THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR
by Patricia J. Williams (Harvard University Press, 1991)

Patricia Williams is a black woman. Her family roots extend back to the slaves and slave-owners of the American South. I am a white woman. I emigrated to Canada from Scotland as a child; my parents struggled out of the working class before I was born. Do I have the authority to review Patricia Williams' book, a book she has subtitled "Diary of a Law Professor"?

I cannot claim to share, or even to understand, the experiences that ground Professor Williams' reflections. But it seems to me that her approach not only invites me to try to understand; it demands that I do so. As Jerome Culp has said of her earlier work: "her words will not permit us the freedom to ignore her reality."[1]

What I do share with Professor Williams is a passionate commitment to social change and a cautious faith in the potential of law as a vehicle for that change. I share her responsibilities as a legal professional. It is from this place that I approach the following review.

In *The Alchemy of Race and Rights* Patricia Williams weaves together seemingly disparate themes with myth, poetry and legal analysis. Readers who do not think the third item on this list belongs with the others will be surprised and challenged. Readers who do will be inspired. For here, Professor Williams clearly demonstrates the creative magic of an experientially-based legal analysis.

Much of the work that appears here is not new; earlier versions of several chapters have appeared previously in law reviews. This, however, is not a disappointment. Here, the reader obtains access to the uncensored versions, as well as to telling postscripts detailing the impact the editorial process had on the originals. Often, this process becomes an integral part of the story.

For example, Professor Williams wrote an article in which she told of being refused entry to Benetton's boutique in New York City. She used this story as a stepping-off point to a consideration of difference and exclusion. Not only did the editor remove the name of the store (the fact that it was her own story was not sufficiently authoritative to support her allegations), he also removed any mention of her race, essentially stripping the article of its meaning. She says:

> Ultimately I did convince the editors that mention of my race was central to the whole sense of the subsequent text; that my story became one of extreme paranoia without the information that I am black;

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1. J. McCristal Culp Jr., "Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy" (1991) 77 Virginia L. Rev. 539 at 545.

> or that it became one in which the reader had to fill in the gap by assumption, presumption, prejudgment, or prejudice. What was most interesting to me in this experience was how the blind application of principles of neutrality, through the device of omission, acted either to make me look crazy or to make the reader participate in old habits of cultural bias.[2]

The second virtue of the collection of some of Professor Williams' earlier work here is the opportunity to make connections. The scope of her vision becomes clearer; patterns emerge. In the tradition of storytellers of many cultures, Professor Williams gives the reader much to think about and ultimately leaves it to her to make the connections and thereby glean the relevance of the stories to her own life.

Boundaries and Gaps

Professor Williams concerns herself with boundaries and the gaps between them in life and in law — "markers between life and death, black and white, male and female, sense and sensibility."[3] Her project is to cross the boundaries:

> I am trying to create a genre of legal writing to fill the gaps of traditional legal scholarship. I would like to write in a way that reveals the intersubjectivity of legal constructions, that forces the reader both to participate in the construction of meaning and to be conscious of that process.[4]

She achieves this by doing more than offering her conclusions about particular incidents or legal issues, to which the reader can earnestly nod her head and move on: she shares her thought processes complete with digressions and unravelled ends, giving the reader a chance to close the experiential gap.

Professor Williams illustrates the notion of the experiential gap with a story about a family trip taken in childhood:

> My sister and I sat in the back seat of the Studebaker and argued about what color the road was. I said black, she said purple. After I had harangued her into admitting that it was indeed black, my father gently pointed out that my sister still saw it as purple.[5]

She returns to this insight later:

> For me to understand fully the color my sister saw when she looked at a road meant more than my simply knowing that her "purple" meant my "black." It required as well a certain slippage of perception that came from my finally experiencing how much her purple felt like my black.[6]

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2. P. Williams, *The Alchemy of Race and Rights* (Cambridge: Harvard University Press, 1991) at 48.
3. *Ibid.* at 190.
4. *Ibid.* at 7-8.
5. *Ibid.* at 149.
6. *Ibid.* at 150.

