it was rocks all the way down.”²⁶ A perhaps apocryphal story growing out of this, maybe influenced by Hindu cosmology, which posits that the Earth rests on the back of a giant turtle (and probably promoted by Dr. Seuss’s *Yertle the Turtle*), is that “[i]t’s turtles all the way down.”²⁷ This metaphor became important in jurisprudence circles when critical legal studies scholars began to explain how power worked.²⁸ It is an explanation that applies to narrative as well. Everyone tells stories: People in power tell stories too. It’s stories all the way down.

A. The Narrative Explosion

In the past several decades, stories have sifted into the ways we think about and practice law. Just as judges, legislators, and legal educators began to pay attention to stories and narrative theory, jurisprudential theorists of many different types also warmed to stories. Stories changed the language of legal discourse. Some law review articles, legal decisions, books, and other legal texts moved from a formal, objective, depersonalized style to first-person narration or conveying experiential insights.²⁹ Even statutes began to be named for crime victims—and represent their stories—rather than for their legislative sponsors.³⁰

26. Roger C. Cramton, *Demystifying Legal Scholarship*, 75 GEO. L.J. 1, 1–2 n.4 (1986) (quoting WILLIAM JAMES, *THE WILL TO BELIEVE* 85 (1979)).

27. CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* 28–29 (1973); STEPHEN W. HAWKING, *A BRIEF HISTORY OF TIME* 1 (1988).

28. See, e.g., Joseph William Singer, *Radical Moderation*, 1985 AM. B. FOUND. RES. J. 329, 329–30 (1985).

29. ROBERT L. HAYMAN, JR. & NANCY LEVIT, *JURISPRUDENCE: CONTEMPORARY READINGS, PROBLEMS, AND NARRATIVES* 268 (1994). For an example of how narrative is used to effectively convey experiential insight, see Ruth Bader Ginsburg, *Women at the Bar—A Generation of Change*, 2 U. PUGET SOUND L. REV. 1 (1978), reprinted in 34 SEATTLE U. L. REV. 649 (2011).

30. Compare, e.g., McCarran–Ferguson Act, 15 U.S.C. §§ 1011–1015 (1945) (sponsored by Senators Pat McCarran and Homer Ferguson), and the Hyde Amendment, 93 Stat. 926 (1979) (sponsored by Representative Henry Hyde), with Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, H.R. 1913, 111th Cong. (2009) (“Matthew Shepard was a gay college student who was tortured and murdered in Laramie, Wyoming, and James Byrd, Jr., was an African-American man who was dragged to death in Jasper, Texas.” *Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act*, HUMAN RIGHTS CAMPAIGN (2009), <http://www.hrc.org/issues/5660.htm>), and Megan’s Law (“[N]amed after seven-year-old Megan Kanka, a New Jersey girl who was raped and killed by a known child molester who had moved across the street from the family without their knowledge. . . . All states now have a form of Megan’s Law.” *Megan’s Law*, STATE OF CAL. DEP’T OF JUSTICE, OFFICE OF THE ATT’Y GEN. (2009), <http://www.meganslaw.ca.gov/homepage.aspx?lang=ENGLISH>), and The Brady Handgun Violence Prevention Act, 18 U.S.C. § 921 (“[The bill] was named [for] James S. Brady . . . the White House press secretary severely wounded in the

Narratives have encouraged law reform in many different domains.³¹ Victims of intimate-partner violence have shared their stories—and in so doing have reframed the prevailing image of domestic-violence victims. There is now room for women who do not fit the stereotype of the “passive, middle-class white woman”—i.e., women who fight back—to have their situations understood.³² At criminal sentencing hearings, victim impact statements can tell the stories of the effects of horrific crimes on the victims.³³ Reciprocally, death-penalty narratives have told the stories of capital defendants who had extreme mental impairments or inadequate legal representation and sometimes were not guilty the old-fashioned way: they didn’t commit the crime.³⁴ Personal narratives have been used very effectively to urge changes in legal doctrine.

Legal educators began to realize that storytelling was among the skills they were training. Lawyers are raconteurs: they construct stories and tell them to other lawyers and to decision-makers. The Carnegie Report calls for more and better training of law students in the skills of narrative thinking and storytelling.³⁵ Students need to understand narrative theory—that they will make choices about what facts matter and how to tell stories persuasively—and they need practice in telling stories.³⁶ Law professors have begun to write about ways to help students learn how to incorporate narrative techniques into brief writing and oral

1981 assassination attempt on President Ronald Reagan.” Thomas L. Friedman, *Clinton Signs Bill on Guns into Law*, N.Y. TIMES, Dec. 1, 1993, at A20).

