

BOOK REVIEWS

LEAVING THE LAW BEHIND

THE ROOSTER'S EGG: ON THE PERSISTENCE OF PREJUDICE. By Patricia Williams. Cambridge, Mass.: Harvard University Press, 1995. 262 pages. \$22.00 cloth, \$14.00 paper.

Although the 1991 publication of *The Alchemy of Race and Rights* brought Patricia Williams considerable praise and respect as a cultural critic,¹ it was as a legal scholar² that she took her place among the reigning members of the Black American intelligentsia. That she was welcomed in this guise should have surprised no one; the book, after all, chronicled Williams's self-conscious struggle to understand her own ambivalent relationship to the law she teaches,³ and to reconfigure the legal concepts that in her view serve to shape social reality.

Given the content of the book, and the ready reception of Williams as legal scholar,⁴ it is somewhat discomfiting to revisit *The Alchemy of Race and Rights* and find that, throughout, she is narrating a constant battle against the accusation that her ideas and work are unrelated to law. She writes of being "made insecure by the wandering gazes" of students, and wondering, "as they obviously do, if all this is really

¹ Williams's writing now frequently graces the pages of several newspapers and magazines. See, e.g., Patricia J. Williams, *Book Him! Johnnie Cochran and Jeffrey Toobin Put the Literary Squeeze on O.J.*, VILLAGE VOICE, Oct. 29, 1996, at 35; Patricia Williams, *The Saints of Servitude*, N.Y. TIMES, Oct. 13, 1996, § 4, at 2 (arguing against the trend toward using work as a "lesson" to teach the poor "discipline").

² See, e.g., Evelyn C. White, *Racism and Culture*, S.F. CHRON., Aug. 18, 1991, at 4 ("The Alchemy of Race and Rights brings jurisprudence to the people while leaving no doubt that the author is among the finest legal talents among us.").

³ Williams's personal struggle to find a psychological home in the law was powerfully conveyed in *The Alchemy of Race and Rights*. Early on in the book, she explains her own position vis-à-vis the law in these words:

I am a commercial lawyer as well as a teacher of contract and property law. I am also black and female, a status that one of my former employers described as being "at oxymoronic odds" with that of a commercial lawyer . . . [T]o speak as black, female and commercial lawyer has rendered me simultaneously universal, trendy, and marginal.

PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR* 6-7 (1991).

⁴ This is not to say that *The Alchemy of Race and Rights* met with no criticism, but rather that its reception, by fans and critics alike, was as a piece of legal scholarship, to be engaged as such. See *supra* note 2.

related to law.”⁵ She writes of having to defend herself to her Dean when her students complain that they “are not learning real law.”⁶ And she writes of receiving rejection letters from unnamed “prominent law review[s]” that advised her to “rewrit[e her] piece as an objective commentary, weaving in appropriate references to the law . . . or, since [she has] a very poetic way of writing,” to “consider writing short stories.”⁷

Williams's style is non-traditional—a mix of story-telling, cultural reportage, and political analysis emblematic of the recent turn in legal scholarship toward the use of narrative and away from the formal, conventional mode of legal academic writing. Yet it is precisely this style, fluid and lyrical, that for so many readers made *The Alchemy of Race and Rights* both an extremely powerful account of Williams's personal struggle to find a home in the legal institutions in which she has built her professional life and an effective challenge to those inclined to view the law as “objective” or otherwise race-neutral.

In *The Rooster's Egg*, Williams's most recent book, there is much that will be familiar to readers of *The Alchemy of Race and Rights*: the determination to expose the deep structuring effects of race and racism on American society, the frequent references to pop culture, the way it moves back and forth between acute social observation and incisive political analysis. But despite the similarities, *The Rooster's Egg* is a surprisingly different book. The most obvious contrast to be drawn between the two is that of tone. Williams, in this second book, speaks at some remove from the topics she discusses. Gone are the moments of personal reflection, self-examination, constant questioning of herself and others. Gone, one feels, is Williams herself, replaced by a very savvy, very insightful but somewhat less engaged cultural critic.

How to explain this difference, this distance between Williams and her material? In this review, I seek to answer this question. In Part I, after describing the narrative approach for which Williams is well-known, I explore the suggestion offered by one commentator⁸ that the answer may lie in the hostile responses to her work that Williams herself recounts in *The Alchemy of Race and Rights*. Although a host of laudatory reviews followed the publication of her first book, Williams did not escape criticism by those legal scholars who challenge the legitimacy of narrative as a scholarly form.⁹ Given this assault, Williams may simply have

⁵ WILLIAMS, *supra* note 3, at 28.

⁶ *Id.*

⁷ *Id.* at 214.

⁸ See Di Toro, *infra* note 18.

⁹ See, e.g., Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 VA. L. REV. 1229 (1995); Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993).

decided to change her style to avoid putting herself on the line a second time.

My reading of *The Rooster's Egg*, however, suggests quite another explanation for the difference between these two books, that Williams's perspective on the law has, quite simply, changed. The central theme of *The Alchemy of Race and Rights* was that law *matters*. In contrast, as I show in Part II, the message of *The Rooster's Egg* is that the law is irrelevant. Rather, it is the *media* which constructs the images and ideas that in turn shape social reality, and it is therefore the media, not the law, to which we must look if we are to understand the terms of our shared experience, or to change them. The law, in the guise of the First Amendment, does make an appearance in *The Rooster's Egg*, although it has now been relegated to a subordinate role, as the force that enables the dissemination of the very public images that Williams wants to challenge. In the second half of Part II, I examine Williams's argument that the First Amendment may actually function to inhibit meaningful conversation, and investigate her own efforts to begin such a conversation.