Much of what Professor Williams says in this book, whether about homelessness, Tawana Brawley, surrogate motherhood, or polar bears, evokes this kind of slippage. Not everything will be comprehensible to every reader, but by speaking in many different voices, she makes pieces of the whole accessible to all.

Sometimes she speaks in the voice of a poet and sometimes in the voice of a lawyer. When she speaks as a lawyer, she is accessible even to those who would normally exclude others. On the importance of remaining intelligible to the excluders she says:

> [A] friend of mine tells me that in the men's room he heard some of [the law professor audience] laughing disparagingly: "all this emotional stuff just leaves me cold." Since the one who is reported to have said this is not only in love with power but is also powerful, I go back to my computer to find a way of saying it just for him.[7]

As well as speaking in her own multiplicity of voices, she introduces other characters to challenge her thoughts. For example, her sister appears throughout, embodying common sense, bringing her back to earth when she becomes too tangled in the legal constructs in which she has been schooled. In this way she is able to avoid the trap of speaking from an educated distance, something others, such as Regina Austin, have warned against:

> Our positions as "scholars" set us apart to some extent from the women about whom we write and our work would be better if we acknowledged the distance and attempted to bridge it. For a start we must accept that there is skepticism about both the law and intellectual pursuits in our communities. It accordingly behooves us to eschew the role of self-anointed spokespersons for our race and sex and instead take our lead as teachers and scholars from the ongoing liberation politics of black women.[8]

Professor Williams recognizes and challenges those gaps which exist even within herself. She recounts an experience of overhearing racist comments by two young saleswomen aimed at Jewish customers, and of effectively being included by virtue of her silence in the face of their bigotry:

> The dilemma – and the distance between the "I" on this side of the store and the me that is "them" on the other side of the store – is marked by an emptiness in myself. Frequently such emptiness is reiterated by a hole in language, a gap in the law, or a chasm of fear.[9]

Boundaries and Gaps in Law

One of the threads running through this book is a discussion of slavery – its history, the people that were its subject and the laws which governed its practice. In this discussion Professor Williams illustrates one of the most fundamental boundaries erected

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7. *Ibid.* at 19-20.
8. R. Austin, "Sapphire Bound!" (1989) Wisconsin L. Rev 539 at 545.
9. Williams, *supra*, note 1 at 129.

in our society: "when black people were bought and sold as slaves, they were placed beyond the bounds of humanity."[10]

She describes the structure of slave law as being rooted in a concept of "black antiwill":

> I would characterize the treatment of blacks by whites in their law as defining blacks as those who had no will. That treatment is not total interdependency, but a relation in which partializing judgments, employing partializing standards of humanity, impose generalized inadequacy on a race: if "pure will" or total control equals the perfect white person, then impure will and total lack of control equals the perfect black person.[11]

The demarcation of this boundary leads directly to a most pervasive and damaging gap in law:

> Black individuality is subsumed in a social circumstance — an idea, a stereotype — that pins us to the underside of this society and keeps us there, out of sight/out of mind, out of the knowledge of mind which is law. Blacks and women are the objects of a constitutional omission that has been incorporated into a theory of neutrality. It is thus that omission becomes a form of expression, as oxymoronic as that sounds: racial omission is a literal part of original intent; it is the fixed, reiterated prophecy of the Founding Fathers.[12]

Such boundaries shrink the whole fabric of the law. For what more effective constraint exists to the positive force of law than the notion of neutrality? It is still virtual heresy in many circles to expose the middle-class, white, heterosexual, able-bodied subjectivity that poses as objectivity in law. Yet it is this myth that prevents law from incorporating and addressing the stories of the majority of society.