31. See Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991); Matsuda, *Public Response*, *supra* note 11.

32. See Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75 (2008).

33. Karen Marie Katz, *Opposing Scales of Justice: Victims’ Voices in the Sentencing Process*, 14 CAN. CRIM. L. REV. 181, 187–88 (2010) (noting that in some jurisdictions, victims can even make sentencing recommendations); see also Paul Gewirtz, *Victims and Voyeurs: Two Narrative Problems at the Criminal Trial*, in LAW’S STORIES: NARRATIVE AND RHETORIC IN THE LAW 135 (Peter Brooks & Paul Gewirtz eds., 1996).

34. See, e.g., Melody Dickson, Comment, *Dismantling the Free Will Fairytale: The Importance of Demonstrating the Inability to Overcome in Death Penalty Narratives*, 77 UMKC L. REV. 1123 (2009); see also Timothy V. Kaufman-Osborn, *Regulating Death: Capital Punishment and the Late Liberal State*, 111 YALE L.J. 681, 683–84 (2001) (“Woven together, these stories have loosened the grip of conventional pro-death penalty narratives, which told of disingenuous lawyers manipulating legal technicalities in order to postpone indefinitely the execution of coddled criminals. In their stead, we often now hear a new, more skeptical narrative in which innocent persons are not infrequently hustled toward the death chamber by officials who, like all other government bureaucrats, are prone to corruption and slipshod work.”).

35. WILLIAM M. SULLIVAN, ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 96–97 (2007).

36. Carolyn Grose, *Storytelling Across the Curriculum: From Margin to Center, From Clinic to the Classroom*, 7 J. ASS’N LEGAL WRITING DIRECTORS 37, 39–41 (2010).

advocacy³⁷ and to encourage students to think about the ethical implications of how they will frame clients' stories.³⁸

In the mid-1990s, Martha Minow and Austin Sarat developed a series for the University of Michigan Press, *Law, Meaning, and Violence*, to illuminate the ways the stories of law create meanings and social norms.³⁹ A cascade of books containing legal narratives followed. Foundation Press created the *Law Stories* book series that recounts the tales behind landmark cases in specific subject areas, such as constitutional law, family law, and immigration, to reveal the background, parties, social context, lawyering, historical impact, and other human elements in major cases.⁴⁰ The *UMKC Law Review* has had an annual stories section in its summer issue each year for four years.⁴¹

In the realm of legal theory, many different schools of jurisprudence picked up the prompt from critical race theorists. They learned the lesson that “[s]tories, parables, chronicles, and narratives are powerful means for destroying mindset[s]—the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse takes place.”⁴² It wasn't just feminists and postmodernists and other outsiders who began to tell stories.⁴³ Traditional theorists also got into the act. But maybe they had always been in the game: “Dworkin's heroic ‘Herculean’ judge and Holmes's one-dimensional ‘bad man,’ for example, are central devices by which these jurists convey their conceptions of the meaning of law.”⁴⁴

37. See Brian J. Foley, *Applied Legal Storytelling, Politics, and Factual Realism*, 14 LEGAL WRITING 17 (2008); Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 RUTGERS L.J. 459 (2001); Carolyn Grose, *A Persistent Critique: Constructing Clients' Stories*, 12 CLINICAL L. REV. 329 (2006).

38. See Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1 (2000).

39. See, e.g., GARY BELLOW & MARTHA MINOW, *LAW STORIES* (1996). See generally *Law, Meaning, and Violence*, THE UNIV. OF MICH. PRESS, <http://www.press.umich.edu/series.do?id=UM76> (last visited Feb. 7, 2011).

40. *West Academic Product Lines: Law Stories Series*, WEST ACADEMIC FACULTY ONLINE STORE (last visited Feb. 7, 2011), <http://www.westacademic.com/Professors/ProductLines.aspx?tab=1>.