In Part III, I seek an answer to the obvious question raised by the shift in Williams's perspective regarding the power and relevance of the law: how to explain the change? Although Williams offers no clear or explicit answers, there are in the text some clues that suggest that this change is less the result of a conscious realization than a function of a growing disillusionment with the static or even regressive character of the law. I explore the clues Williams provides to explain why she has left the law behind, and I offer a possible reason of my own: the steady pacification of law students in America that has meant that the majority of students graduate from law school with little if any drive to use the law as a tool for social change.

I. A CHANGE IN TONE

A. Narrative as Legal Critique

With the publication of *The Alchemy of Race and Rights*, Williams established herself as a master of the narrative form.¹⁰ Unlike those legal scholars who use narrative approaches as a way of rendering accessible and sympathetic the life experience and circumstances of some individ-

¹⁰ See Robin West, *Murdering the Spirit: Racism, Rights, and Commerce*, 90 MICH. L. REV. 1771, 1772-73 (1992) ("Although certainly not the first to blend the subjective and objective voices, or to employ narrative in conjunction with traditional analysis, Williams may well be the first to do so with such breathtaking effect.").

ual or group who might otherwise appear alien to a decisionmaker,¹¹ Williams does not use narrative as an advocate. Rather, she tells us stories of everyday life—usually, but not always, *her* everyday life—in a way in which even the most commonplace social interactions are revealed as deeply political moments: the bubble-gum-chewing, white teenage salesclerk's refusal to buzz Williams—a black woman—into Benetton on a busy shopping Saturday before Christmas;¹² a New York City apartment dweller's anger at finding an old homeless woman in the lobby of her building, and her insistence that Williams, who was on her way to a dance class, call the police;¹³ a guide's offer during a walking tour of Harlem, to a group in which Williams was the only non-white, of the chance to “go inside some churches . . . to see some services” because “Easter Sunday in Harlem is quite a show.”¹⁴ These are the kinds of experiences that most people, I would venture to say, would let pass without comment, much less trenchant analysis. But reading *The Alchemy of Race and Rights*, one realizes that Williams has a rare gift for nuanced observation. Her strategy is to put this gift to work to uncover not only the political meaning in the everyday, but also—and here is where her work may be threatening for traditional legal theorists—the *legal* meaning.

Whatever the response to Williams's work from the students, colleagues, and editors who experienced it as somehow not “real law,” Williams very much understood her project in *The Alchemy of Race and Rights* to be one of legal critique.¹⁵ All that Williams presents in *The Alchemy of Race and Rights* was intended to expose us to ways of seeing that are generally unavailable through more traditional legal theory. Her motivation for doing so was that law *matters*.¹⁶ Each of us, Williams argued in her first book, is constructed as a legal subject through a process in which we all collude. We need to understand this process of legal construction if we are to know ourselves or to change society, and

¹¹ Those scholars who have deployed narrative strategies in the tradition of legal storytelling have largely done so without objection from the keepers of the legal academic tradition. See, e.g., Sally Frank, *Eve Was Right To Eat the "Apple": The Importance of Narrative in the Art of Lawyering*, 8 YALE J.L. & FEMINISM 79 (1996) (arguing for the use of narrative as a strategy of legal advocacy); Christopher J. Meade, *Reading Death Sentences: The Narrative Construction of Capital Punishment*, 71 N.Y.U. L. REV. 732 (1996) (arguing that capital defense litigators should use narrative as a strategy against the death penalty); Austin Sarat, *Narrative Strategy Death Penalty Advocacy*, 31 HARV. C.R.-C.L. L. REV. 353 (1996) (same).

¹² See WILLIAMS, *supra* note 3 at 44–46.

¹³ See *id.* at 133–34.

¹⁴ *Id.* at 71.

¹⁵ See, e.g., *id.* at 5 (describing her project as “a book about the jurisprudence of rights” which “will attempt to apply so-called critical thought to legal studies”).

¹⁶ See *id.* at 7.

it is to this end—to expose the law's power to construct social meaning,—that Williams directed her first book.¹⁷

B. A Turn to the Conventional

The Rooster's Egg is, like its predecessor, a collection of essays. It covers a range of political and cultural subjects, including the popularity of Rush Limbaugh and Howard Stern (pp. 41–56), the vilification of Hillary Clinton and Lani Guinier (pp. 150–68), the confirmation of Clarence Thomas (pp. 121–36), affirmative action (pp. 87–108), political correctness, and cultural stereotyping of all kinds. Williams sub-titled *The Rooster's Egg* “On the Persistence of Prejudice,” a word choice that might be read to convey the idea that this second book is somehow a follow-up, a sequel to *The Alchemy of Race and Rights*. But although Williams's style is frequently familiar, and her insights often incisive in ways that recall the strongest moments of her previous book, *The Rooster's Egg* is in fact a very different offering, so different, in fact, that the reader (or at least this reader) is compelled to seek an explanation.

In her review of *The Rooster's Egg*, Jennifer Di Toro¹⁸ suggests that the primary difference between the two books is that in the second, Williams has frequent recourse to “statistical evidence to prove the falsity of the stereotypes she is attacking.”¹⁹ Di Toro argues that Williams's use of statistics is her way of responding to the critics who challenged the authenticity of the stories she used to contextualize her critique of the law.²⁰ Di Toro is right that statistics surface more frequently in *The Rooster's Egg* than they did in *The Alchemy of Race and Rights*.²¹ And she makes a convincing argument that where Williams relies on statistics to help make her point, she does so at the expense of her own project of challenging cultural stereotypes, the very stereotypes that are likely to have helped shape the statistical data she presents.²² For not only may “readers who are so inclined . . . continue to deflect the cultural critique by challenging the validity of the numbers,”²³ but

¹⁷ See *id.*

¹⁸ See Jennifer A. Di Toro, *Casting the Outsider*, 48 STAN. L. REV. 1469 (1996).

