BOOK REVIEW

DANGEROUS TERRITORY

THE ALCHEMY OF RACE AND RIGHTS. By Patricia J. Williams.* Cambridge, Massachusetts: Harvard University Press 1991. Pp. 257. $24.95.

Reviewed by Joan Vogel**

I cannot remember enjoying a law book as much as I have Patricia Williams's recent book, *The Alchemy of Race and Rights*.[1] The stories in this book are alternately shocking, hilarious, witty, and sad. Professor Williams poetically weaves her experiences with an analysis of the prevailing state of race and gender relations in the United States. Nothing, even the most commonplace occurrences, escapes her notice. She imbues these incidents as well as other notorious episodes of recent years with enormous significance. Thus, a conversation between parents and a small child afraid of large dogs becomes a springboard for a discussion of how we are taught to ignore the inequities and injustices that we would otherwise see, a process that many times is replicated in the law school classroom.[2] A rendition of a commercial law hypothetical on an L.L. Bean parka with a missing label becomes an elaborate exegesis of the power of images to obliterate the public domain.[3] We become prisoners of advertisers' fantasies, unable to think or care about others.

The narrative style Professor Williams employs in her book

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1. PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS (1991).

2. *Id.* at 12-13. In this story, a four-year old boy told his parents he was afraid of big dogs. When his parents asked him why he was afraid of large dogs, he answered, "Because they're big." *Id.* at 12. The parents then pointed to a large and a small dog, explaining "If you look really closely you'll see there's no difference at all. They're all just dogs.'" *Id.*

3. *Id.* at 39-41. In her commercial law class, Professor Williams uses a hypothetical of an L.L. Bean Baxter State Parka that comes without the L.L. Bean label. When she used this hypothetical in her early years of teaching, most students believed the missing label was a minor fault. In recent years, however, Professor Williams's students actually considered the missing label to be a major breach of contract. The students wanted an *L.L. Bean Parka*, not just a coat that keeps out the elements and keeps the wearer warm. Professor Williams attributes this change to the effects of advertising that obliterate the real world and real human needs. *Id.* at 39-41.

has become popular in recent years, but few use it with as much skill.[4] To convey this book's influence on my own analysis and scholarship, I decided to review Professor Williams's book in the same personal and narrative style she adopts. In no other way could I fully convey this book's power and its insight. But for me, writing in the narrative style is a new and somewhat frightening experience. In my other scholarly writings I followed the usual conventions of writing in an impersonal and restrained style.[5] As a junior faculty member, the conventional style seemed to be the only safe way to negotiate my way through the tenure process.[6]

The narrative style provokes fierce criticisms from conventional legal scholars.[7] Certainly, I thought such work would provoke this type of criticism from senior faculty. The whole time, however, I knew not to follow conventional approaches in the classroom. Over the years, I have learned that a more personal and narrative style works far better in conveying the reality of law in most people's lives. Not until recently did I have the confidence, or the support from my colleagues, to apply this understanding to my own scholarship. Professor Williams's book

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4. For other sources on the narrative style, see, e.g., DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987); Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1991); Robin D. Barnes, *Race Consciousness: The Thematic Content of Racial Distinctiveness in Critical Race Scholarship*, 103 HARV. L. REV. 1864 (1990); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989); Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320 (1989); Philip N. Meyer, *Convicts, Criminals, Prisoners, and Outlaws: A Course in Popular Storytelling*, 42 J. LEGAL EDUC. 129 (1992); Kim Lane Scheppele, *Foreword: Telling Stories*, 87 MICH. L. REV. 2073 (1989).

5. *See* Joan Vogel, *Manufacturing Solidarity: Adventure Training for Managers*, 19 HOFSTRA L. REV. 657 (1991); Joan Vogel, *Until Death Do Us Part: Vesting of Retiree Insurance*, 9 INDUS. REL. L.J. 183 (1987); Joan Vogel, *Containing Medical and Disability Costs by Cutting Unhealthy Employees: Does Section 510 of ERISA Provide a Remedy?*, 62 NOTRE DAME L. REV. 1024 (1987); Joan Vogel, *Squeezing Consumers: Lemon Laws, Consumer Warranties, and a Proposal for Reform*, 1985 ARIZ. ST. L.J. 589.

6. Junior faculty who use the "narrative style" often risk severe criticism. *Cf.* Abrams, *supra* note 4, at 976-80 (discussing criticism directed at feminist narrative scholars).