41. See, e.g., *Law Stories: One L Revisited*, 78 UMKC L. REV. 1015 (2010) (with an introduction by Scott Turow).

42. Delgado, *Storytelling*, *supra* note 11, at 2413.

43. See Mario L. Barnes, *Black Women's Stories and the Criminal Law: Restating the Power of Narrative*, 39 U.C. DAVIS L. REV. 941 (2006); Margaret Moore Jackson, *Confronting “Unwelcomeness” From the Outside: Using Case Theory to Tell the Stories of Sexually Harassed Women*, 14 CARDOZO J.L. & GENDER 61 (2007).

44. Robin West, *Jurisprudence as Narrative: An Aesthetic Analysis of Modern Legal Theory*, 60 N.Y.U. L. REV. 145, 146 (1985).

Even law and economics theorists dabbled in stories,⁴⁵ although perhaps they too had been telling stories the whole time: “Law and Economics scholarship is full of stories about how liberal rights and regulation designed to advance equality victimize the all-powerful market, undermining its promised rewards.”⁴⁶ Feminists and critical theorists pointed out that, really, everyone tells stories, except that “[d]ominant narratives are not called stories. They are called reality.”⁴⁷

B. Understandings about Narrative and Neuroscience

[W]e dream in narrative, daydream in narrative, remember, anticipate, hope, despair, believe, doubt, plan, revise, criticize, construct, gossip, learn, hate and live by narrative.⁴⁸

Over the same couple of decades that stories began to abound in the legal academy, cognitive psychologists were beginning to empirically demonstrate that stories are the way people understand the world. Creating a storyline is fundamental to how humans comprehend and remember events.⁴⁹ “The brain is structured, or ‘wired,’ to detect patterns” and encoding ideas in story form is a better way than simply conveying facts to “encourage . . . the recognition of new patterns and relationships among objects and ideas.”⁵⁰ People retain about one-fifth of what they read, but

45. Wayne Eastman, *Telling Alternative Stories: Heterodox Versions of the Prisoners' Dilemma, the Coase Theorem, and Supply-Demand Equilibrium*, 29 CONN. L. REV. 727, 728 (1997).

46. Martha T. McCluskey, *Thinking with Wolves: Left Legal Theory After the Right's Rise*, 54 BUFF. L. REV. 1191, 1267 (2007); see also Jeanne L. Schroeder, *Just So Stories: Posnerian Methodology*, 22 CARDOZO L. REV. 351 (2001).

47. Catharine A. MacKinnon, *Law's Stories as Reality and Politics*, in LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW 232, 235 (Peter Brooks & Paul Gewirtz eds., 1996); see also RICHARD DELGADO, *THE RODRIGO CHRONICLES 194-95* (1995) (“White folks tell stories, too. But they don't seem like stories at all, but the truth. So when one of them tells a story . . . few consider that a story, or ask whether it is authentic, typical, or true. No one asks whether it is adequately tied to legal doctrine, because it and others like it are the very bases by which we evaluate legal doctrine.”).

48. Bret Rappaport, *Tapping the Human Adaptive Origins of Storytelling by Requiring Legal Writing Students to Read a Novel in Order to Appreciate How Character, Setting, Plot, Theme, and Tone (CSPTT) Are as Important as IRAC*, 25 T.M. COOLEY L. REV. 267, 268 n.2 (2008) (alteration omitted) (quoting JANICE MCDRURY & MAXINE ALTERIO, *LEARNING THROUGH STORYTELLING IN HIGHER EDUCATION* 31 (Kogan Page 2003) (2002)).

49. JOHN WINSLADE & GERALD MONK, *NARRATIVE MEDIATION: A NEW APPROACH TO CONFLICT RESOLUTION* 3 (2001) (“[P]eople tend to organize their experiences in story form. . . . [W]e use stories to make sense of our lives and relationships.”).

50. Delores D. Liston, *Abstract, Story-telling and Narrative: A Neurophilosophical Perspective*, ERIC Document Reproduction Service No. ED 372092 (1994), available at http://www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?_nfpb=true&_ERICEExtSearch_SearchValue_0=ED372092&ERICEExtSearch_SearchType_0=no&accno=ED372092.

will remember about four-fifths of the images they form in their minds.⁵¹ Stories are recalled much better than sterile facts because stories are essentially remembered as symbols or images.

Cognitive neuroscientists have documented that narratives provide a holistic learning experience. Narratives trigger a release of neurotransmitters that affect both hemispheres of the brain.⁵² Stories activate both the rational (the frontal cortex) and the emotional (midbrain neural centers) parts of the brain.⁵³ People processing narratives engage with them both factually, as argument, and emotionally, because they create an affective response. “Thus, stories are . . . more interesting, more memorable, and more persuasive than other narrative forms.”⁵⁴ Stories don’t just entertain, they provide a structure for organizing and understanding a chain of events.