¹⁹ *Id.* at 1480.

²⁰ See *id.* at 1470–71. Cf. WILLIAMS, *supra* note 3, at 214 (recounting that editors at unnamed “prominent law reviews” advised her to use more “social science data” in her work).

²¹ For example, challenging the myth of the “black welfare queens who purportedly reproduce like rabbits,” (p. 170) Williams points out that “90 percent of women on welfare have only two children, and that most welfare recipients are white.” (p. 170) Elsewhere, to the same end, she cites statistics suggesting that single mothers on welfare constitute a negligible burden on the American taxpayer. (p. 7)

²² See Di Toro, *supra* note 18, at 1480.

²³ *Id.* at 1471.

the implicit appeal to the authority of statistics will only make readers less receptive to the less stable, although more complex and potentially more powerful, reflections on Williams's own experience.²⁴

Although Di Toro has identified one significant aspect of the difference between Williams's first book and her second, I am not convinced that she captures the whole of it. I view Williams's use of statistics in *The Rooster's Egg* as emblematic of a deeper change in Williams's perspective on her own work and on the relative importance of the law itself as both the creator of social meaning and the agent of social change. This change in perspective is signalled by the style Williams adopts in *The Rooster's Egg*, which is considerably more akin to a conventional essay style—point, counterpoint, assertion, illustration—than anything in *The Alchemy of Race and Rights*. Not that this turn to the conventional is entirely unsuccessful or unsatisfying. Williams's prose in *The Rooster's Egg*, though less personal, still is frequently breathtaking, and at points positively sings, without sacrificing meaning for style. Witness, for example, her expression of her own fear in the face of the growing market for Rush Limbaugh-style hate radio:

I (that is, the likes of me) am acutely aware of losing my mythic shield of protective individualism . . . to the surface shapes of my mythic group fearsomeness as black, as female, as left-wing. "I" merge not fluidly but irretrievably into a category of "them" [I]t is precisely this unacknowledged contest of groupness—an Invisible Nation of whites locked in mortal combat with an Evil Empire of rascally carpetbaggers and Know-Nothing Negroes—for which the dominant ideology of individualism has no eyes, no vocabulary, and certainly no remedy, that worries me most. (pp. 51–52)

Or consider her analysis of America's national tendency to evoke an image of the virtuous, upstanding exceptional black middle class—W.E.B. DuBois' "talented tenth"²⁵—and its accompanying inability to envisage a black working class of the same strong moral fibre:

Americans, while purportedly embracing a political ideology of complete class[le]ssness, nevertheless turn to their dark, designated "under"-class for great splashes of ghetto adrenaline. It's better than amphetamines, an injectable *frisson*, like a wake-up call piquing the otherwise silent majority into a raging moral froth: Yonder lies the moral precipice, beware At the same time,

²⁴ See *id.* at 1481.

the white world turns to "the black middle class," so designated, for warm hugs of racial reconciliation (p. 64)

The Rooster's Egg is full of gems like this, passages that combine insight with flowing prose. It also has its share of autobiographical moments, when, recalling her former style, Williams focuses on her own experiences to illuminate a more general point.²⁶ But the overall effect is, it must be said, less engaging and, perhaps for this reason, less powerful than *The Alchemy of Race and Rights*. Williams seems in this new book to be less inclined to expose herself, to lay bare the psychological twists and turns of an "outsider" scholar seeking a comfortable place for herself within the legal academy.

What accounts for the change? It may be, as Di Toro suggests, that notwithstanding the warm reception her first book received from some quarters, Williams was ultimately beaten down by critics like Anne Coughlin and Daniel Farber and Susanna Sherry, who challenged the legitimacy of the autobiographical approach to legal theory Williams adopts.²⁷ But I want to suggest another explanation, one that attends less to Williams's reaction to her critics, and more to the changing nature of her own perspective on the task at hand. Specifically, reading the two books side by side reveals that Williams's own views about the significance of the law, and in particular the power of the law to shape social reality, have fundamentally changed, replaced by an unsurprising but considerably different focus on the mass media as producer of social meaning. Given that Williams's relationship to the law was from the start an uneasy one,²⁸ it is perhaps not surprising that this shift in focus, which made it possible for Williams to offer powerful social critique without having to turn her own psyche inside out to do so, has resulted in a very different book.

²⁵ See W.E.B. Du Bois, *The Talented Tenth*, in *THE NEGRO PROBLEM* 33-75 (Booker T. Washington et al. eds., 1903).

²⁶ In her chapter on affirmative action, for example, she tells of a job talk she once gave, for which "[o]ne of the committee members, a white man, had gotten dressed up in a dashiki and tiger-toothed necklace [and d]uring the talk . . . scowled vividly and interrupted [her], in a bad imitation of black dialect, with a series of silly and off-the-point questions," apparently as a way of "testing" her "for [her] ability to respond under stress." (p. 95)

²⁷ See Coughlin, *supra* note 9; Farber & Sherry, *supra* note 9.