An example Professor Williams offers is the fact that social rights are not enshrined in the American Constitution:

> It is thus, I tell my angry students, that the homeless have no real right to conjugal benefits, to family of their own, to anything like happiness, or to the good health that is necessary in order to enjoy life, appreciate liberty, and pursue happiness.[13]

Another fundamental boundary explored by Professor Williams is that drawn between mother and fetus in the abortion debate and elsewhere. She juxtaposes two stories, one of a pregnant woman put in prison by a judge to keep her off the streets and away from drugs in order to protect her fetus, the other of an inmate in a Missouri prison, also

10. *Ibid.* at 227.
11. *Ibid.* at 119.
12. *Ibid.* at 121.
13. *Ibid.* at 26.

pregnant, who attempted to sue the state on behalf of her fetus for imprisonment without due process. In both cases fetus is pitted against mother:

> My head is throbbing because these cases don't make sense to me. I don't believe that a fetus is a separate person from the moment of conception; how could it be? It is interconnected, flesh-and-blood bonded, completely a part of a woman's body. Why try to carve one from the other? Why is there no state interest in not simply providing for but improving the circumstances of the woman, whether pregnant or not?[14]

Viewed in the context of this artificial separation, the seemingly absurd position taken by the second woman makes eminent sense:

> It seems only logical, I think while applying a cold compress to my brow, that in the face of a statute like Missouri's, pregnant women would try to assert themselves through their fetuses; that they would attempt to rejoin what has been conceptually pulled asunder.[15]

But Professor Williams cautions against the wider impact of submitting to this partialization, of "allowing the separation in order to benefit the real mutuality."[16]

Crossing the Boundaries, Closing the Gaps

Professor Williams does not advocate total renunciation of the present system regardless of its shortcomings, but she is not content to work within the system as it is either. Her solutions are grounded in wholeness, a pulling together of the fragments that calls for expansion rather than rejection:

> Justice is a continual balancing of competing visions, plural viewpoints, shifting histories, interests, and allegiances. To acknowledge that level of complexity is to require, to seek, and value a multiplicity of knowledge systems, in pursuit of a more complete sense of the world in which we live.[17]

The obvious focus of her discussion is "rights discourse," so fiercely debated among opponents of liberalism as well as between liberals and their opponents. Professor Williams examines the Critical Legal Studies critique of rights discourse and concludes that "the problem ... is not that the discourse itself is constricting but that it exists in a

14. *Ibid.* at 184.
15. *Ibid.* at 185.
16. *Ibid.*
17. *Ibid.* at 121.

constricted referential universe."[18] Her response to the shortcomings in the operation of rights is not to reject them altogether but to expand them so that they function as they ought to:

> The task for Critical Legal Studies, then, is not to discard rights but to see through or past them so that they reflect a larger definition of privacy and property: so that privacy is turned from exclusion based on self-regard into regard for another's fragile, mysterious autonomy; and so that property regains its ancient connotation of being a reflection of the universal self. The task is to expand private property rights into a conception of civil rights, into the right to expect civility from others. In discarding rights altogether, one discards a symbol too deeply enmeshed in the psyche of the oppressed to lose without trauma and much resistance. Instead society must *give* them away.[19]

This book resonates with images of connection. The four sections are titled with headings that include the words necklace, sequence, ladder, and string. It is about asserting and reasserting the connections within oneself and between oneself and others, about acknowledging all of the layers that comprise one person and comfortably letting those layers co-exist. For example, the complex interrelationship of race and gender in a black woman must be accepted: fragmenting her experience along one line or the other denies her wholeness. And it is about creating space in the law to accommodate wholeness, the wholeness which is denied by a law which purports to accommodate a fetus as distinct from its mother rather than accommodating the totality that is both fetus and mother.

Professor Williams' work in this book is nothing short of revolutionary. She points the way to a legal analysis which is both far-reaching and practical. She uncovers and critiques the contradictions in our legal practice, past and present, but she does not reject law as a tool for the future.

To the cynical and the discouraged, she offers the possibility of being at once a legal academic and a whole person. For it is experience, as well as openness to the experiences of others, that forms the foundation of a truly progressive jurisprudence. Professor Williams does not simply say that this is so, she shows us. Here, she offers pieces of her autobiography. It is left to the reader to insert herself into legal analysis, thereby closing the gap a little further.

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18. *Ibid.* at 159.
19. *Ibid.* at 164-65.