7. *See, e.g.*, Larry Alexander, *What We Do, and Why We Do It*, 45 STAN. L. REV. 1885 (1993); Richard A. Epstein, *Legal Education and the Politics of Exclusion*, 45 STAN. L. REV. 1607 (1993); Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993); Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989); Mark Tushnet, *The Degradation of Constitutional Discourse*, 81 GEO. L.J. 251 (1992).

Actually much of the criticism directed at outsider jurisprudence is found not in law reviews, but in faculty meetings on appointments and tenure discussions. *See, e.g.*, Abrams, *supra* note 4, at 977. I also recall such discussions in the hallways of major legal academic meetings, such as at the American Association of Law Schools yearly convention.

gave me the confidence to write in a more personal and narrative style. Although, even as I write this essay, I still hear a little voice telling me this is not real scholarship.[8]

My first experience employing the narrative style came in the most unexpected way. I used it to relate a painful experience in my own life. The Federalist Society, a national conservative law student group with a chapter at Vermont Law School, asked me to participate in a panel discussion they were organizing on free speech in academia. I was hesitant at first. I am known as a left-wing professor at the law school, in part because I believe in placing some restrictions on hate speech designed to silence or drive women, minorities, and gays and lesbians off campus. I was concerned that I would be the "token progressive" at an event designed to promote the conservative view that all this concern about hate speech on campus was nothing more than a left-wing plot to censor conservative opinions and brainwash students.

In fact, the forum grew out of a very public and ugly incident of sexist hate speech that occurred during the previous school year.[9] In response to the incident, the law school created a Gender Bias Committee to discuss and formulate sexual harassment guidelines for the law school.[10] Some of the more conservative students complained that these efforts to confront sexism and other forms of discrimination on campus were attempts to enact

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8. According to Kathryn Abrams, these fears are justified. Senior colleagues often attack this less conventional scholarship in tenure and promotion decisions. *See* Abrams, *supra* note 4, at 977.

9. During the final exam period in December 1990, someone or some persons distributed fliers listing the ten "most attractive" women in the first-year class at Vermont Law School. Anonymous, First Year Top Ten (Dec. 1990) (on file with the Dean's Office of Vermont Law School). The leaflet also stated that the only important way to judge women was by their physical appearance. *Id.* Distribution of the flier during the exam period was designed to cause maximum distress to the women who were named. Both the Dean, Douglas Costle at the time, and the faculty issued strong statements condemning the leaflets. Memorandum from Dean Douglas Costle, Dean of Vermont Law School, to Students (Dec. 17, 1990) (on file with the Dean's Office of Vermont Law School); Memorandum from the Faculty, to VLS Students (Dec. 19, 1990) (on file with the Dean's Office of Vermont Law School). Approximately one month later, another anonymous letter was distributed. The Sons and Daughters of Liberty, Broadside (Jan. 1991) (on file with the Dean's Office of Vermont Law School). This letter criticized the Dean's and faculty's response to the flier, claiming that the condemnations violated the speech rights of students. *Id.* This letter is similar to claims that protecting oppressed groups from hate speech is simply a form of political correctness. *See* Maura Griffin, *Most Beautiful List Divides Law School*, BURLINGTON FREE PRESS, Jan. 25, 1991, at 1B.

10. *See* Draft Policy Statement (Jan. 1991) (on file with the Dean's Office of Vermont Law School).

"speech codes" and to silence conservative opinions. I feared that the Federalist Society hoped to use this forum to put such efforts in disrepute, and that the organizers of the panel would select speakers to convey this message. Two weeks before the forum, the Federalist Society announced the composition of the panel, and I realized that my fears were justified. Earlier in the fall when the organizers approached me about participating, they indicated that a number of speakers with a variety of views would be invited. With this in mind, I was less hesitant to participate because I did not believe that I would be the only advocate for restricting hate speech, but after hearing of the other panelists I felt that the panel was "stacked" against me. The panel consisted of Nadine Strossen, Executive Director of the American Civil Liberties Union ("ACLU"); Jeffrey Hart, a professor at Dartmouth College and conservative columnist; Glenn Loury, a conservative, African-American economist from Boston University; and Thomas Salmon, former Governor of Vermont and Acting President of the University of Vermont. I was afraid that I was there as target practice for the rest of the panel and the audience.