Narrative is more than a powerful method of learning; it is also an extremely influential method of persuasion. Stories provoke interest, they invite involvement,⁵⁵ and they encourage empathetic imagination.⁵⁶ Stories create a connection between the teller and the listener. At the end of the day, “a trial is not a debate; it’s a contest of stories. The strongest . . . most persuasive, most inspiring story will win. Juries pick the story they want to win; they don’t pick the stack of facts they want to win”⁵⁷

III. INTERROGATING PRESS-CONSTRUCTED NARRATIVES

What happens, though, when stories persuade out of proportion to their truth value? This is of particular concern when the stories are told not within the pages of academic texts, which provide a relatively open-access forum for critique, but in the popular media.

51. Michael Berman, *A Few Words on Story-telling*, HUMANIZING LANGUAGE TEACHING MAG., May 2003, <http://www.hltmag.co.uk/may03/pubs4.htm> (“Storytelling uses the left brain’s functions (language, a story line, sequences of cause and effect) to speak the right brain’s language of symbolic, intuitive, imaginative truths.”).

52. John Batt, *Law, Science, and Narrative: Reflections on Brain Science, Electronic Media, Story, and Law Learning*, 40 J. LEGAL EDUC. 19, 25 (1990); see also JONAH LEHRER, HOW WE DECIDE (2009).

53. Steven J. Johansen, *Was Colonel Sanders a Terrorist? An Essay on the Ethical Limits of Applied Storytelling*, 7 J. ASS’N LEGAL WRITING DIRECTORS 63, 82 (Fall 2010).

54. *Id.*

55. Kathryn M. Stanchi, *The Science of Persuasion: An Initial Exploration*, 2006 MICH. ST. L. REV. 411, 443–44.

56. Kenneth D. Chestek, *Judging by the Numbers: An Empirical Study of the Power of Story*, 7 J. ASS’N LEGAL WRITING DIRECTORS 1, 2 (2010); see also KENDALL HAVEN, STORY PROOF: THE SCIENCE BEHIND THE STARTLING POWER OF STORY 13 (2007).

57. N. Jill Yaziji, *Fame 101: Powerful Personal Branding & Publicity for Amazing Success*, 47 HOUS. LAW. 40, 41 (May/June 2010) (quoting JIM PERDUE, WINNING WITH STORIES: USING THE NARRATIVE TO PERSUADE IN TRIALS (2006)).

A. The Media Construction of Reality

The American public gleans most of its news from popular media stories in television, radio, magazine, and the Internet, rather than from original sources, professional journals, or scientific studies. Popular media views of many topics, such as science or health risks or criminal justice, “constitute the primary source of information for the vast majority of people.”⁵⁸

The influence of popular-media-based knowledge is extraordinary. The news media have a singular ability to spotlight attention on issues, provide cues about the significance of issues, and sway public opinion.⁵⁹ The ways in which media present issues have a huge impact on public attitudes, particularly for people who are less informed about those issues to start.⁶⁰ “[T]he role of the media as an information provider . . . remains critical . . . [e]ven if you do not accept the simple linear relationship between popular media representations and public perceptions.”⁶¹ Social-media networks, such as Facebook and Twitter, both amplify the speed at which news travels and aggravate the distortions because they transmit information but offer minimal to no fact-checking.⁶²

Since public opinion is so dramatically influenced by the popular media, stories that are exaggerated or slanted, let alone false, pose serious problems for the shaping of cultural understandings. Some stories, such as the myths about global cooling or healthcare legislation creating “death panels,” are empirically just flat wrong—yet touted in the media.⁶³ Other media-fueled misconceptions include “alarmist stories about misuse of genetic information,”⁶⁴ the myth that the estate tax causes

58. Russell D. Covey, *Criminal Madness: Cultural Iconography and Insanity*, 61 STAN. L. REV. 1375, 1378 (2009); see also Sheldon Leigh Jeter, Note, *The Role of Risk Assessment, Risk Management, and Risk Communication in Environmental Law*, 4 S.C. ENVTL. L.J. 25, 42 (1995) (“[M]ost of the public’s knowledge about science is gained through television and newspapers.”).