²⁸ In *The Alchemy of Race and Rights*, Williams traces her lineage to her great-great-grandmother, Sophie, who gave birth to her great-grandmother, Mary, after being raped at the age of 11 by her owner, Williams's great-great-grandfather, attorney Austin Miller. See WILLIAMS, *supra* note 3, at 154-55. Williams describes the "ironic, perverse" way that "the image of this self-centered child molester became the fuel for my survival in the dispossessed limbo of my years at Harvard . . ." *Id.* at 155. Williams provides further insight into her experiences at Harvard Law School, as well as those of her fellow black, female classmates, in Patricia J. Williams, *Notes from a Small World*, NEW YORKER, Apr. 29 & May 6, 1996, at 87.

II. LEAVING THE LAW BEHIND

In *The Alchemy of Race and Rights*, Williams viewed the law as the appropriate focus of her investigations because it was the law which, in her view, defined our selves and determined our possibilities. In *The Rooster's Egg*, Williams no longer assumes that this power to construct our societal self-understandings, and thus to shape the actual life circumstances of society's members, resides in the law. If the theme underscoring *The Alchemy of Race and Rights* was that law matters, the message of *The Rooster's Egg* is that law is largely irrelevant and instead that the popular media matters. "If the pen is mightier than the sword," Williams writes, "and a picture is worth a thousand words, then a little simple multiplication is all it takes to figure out the enormous propagandistic power that television has to create truth and shape opinion." (p. 110) It is, in other words, not the law but the broadcast media that, Williams now believes, holds the power to construct, interpret, and define our own self-understandings as well as our understandings of others, their needs, intentions, and value.²⁹

Williams's view of the media as the window on our collective mind is arguably nothing new—readers of *The Alchemy of Race and Rights*, for example, will remember Williams in part as a TV and pop culture addict. The difference, however, is that in that book, Williams brought the insights she gleaned from her TV screen to bear on her efforts to understand the law and to change it. Here, on the other hand, her critical inquiry starts and stops with the words, events, and images occupying the public imagination. Rather than defining the shape of our world, law is now itself seen as a function of the more powerful force of the popular media, which "'caters to,' rather than creates," reigning assumptions and stereotypes. (p. 104)

Still, there is, lurking below the surface of the text, a vision of the law, albeit an enfeebled one. Williams is, after all, a lawyer, and it is perhaps not surprising that she returns over and over again to the precise point at which the law meets the creation of images: the First Amendment. Her return to the Constitution should not, however, be read as a sign that she still believes the law to have independent force. Instead, the image is one of the law as lackey, as facilitator of media power and

²⁹ As Williams observes, "[f]rom Churchill to Hitler to the old Soviet Union, it is quite clear that radio and television have the power to change the course of history, have the power to proselytize and to coalesce not merely the good and the noble but also the worst in human nature." (p. 45)

Williams tends to focus on radio, film, and television as the primary centers of media power. It seems likely, however, given her general theory of the power of words and images to influence ways of thinking, that her perspective would extend to new information technologies, including the Internet and the World Wide Web.

influence, and of the First Amendment as a crude tool used to foreclose meaningful discussion on some of the most difficult issues America faces.

A. *In Search of Meaningful Conversation*

A comparison of the opening passages of the two books neatly illustrates Williams's change in focus. *The Alchemy of Race and Rights* opens with Williams pondering the nature of legal subjectivity in light of an 1835 Louisiana court decision³⁰ voiding a slave purchase agreement on the grounds that the slave was so "stupid," so "useless . . . that it must be supposed the buyer would not have purchased with a knowledge of the vice."³¹ *The Rooster's Egg*, in contrast, opens with a televangelist "rant[ing] against a government that provides any money at all to women who 'fornicate,'" (p. 2) closes with reference to a series of Benetton advertisements that use computer imagery to make the Pope Chinese, Queen Elizabeth II black, and (surprise) Michael Jackson white (p. 242) and throughout, keeps an eye and an ear on the television and radio.

The essay "Radio Hoods" (pp. 42–56) is an example of Williams at her best, wise and insightful. In this essay, Williams reflects on the proliferation of talk radio shows in the style of Rush Limbaugh and Howard Stern, which as she describes them are vehicles for angry white people (mostly men) to vent their prejudices against Blacks, Jews, feminists, "liberals," homosexuals, and all the other groups who seem to be bearing the brunt of current conservative resentment and bigotry. (p. 44) For Williams, this phenomenon merits serious attention precisely because of the power of the media "to change the course of history, . . . to proselytize and to coalesce not merely the good and the noble but also the very worst in human nature." (pp. 45–46) Seeking an explanation for the popularity of these shows among the white men who constitute their primary audience,³² Williams notes the collapsing economy³³ and

³⁰ *Icar v. Suars*, 7 La. 517 (1835).

³¹ WILLIAMS, *supra* note 3, at 3 (internal quotation marks omitted).

³² According to Williams, "96 percent of Rush Limbaugh's audience is white, about two-thirds of it white men, and 75 percent of Howard Stern's listeners are white men." (p. 48)

³³ It must be said, however, that Williams clearly finds this explanation unconvincing. She asks:

Is it really just a collapsing economy that spawns this drama of grown people sitting around scaring themselves to death with fantasies of black feminist Mexican able-bodied gay soldiers earning \$100,000 a year on welfare who are so criminally depraved that Hillary's hen-pecked husband or the Anti-Christ-of-the-moment had no choice but to invite them onto the government payroll so they can run the country? (p. 47)

the extent of their segregation from anyone different from themselves (p. 48) as two possible explanations for the wild anger and child-like fear and resentment displayed by hosts and callers alike. But she also points to another, perhaps somewhat surprising explanation for what she hears on the radio: the yearning among listeners for the sense of community created for callers and listeners alike when everyone's views line up on the same side. The *modus operandi* of Limbaughs, Sterns, and wannabe hate radio hosts is to receive any dissent or disagreement with a "verbal back-of-the-hand," (p. 47) a shout of derision, and a prompt dismissal. "But, ah, if you *will* only agree," Williams observes,

what sweet and safe reward, what soft enfolding by a stern and angry radio god, oh leader of a righteous nation. And as an added bonus, the invisible shield of an AM community, a family of fans who are Exactly Like You, to whom you can express, with sheltering call-in anonymity, all the filthy stuff you imagine "them" doing to you. (p. 48)