59. See MAXWELL MCCOMBS, *THE AGENDA-SETTING ROLE OF THE MASS MEDIA IN THE SHAPING OF PUBLIC OPINION* (2001), http://www.infoamerica.org/documentos_pdf/mccombs01.pdf.

60. See Richard R. Lau & Mark Schlesinger, *Policy Frames, Metaphorical Reasoning, and Support for Public Policies*, 26 POL. PSYCHOL. 77, 78 (2005); see also Monica Soderland, Note, *The Role of News Media in Shaping and Transforming the Public Perception of Mexican Immigration and the Laws Involved*, 31 LAW & PSYCHOL. REV. 167, 170 (2007).

61. Timothy Caulfield, *Popular Media, Biotechnology, and the “Cycle of Hype,”* 5 HOUS. J. HEALTH L. & POL’Y 213, 221 (2005).

62. Brian Solis, *The Information Divide: The Socialization of News*, SOC. MEDIA TODAY (Feb. 10, 2010), <http://www.socialmediatoday.com/SMC/173658>.

63. Charles M. Madigan, *Shirley Sherrod: The Messy Backlash of a 24/7 Media*, CHI. TRIB., July 22, 2010, at 21, available at http://articles.chicagotribune.com/2010-07-22/news/ct-oped-0723-muck-20100722_1_media-death-panels-messy (arguing that the public’s insatiable appetite for news to be delivered immediately leads to press mistakes such as the firing of Department of Agriculture Undersecretary Shirley Sherrod).

64. Colin S. Diver & Jane Maslow Cohen, *Genophobia: What Is Wrong With Genetic Discrimination?*, 149 U. PA. L. REV. 1439, 1446 n.20 (2001).

people to have to sell their family farms,⁶⁵ publicized accounts of the “crack baby” phenomenon to justify prenatal and postnatal drug testing principally for mothers of color,⁶⁶ and tales, unsubstantiated by any police reports, that teenagers are having “pharm parties” where they take miscellaneous drugs from their parents’ medicine cabinets, mix them in a big bowl, and then eat handfuls of the random mixture of pills.⁶⁷

The press also has a tendency to exaggerate the incidence of violent crimes (at a time when state and national crime rates are falling), as well as to vastly overrepresent members of racial minorities as perpetrators⁶⁸ and white women as victims—the “missing white woman syndrome.”⁶⁹ Of course, the repetitions of stories that are slanted or false can make them seem like truths.⁷⁰ That these stories take hold in the public imagination is testament to the extraordinary power of the media.

Joan Williams offers a tremendous example of how to interrogate irresponsible narratives like these media-constructed stories. She demonstrates what can be done about anecdotal accounts in the media that are coupled with sensational or misleading portrayals.

B. Unpacking the Stories

From the standpoint of gender equality, some of the most pernicious media-driven myths have to do with motherhood. This is where Joan Williams performs a brilliant tour de force. She describes and meticulously dismantles the press-created “opt-out” narrative and does this in the service of reshaping the work-family debate, as her title states, and moving toward gender equality. Her methods of unpacking slanted or false press-constructed stories go well beyond this particular narrative about women and work though.

The “opt-out” story is that professional women are “discovering that they ‘really are’ different than men, that women’s priorities are dif-

65. David Cay Johnston, *Talk of Lost Farms Reflects Muddle of Estate Tax Debate*, N.Y. TIMES, Apr. 8, 2001, <http://www.nytimes.com/2001/04/08/us/talk-of-lost-farms-reflects-muddle-of-estate-tax-debate.html> (“Neil Harl, an Iowa State University economist whose tax advice has made him a household name among Midwest farmers, said he had searched far and wide but had never found a farm lost because of estate taxes.”).

66. Kathleen R. Sandy, *The Discrimination Inherent in America’s Drug War: Hidden Racism Revealed by Examining the Hysteria over Crack*, 54 ALA. L. REV. 665, 684–90 (2003).

67. Jack Shafer, *Back to School Pharm Party*, SLATE (Sept. 8, 2010), <http://www.slate.com/id/2266574/>.

68. See Perry L. Moriearty, *Framing Justice: Media, Bias, and Legal Decisionmaking*, 69 MD. L. REV. 849 (2010).

69. The media periodically obsess over the disappearance or death of a woman, like Laci Peterson or Natalie Holloway, while ignoring missing or murdered women or children of color. *Missing White Women Syndrome*, WIKIPEDIA, http://en.wikipedia.org/wiki/Missing_white_woman_syndrome (last visited Feb. 26, 2011).