The price the rest of us pay for the forging of this community of Scared and Angry White Male Radio Listeners, Williams suggests, is twofold: a flattening of our identities, so that we become, for the members of this group, the source of all things wrong with America; and a loss of the relative safety that accompanied those historical moments when "angry or bigoted people more or less kept their feelings to themselves." (p. 50)

This last suggestion—that there may be instances when members of the community, particularly those in positions of potentially powerful influence over public debate, should be more circumspect when framing their contributions—surfaces in various forms throughout *The Rooster's Egg*. Williams is very conscious of the immediate invocation of the First Amendment that this view is likely to elicit. The crux of her response to this anticipated challenge constitutes a major unifying theme of the book: that if our goal is to build an environment of mutual respect, of "dignity and tolerance for all," (p. 29) the First Amendment doesn't get us very far. What's more, its easy invocation whenever the content of someone's public speech is challenged as objectionable, dangerous, or merely misguided, actually *undermines* our efforts to have a meaningful conversation about the real state of the union and the experiences of its members.³⁴

³⁴ As Williams puts it,

[I]t is as if the First Amendment has become severed from any discussion of the actual limits and effects of political, commercial, defamatory, perjurious, or any

As Williams describes it, the preemptive power of invocations of the First Amendment works something like this: someone in a position of power or someone well-placed to attract an audience, say, a college dean or a Harvard undergraduate, does or says something that has the probable effect of making other members of the community feel threatened, excluded, or humiliated. The speech or act might be something like approving for placement on campus a statue called "The Student Body" featuring arguably stereotypical representations of black, white, and Asian students of both genders (pp. 37–39), or hanging a Confederate flag out one's dorm room window "to symbolize the warmth and community of [one's] happy southern home." (p. 29) Someone else then objects, whether because raising such a statue may reduce "black men and all women to their physical traits" and reinforce feelings of alienation among already marginalized students, (p. 39) or because the display of a confederate flag—whatever one's professed motivations—might be experienced by other students as a symbol of "the Confederacy as a *white* community forged against a backdrop of force, intimidation, and death for blacks." (p. 29) When, as invariably happens at this point, the First Amendment gets invoked on behalf of the speaker or actor, the effect is that all further conversation about how the speech or act made people feel or what form a more sensitive and respectful exchange might take is muzzled, drowned out by the chorus of proclamations of the sanctity of the First Amendment and accusations of censorship. The result is that no one ends up focusing on the objections to this particular exercise of First Amendment rights, and the community becomes that much less comfortable for those who felt themselves targeted in the first place.³⁵

For this reader, Williams's description of these and other (non)exchanges recalled a conversation I had many times with many different people during the heyday of the anti-pornography campaign spearheaded by Catharine MacKinnon and Andrea Dworkin³⁶—so many times, in fact, that I came to think of it as "the pornography conversation," and tried to avoid it whenever possible. In real life, the pornography conver-

other of the myriad classifications of speech. It is as if expressions that carry a particularly volatile payload of hate become automatically privileged as political, and, moreover, get to invoke the First Amendment as a bludgeon of paradox—"I have my First Amendment right to call you a monkey, so you shut up about it." (p. 29)

³⁵ Williams remarks that in this way, "as legal anthropologist Richard Perry has observed, hatred . . . gets to cross-dress as Virtue Aggrieved." (p. 29) (citing personal communication with Richard J. Perry, June 1, 1994).

³⁶ See ANDREA DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* (1981); CATHERINE MACKINNON, *FEMINISM UNMODIFIED* 262 n.1 (1987).

sation could last two hours or more, but it always came down to three easy steps:

- (1) Someone I don't really know (always male, often at a party) asks me what I think of pornography.
- (2) I respond that I think pornography hurts women.
- (3) I am accused (often in conjunction with "all you feminists") of censorship.

Until I learned to expect it, step (3) always left me somewhat confused. Had I, unwittingly, offered policy suggestions in the midst of explaining my concerns about actual physical harm and the damaging symbolic effects of packaging women as sexual commodities? Eventually, I realized that, no, I hadn't ever said the c-word, but that my not having actually said it didn't prevent the person to whom I was speaking from hearing it. It was a translation problem—there seemed to be no available language for me to object to the content of a particular form of speech or a particular speech act, and to have that objection be heard, not as a call for censorship, but for what it actually was: an attempt to have a conversation about whether it would better for women and for society in general if the market for pornography dried up, or if pornographers themselves refrained from speaking.

Williams, I would venture to guess, has participated in many different versions of the pornography conversation. And although she continually critiques the images and messages she hears and sees (that is, other people's speech), her purpose is not to stifle conversation, as the accusations of censorship she anticipates would suggest. Rather, Williams wants to encourage more meaningful conversation, the kind of conversation in which participants actually listen to one another, and are respectful of each other's experiences and perspectives.³⁷ As she puts it, talking in particular here about the academy,

[o]ne of the subtlest challenges we face, if we are not to betray the hard-won gains of the last forty years, is how to relegate the national discussion of racial, ethnic, and gender tensions so that we can get past the Catch-22 in which merely talking about it is considered an act of war, in which not talking about it is a complete capitulation to the status quo, and in which not talking about it is repeatedly covered up with a lot of high-volume substitute talk about the legalities of censorship and the First Amendment. (p. 40)

³⁷ Williams views the debate over language in the universities—"what is so snidely referred to as 'political correctness'" (p. 24)—as efforts to have just the kind of conversation she is calling for.