70. See, e.g., Shafer, *supra* note 67.

ferent, and that the lure of children pulls them away from work and into the home sweet home.”⁷¹ These stories, splashed across the front page or cover of newspapers and magazines, make provocative claims, such as “Many Women at Elite Colleges Set Career Path to Motherhood” or “The Opt-Out Revolution.”⁷² The stories quote predominantly white mothers talking about how challenging it is to juggle a good job and take care of children. The resolution offered by these press accounts is that women in general are “happily” making the choice to leave their prestigious jobs, “joyfully embracing their role as stay-at-home moms, and cheerfully giving up the luxuries their paychecks used to cover.”⁷³ This storyline, says Williams, is inaccurate, misleading, and rife with classist illusions.

Williams examines the content of 119 news stories appearing in print over a period from 1980 to 2006. One of the first things she notes is that the press coverage centers on “the 3.7% of American women who are highly educated white professionals.”⁷⁴ This assumption that highly educated women are more likely to leave the labor force is unsupported by statistics. It is more often lower-income and less-educated women, rather than middle- or higher-income women, who are stay-at-home mothers.⁷⁵ Williams notes, “By failing to include women who work in nonprofessional jobs, working mothers of color, and those with lower levels of education, the press presents a highly misleading picture of work-family conflict.”⁷⁶ The opt-out story is statistically wrong: less-educated women are more likely to leave the work force; well-educated women do so much less.

Minimized in the press stories are the forces pushing women out of the labor market: workplace inflexibility regarding hours, minimal sick leave and maternity leave, the absence of good and affordable child care, tax penalties for joint tax filers, and discrimination against women who are mothers.⁷⁷ Almost completely omitted are the economic consequences of their leaving. Only *one-tenth* of the rosy opt-out articles even considered the longer-term economic picture for women who leave the workforce.⁷⁸ Williams documents that reentry into the workforce is diffi-

71. WILLIAMS, *supra* note 1, at 3.

72. *Id.* at 12–13.

73. *Id.* at 14.

74. *Id.* at 13.

75. *Id.* at 19 (“Education fuels employment—a strong and consistent finding the opt-out story ignores.”).

76. *Id.* at 20.

77. *Id.* at 33–41 (“Motherhood is the strongest trigger for gender bias in the workplace today.”).

78. *Id.* at 24.

cult for women who leave it, and the earnings consequences are immense: “[L]eaving the workforce has a significant effect on women’s wages even twenty years after a career interruption.”⁷⁹ Not a single one of the articles made the connection between mothers leaving the workforce and the economic vulnerability of women.⁸⁰

The opt-out stories are implicitly tied to a particular political message: the ideal of a male breadwinner and a stay-at-home mother. “Nearly two-thirds (64%) of the articles surveyed refer to a return to ‘traditional’ gender roles.”⁸¹ Women who leave the workforce are portrayed as “selfless” and they are invited to engage in “intensive mothering” activities.⁸² Again omitted are the sociological data. Most mothers (84%), according to one study, did not get an education and enter the workforce with the objective of staying at home.⁸³ Modern studies also show that “[e]mployed mothers now spend as much time interacting with their children as did stay-at-home mothers in 1975.”⁸⁴ Those studies also reinforce a theme about class divisions—“[i]ntensive mothering is utterly outside the realm of possibility for less-affluent families.”⁸⁵

Perhaps most importantly, the opt-out story locates the solution to the work-family debate in individual choice. Individual women can “choose” to resolve the tensions between work and family by just electing to stay home with the kids. It is a resolution that is not desired by most women, won’t work for many women, and one that completely omits institutional and social responsibility for the architecture of the workplace.

Williams’s disassembling of the press-constructed opt-out story is a powerful template for ways to challenge erroneous media myths that are often accepted without critique. First, she interrogates the storyline using sociological data. Second, she makes clear the race and class slant of the inquiries and the resulting implicit message: that the primary tension between wage-earning and child care is a “champagne problem enjoyed by upper middle-class women in white-collar jobs” and a “triumphalist tale” of individual choice.⁸⁶ Third, she brings to the table the dimensions that are overlooked or omitted by the standard form of press coverage—the ways mothering today differs from mothering in the past, the economic consequences of opting out, and the absence of other choices. She re-

79. *Id.* at 25.

80. *Id.* at 26.