Williams is not, of course, the first person to call for greater dialogue between groups that have heretofore spoken only among themselves.³⁸ But her insight that the First Amendment may actually serve to undermine efforts in this direction is an extremely powerful one, and the frequency with which she bumps up against it potently illustrates the potential cost of the sacred status the First Amendment retains in American society.

Williams goes beyond merely identifying the problem, seeking herself to exemplify the sort of sensitive and sympathetic listening she advocates. Perhaps the best example of this sort of listening in *The Rooster's Egg* comes in the chapter called "Unbirthing the Nation." In this chapter, Williams seeks to make sense of the fear and resentment, the "constantly bunkered sense of transgressed rights," (p. 69) found among many working class whites, and made manifest (according to Williams) to any listener of right-wing talk radio, or anyone else with their finger on the political pulse of this country. Her question, in essence, is: How is it that these people, who enjoy, relatively speaking, so much social and economic power, have come to feel so marginalized and beleaguered? In answer, Williams describes what she began to notice in the wake of the Tonya Harding/Nancy Kerrigan affair in terms of the way the white working class—including Harding's community and family—were portrayed in the "respectable" (p. 72) press. Although the *New Yorker*, for example, might not stoop to speak the words "white trash" in its own voice, the author writing about Harding's home town for that publication still managed to convey the judgment implicit in that term, while passing it off as the comment of a local resident—"Trailer trash is what they call people out here." (pp. 71–72) (quoting Susan Orlean, *Figures in a Mall*, *NEW YORKER*, Feb. 21, 1994, at 48). Williams writes:

[o]nce I developed an eye and an ear for it, I began to see the vast body of sitcoms, talk shows, editorials, and magazines as not just "mainstream" but class-biased and deeply hypocritical. The most interesting aspect of this hypocrisy rests, I think, in the wholesale depiction of poor whites as bigoted, versus the portrayal of enlightened, ever-so-liberal middle and upper classes who . . . [think] of themselves as "classless." I can well imagine that this might encourage [some people] to hear the word "liberal" as just another synonym for hypocrite. (p. 73)

³⁸ Feminist theorists in particular have for years been arguing for the importance of communication among feminists divided along lines of race, class, ethnicity, religion, sexuality, and so on. See, e.g., ELIZABETH SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988); Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581 (1990).

This insight seems to me to be a thoroughly plausible explanation for both the resentment felt by some white, working-class Americans toward those they view as the American liberal elites and their receptivity to easy and hateful images of people with whom they likely have never come into contact. It also makes it easier to understand why many working-class whites have responded enthusiastically to those public figures—Rush Limbaugh, Howard Stern, Pat Buchanan—who affirm their value and validate their views.

There are many moments like this in *The Rooster's Egg*, moments when Williams zeroes in on a media image and mines it for ways to understand better the dynamics of a society divided along lines of race and class. If too often, what she sees explains our inability to understand, respect, and tolerate—much less to accept—those who are different from ourselves, Williams is clear that reflective use of the media may be the way to bridge the gaps between us. "The media remain," she says, "the principal source of most Americans' knowledge of one another, as well as most of the rest of the world." (p. 75) While as she shows, this power is often used to "disinform, . . . incite, induce passivity or promote violence," she continues to believe that "the media do have a significant role to play in both demonstrating and reformulating civic, national, and a host of other allegiances and group identities." (p. 76)

III. THE REHNQUIST COURT, PRIVATE LAW, AND THE PACIFICATION OF LAW STUDENTS

Thus, if, in *The Alchemy of Race and Rights*, it was the law which held the power to shape society, to structure our interactions, and to establish the boundaries of our possibilities, in *The Rooster's Egg* it is the media—the ownership of which is concentrated in the hands of a few private concerns—which Williams believes should be the focus of our attention.

What accounts for this change in perspective? And does Williams's new-found focus on the media as the appropriate site of struggle over social meaning provide any explanation for the difference in tone and style of her second book as compared with her first?

As to the first question, the reason for the change, Williams's discussion of "judicial resistance" to affirmative action programs (p. 101) may provide an answer. In a chapter entitled "White Men Can't Count," Williams explains the unwillingness of the courts to uphold or strengthen affirmative action programs as a function of the predisposition of the legal system to construe all matters as private disputes between two individuals. By turning litigation over the validity of affirmative action into an examination of the "limited life circumstances of

a single litigant," (p. 101) courts can decide cases without ever considering the social and political implications of their decisions. Moreover, the repeated deployment by the courts of the "paradigm of private contract law" also serves to reinforce the belief that this paradigm is the appropriate one for the courts to adopt, which in turn makes it harder to argue that the inevitable clash between private interests and "express social guarantees" is a phenomenon with which the courts should be concerned. (pp. 102-03)

This reduction by the courts of controversies of broad social and political import to disputes between individuals is not, Williams maintains, inevitable. She identifies an explicit strategy of "deflation," through which the courts deploy "rhetorical images" that reinforce a sense of the judicial "unmanagab[ility]" of broader considerations of societal discrimination ("labeled 'amorphous' and 'reflexive'"), the need to protect "historically vulnerable interests" ("reduced to the privileging of 'view-points'"), and the value of cultural identity ("collapsed into racial 'stereotypes'"). (p. 103)

But although she does not view the supremacy of the contractarian paradigm in judicial decisionmaking as inevitable, Williams does talk as if there is no getting away from it, and as if, therefore, the law is not a force with which those seeking to challenge the forces of racial discrimination ought to bother engaging. That is to say, there is a new and palpable fatalism in Williams's treatment of the law in *The Rooster's Egg*. It is possibly because she sees no quarter in the law for those seeking broad social change that Williams moves in "White Men Can't Count" from her discussion of the rhetorical strategies through which legal arguments for affirmative action are transformed into evidence of the harm such programs would do to minorities³⁹ to a conclusion that centers—once again—on the media as the appropriate locus of struggle. Connecting discrimination of the kind affirmative action is intended to overcome with "the material crisis at every level of American society, most urgent in black inner-city neighborhoods," (p. 108) Williams concludes not that we should look to the courts or the legislature for solutions, but that "we must begin to think just a little bit about the fiercely coalescing power of the media to spark mistrust, to fan it into forest fires of fear and revenge; we must begin to think about the levels

³⁹ As she puts it,

[A]ny language of reform may be turned inside out by conflating it with metaphors of negativity even as its substance is being relentlessly dehistoricized. Whereas segregation and group exclusion were once thought of as the stigma of inferiority, now it is the very identification of blacks and other racial minorities *as* groups that is stigmatizing—despite the fact that the project is inclusion. (p. 103)

of national and social complacency in the face of such resolute ignorance." (p. 108)

Williams's fatalism in the face of the law is traceable to her views about legal education. She argues that the legal curriculum is designed to neutralize possible political tension by relegating any potentially political topics to coverage in "special" interest classes like "Poverty Law, Law and Feminism, or Race and the Law." (p. 36) Although Williams does not herself elaborate on the consequences of this design, any remotely political law student can attest to its effects: it insulates the majority of law students—those who would not in a million years go near such "radical" electives—from exposure to critical perspectives on the law; and it provides a tool for disciplining those students inclined in mainstream classes to raise concerns of, say, race, class, or gender—to whom professors are able, with a straight face, to proclaim that such concerns have nothing to do with the core curriculum and are more properly the province of these "specialty" classes.⁴⁰ In this way, legal education constructs future lawyers who will take as given the individualizing "paradigm of private contract law," which Williams identifies as structuring the court's treatment of even the most politically significant cases. (p. 102) As Williams notes, in the face of this system, "[i]t is no wonder that the Rehnquist court has been able to cavalierly undo what took so many lives and years to build:⁴¹ the process of legal education mirrors the social resistance to anti-discrimination principles." (p. 36)

From the perspective of this law student, Williams's description of the mainstreaming of legal education seems right,⁴² although incomplete, as

⁴⁰ Williams's description of this process as a "carv[ing] off and discard[ing of] some of the most important parts" of "core" classes" implies a time when overtly political perspectives of the sort she seeks to introduce were actually a part of the core curriculum. (p. 36) Other accounts, however, suggest that alternative perspectives never really had a hearing in law school classrooms. See, e.g., Hope Yen, *Nader Escalates Effort for Public Interest Funds*, HARV. L. REC., Oct. 27, 1995, at 1 (quoting Ralph Nader, recounting that "[w]hen we were taking criminal law at Harvard, none of us questioned, 'How come it's all street crime?' . . . Then there was a course on landlord-tenant law, but we never got to the tenant!").

⁴¹ This view of the Rehnquist Court may provide a further clue as to the source of Williams's fatalism with respect to the possibility of the law as an appropriate site of political struggle. That is, it may be that in the face of the Rehnquist Court's determined dismantling of what remains of the Warren Court's legacy of social justice, Williams is no longer able to retain the hope of seeking social change through the law.

⁴² My own lesson in what is or is not appropriate to be raised in a law school classroom came in Corporations class. The class was considering a hypothetical developer who wanted to buy up 68 parcels of land from 68 individual property owners in order to put up an office building. The undisclosed principal doctrine, we were informed, increased overall efficiency by keeping the developer's intentions a secret, thus preventing individual buyers from holding out for better than the market price. Against this conclusion, I raised the possibility that, if values like community and quality of life for the neighborhood as a whole were taken into account, the undisclosed principal doctrine, by cloaking the buyer's intentions, might actually reduce rather than increase overall efficiency. The

an explanation of the acceptance among lawyers of the de-politicized vision of social life that has come to dominate judicial opinions in the years since the Warren Court. I would argue that what Williams is missing by focusing on the law school curriculum is the way the structure of that curriculum is itself a function of a larger phenomenon, which I call the pacification of law students. To understand this larger phenomenon, it is necessary to understand the law schools as both serving a market—law firms—and participating themselves as a player in the market for law students. Add to this picture the growing insecurity about the future among law students at all schools, even the most prestigious,⁴³ and the result is a whole system of legal education ready to do whatever necessary to produce students attractive to future employers.⁴⁴

Viewed from any one of the perspectives just mentioned—law students, law firms, or law schools—the implications of this symbiosis for legal education are clear. Because most law firms cater to the private sector, the ideal employee will be someone who is not inclined to apply a critical (by this I mean “left-wing”) political analysis to the system of private capital they service. In fact, the ideal employee will be one who views “politics” as not properly brought to bear at all on the resolutions of legal issues, one who accepts without question the individualistic “contractarian model” of legal analysis Williams criticizes. (p. 102) Knowing what firms are looking for, law students aspiring to the position of private sector corporate lawyer are likely to make both conscious and unconscious accommodations in order to appear to be an appropriate candidate. On the conscious level, such students⁴⁵ may avoid professors known to have “radical” views about the relationship between politics and law, and may choose courses less likely to raise eyebrows or elicit awkward questions in a firm interview.⁴⁶ On the unconscious level, they

response of the professor—appropriately self-deprecating, but clear nonetheless—was that, for purposes of this class, “value is anything that makes a buck.” That was the last time I challenged the privileging of profit over other values in Corporations class.