81. *Id.* at 21.

82. *Id.* at 23.

83. *Id.* at 22.

84. *Id.* at 23.

85. *Id.*

86. *Id.* at 14–15.

veals that the storyline—internal motivations rather than institutional pressures spur women to choose motherhood—is a fraud. The work-family balance is an area where the workplace is being remade, slowly, and along class lines, to accommodate a new reality. So the media stories to which Williams objects are actually taking a new phenomenon, the remaking of the relationship between work and family, and translating it into an old one—the reassertion of traditional gender roles.

Williams also spends time exploring the ways public policies could change to architect a much different world of work. This world does not force binary choices—stay at home or work. It is one that provides some flexibility in work scheduling and family support, such as sick leave and parenting time and healthcare. It is also a world that is concrete, rather than imaginary: Williams repeatedly draws on the examples of other industrialized nations that provide various types of support for working parents, such as hourly caps on the workweek, the right to work part-time, paid parental leave, and universal health coverage.⁸⁷

Her methods are very helpful in drawing on provable facts to show that the myth is wrong, in searching for different implications of social conditions for different identity groups and classes, and of looking for unexamined truths. These techniques could be useful in changing perceptions regarding other media-constructed stories. But there is a missing piece.

IV. CONSTRUCTING NEW NARRATIVES

The difficulty is that press-constructed narratives have enormous staying power.⁸⁸ Women in the workforce may draw on narratives that are in the ether—and the opt-out narrative may remain until a powerful competing narrative materializes. The need, then, is to go beyond rebutting the myth of the opt-out narrative and to create a new story to explain our reality. Williams hints at a counternarrative that is emerging, but frames it in terms of acquiring a broader-based political coalition rather than as a story.⁸⁹

She does note that women need to work and that employers need women's labor, but the way it plays out by class is problematic. What seems to be impeding a compelling counternarrative is class differences. It is this story that needs flesh: the story of flexible workplaces, even for blue-collar jobs; the economic benefits for employers—in employee retention and reduced turnover—of affording workplace choices and making workplaces family friendly; and the remaking of gender attitudes to

87. *Id.* at 35–40.

88. *See, e.g.,* Shafer, *supra* note 67.

89. WILLIAMS, *supra* note 1, at 207–14.

accommodate different notions of male–female partnerships. While this latter process is underway, and further along for the middle class than the working class, the missing piece of the transformation is reaching the public with the message.

Perhaps it is this storyline that both academics and journalists can create going forward. In a later writing, Williams has applauded the *New York Times* for focusing “not on mothers’ choices but on the ways the labor market pushes mothers out of good jobs.”⁹⁰ Looking for the good is helpful in nudging the press toward greater accuracy in reporting.

Law is tremendously important in creating more family-friendly workplace norms. So is taking the message to the public about ways to remake workplaces to allow more flexibility for men and women in balancing work and family obligations. Other academics are also realizing that reaching outside of sterile academic tracts to communicate with a popular audience has tremendous potential to create cultural shifts.⁹¹ Perhaps the challenge in the academic realm is to retain and tell the authentic stories of experience that “humanize the continuing struggle for equality.”⁹²

90. Joan Williams, *The Times Opts Out of the “Opt Out Narrative,”* HUFFINGTON POST (Aug. 11, 2010), http://www.huffingtonpost.com/joan-williams/the-times-opts-out-of-the_b_677810.html.

91. Naomi Cahn and June Carbone do this brilliantly. See, e.g., *Family Values: Chelsea and Marc v. Bristol and Levi*, HUFFINGTON POST (Aug. 10, 2010), http://www.huffingtonpost.com/june-carbone/family-values-chelsea-and_b_677361.html; Naomi Cahn & June Carbone, *Just Desserts—in Red or Blue?—For Valentine’s Day*, RED FAMILIES V. BLUE FAMILIES BLOG (Feb. 10, 2010), <http://www.redvbluefamilies.com/2010/02/just-desserts-in-red-or-blue-for.html> (asking about the political and cultural meaning of traditions and foods—Are cupcakes a dessert for red states or blue? How about red velvet cake?—and providing recipes).

92. Michèle Alexandre, *Dance Halls, Masquerades, Body Protest and The Law: The Female Body as a Redemptive Tool Against Trinidad’s Gender-Biased Laws*, 13 DUKE J. GENDER L. & POL’Y 177, 184 (2006).