⁴³ Conversation with Tom Koenig, January 1995 (conveying the findings of research done in conjunction with Robert Granfield, which revealed comparable levels of anxiety about the future among students at Suffolk and Harvard Law Schools).

⁴⁴ At Harvard Law School, for example, the Office of Career Services coordinates the extremely complex on-campus interviewing process for hundreds of firms, and cancels classes for upper-year students for one week—designated “fly-out” week—in the fall, during which time students are expected to return to firms for on-site interviews. Even Northeastern Law School, which began with an explicit mission to train public interest lawyers, has begun encouraging and accommodating on-campus recruiting by private corporate firms. See ROBERT GRANFIELD, MAKING ELITE LAWYERS 182, 186–97 (1992).

⁴⁵ By using this phrasing, I do not mean to imply that I, a law student, am somehow exempt from the process I am here describing. My time at Harvard Law School has been spent trying to gauge to what extent this process has worked itself upon me, and I have as yet no reason to assume I have escaped unaffected.

⁴⁶ See Laura Duncan, *Times Ensure Roads Less Travelled Stay that Way*, CHI. DAILY L. BULL., Sept. 30, 1994, at 3.

may teach themselves to suppress what they know about the distribution of social and political power in America along lines of race, gender, and class when analyzing the law they learn in their "basic" courses, or to view public interest oriented students—who have some commitment to using the law to improve the lives of the least well-off—as somehow "impractical" or "naive," while praising themselves for their "realism."⁴⁷ For their part, the law schools set the curriculum in the way Williams describes so as to neutralize the tendency among idealistic law students to view the law through a critical political lens, and law professors oblige, by teaching students that initial outrage at the result in a particular case may reflect a failure to be sufficiently dispassionate toward the law.⁴⁸

It is this system, I contend, with its various levels of pressure against the teaching of law as an organizing mechanism for a particular socioeconomic form consistent with a particular political program, which explains the pacification of law students.⁴⁹ Given the admittedly obvious fact that today's law students are tomorrow's lawyers, it seems to me that this process of pacification must have no small effect on the acquiescence of the legal community in the Rehnquist Court's dismantling of the remaining legacy of the Warren Court, and in the judiciary's tendency in general to treat cases of considerable social and political import—like those dealing with affirmative action—merely as disputes between two parties. If I am right, it is no wonder that Williams, teaching class after class of pacified law students, finding little or no resistance to the de-politicization of the law's treatment of the issues that matter to her most, and watching media-generated stereotypes of all kinds played back to her in the reactions of her students, has come to be disenchanted with the legal system she once sought to challenge and has felt compelled to look elsewhere for the promise of change.

⁴⁷ See Robert Granfield & Thomas Koenig, *The Fate of Elite Idealism: Accommodation and Ideological Work at Harvard Law School*, 39 (4) SOC. PROBS. 315, 319, 325 (1992).

⁴⁸ On this point, see DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* 6-7 (1983). Kennedy argues that a certain number of the cases in the first year curriculum are there to elicit "an initial reaction of outrage," in order to convey that this reaction "is naive, non-legal, irrelevant to what you're supposed to be learning, and maybe substantively wrong in the bargain." *Id.* at 7.

⁴⁹ I confess that I offer these observations largely without any empirical support. I am also unable to say with certainty that the phenomenon I describe here is anything more than a recent development. My hypothesis, however, is that the pacification of law students, at least in the more prestigious schools, can be traced in part to the rise of the large law firms in the early 1980s, with the drastic increase in salaries these firms offered their starting associates. See, e.g., Frederick Gabriel, *Law Reviews Pay: Smaller Firms Hike Salaries To Woo New Associates; Cost Worries Curb Big Players*, CRAIN'S N.Y. BUS., Sept. 23, 1996, at 1.

CONCLUSION: THE PERSONAL IS (MORE) POWERFUL

The second question raised above still remains to be answered: Does this change in Williams's attitude vis-à-vis the prospect of generating social change through engagement with the law shed any light on the difference in tone of *The Rooster's Egg*? My sense is that it does. In *The Alchemy of Race and Rights*, the reader learns among other things that this is a woman who has found herself in the midst of a place with a history of excluding people just like her and is struggling there as best she can to make for herself a place of moderate psychological comfort. A testament to this struggle, the book reaches depths that an author at greater remove from her subject could never hope to replicate.

In *The Rooster's Egg*, Williams is that author at greater remove from her subject. Never at home in the law yet required to make it her home, her earlier efforts to explicate its power, biases, and exclusions necessarily engaged Williams on a personal level. In contrast, Williams is no more personally implicated in the mass media than are any of the millions of viewers connected to *Oprah Winfrey* or *The Cosby Show* solely through the screens of their TVs. This distance allows Williams to criticize what she sees without fear of reprisal, rejection, or excommunication.

It is likely that Williams's newfound ability to distance herself from her subject is the reason that, although there are still flashes of brilliance and moments of insight in *The Rooster's Egg*, it lacks the personal engagement that shaped her prose in *The Alchemy of Race and Rights*. But if as readers we pay a price for this difference, her new position is clearly an easier one for Williams to occupy. Her relative psychological distance from the media she criticizes seems to have brought Patricia Williams new peace of mind. And we can hardly begrudge her that.

—Sharon Dolovich*

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