Nervous about speaking at the forum I wished I had never agreed to do it. I decided to talk about hate speech not with abstract arguments, but by relating a painful hate speech incident that happened to me when I was a law student. I never discussed this incident before and had even suppressed it from my memory. Professor Williams's book and other articles I read on hate speech brought it back into my memory. I believed the only way to make others understand what was at stake was to relate this experience, no matter how painful it would be.

Telling this story was going to be very different than presenting a hypothetical in class. This incident did not happen to someone else, it happened to me. I felt vulnerable in telling this story to what was likely to be a hostile audience. If the audience or a panelist attacked my remarks, the attack would feel far more personal than a disagreement on doctrinal or political analysis. By recounting the incident, I had to publicly relive the anger and humiliation I felt at the time the incident occurred. I also knew that many of my students would be in the audience, and I had never talked about anything as painful or personal with students before. As Professor Williams relates so well in her book, many women and minorities in legal academia feel particularly vulnera-

ble to student hostilities and attack.[11] I risked an attack on me when I felt most vulnerable. At that moment, I really understood what Professor Williams meant when she said:

> Writing for me is an act of sacrifice, not denial. . . . I deliberately sacrifice myself in my writing. I leave no part of myself out, for that is how much I want readers to connect with me. I want them to wonder about the things I wonder about, and to think about some of the things that trouble me.[12]

After reading this book, and after watching Anita Hill tell an all white, all male Senate Judiciary Committee about how Supreme Court nominee Clarence Thomas sexually harassed her,[13] I summoned the courage to relate my incident. I told myself I was not likely to experience the hostility Anita Hill faced, nor was I likely to encounter the scathing criticism directed at Professor Williams and others who have related their own stories of sexism, homophobia, and racism. Surely, the Federalist forum would not be that bad.

Despite my worst fears, my speech was well received by many

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11. Professor Williams describes how vulnerable she felt when she read her student evaluations:

> It is the end of a long academic year. I sit in my office reviewing my students' evaluations of me. They are awful, and I am devastated. The substantive ones say that what I teach is "not law." The nonsubstantive evaluations are about either my personality or my physical features. I am deified, reified, and vilified in all sorts of cross-directions. I am condescending, earthy, approachable, and arrogant. Things are out of control in my classroom, and I am too much the taskmaster. I am a PNCNG (Person of No Color and No Gender) as well as too absorbed with ethnicity and social victimhood. My braids are described as being swept up over my "great bald dome of a skull," and my clothes, I am relieved to hear, are "neat." I am obscure, challenging, lacking in intellectual rigor, and brilliant. I think in a disorganized fashion and insist that everyone think as I do. I appear tired all the time and talk as if I'm on speed, particularly when reading from texts. My writing on the blackboard is too small.

WILLIAMS, *supra* note 1, at 95.

12. *Id.* at 92.

13. *See* Symposium, *Gender, Race, and the Politics of Supreme Court Appointments: The Import of the Anita Hill/Clarence Thomas Hearings*, 65 S. CAL. L. REV. 1279 (1992) (presenting an exhaustive analysis of the effects of the Anita Hill-Clarence Thomas hearings); *Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the U.S.: Hearings Before the Senate Judiciary Committee*, 102d Cong., 1st Sess. 5-29, 157-269, 605-17 (statements of Clarence Thomas) 36-137, 157 (statements of Anita F. Hill) (1991).

in the audience. Although I was able to arrange to speak next to last, thereby avoiding being a punching bag for the other speakers, I still nervously awaited my turn. Jeffrey Hart, at his own request, spoke first and trivialized the entire issue of hate speech on campus by giving a flip and jocular history of the use of the word "fuck" in ordinary language after World War II. In the process, he intimated that liberals and leftists on campuses were trying to squelch this and other salient, expressive terms, all in the name of protecting feelings. Then Glenn Loury complained that intense criticism of "opposing views," meaning conservative views, threatened to squelch all "intelligent" discussion on campus, a notion difficult to believe in the conservative climate of recent years.

Nadine Strossen spoke next about the danger the various speech codes on campus posed to free speech. While the ACLU believes in fighting discrimination in all its forms, she argued, speech codes or any restriction on hate speech would harm speech rights more than it would combat discrimination. Taking what amounted to a near absolutist position on speech, she argued that the best response to hate speech was more speech opposing the sentiments behind the hate speech. Now, my turn came and with some trepidation and with my heart pounding, I related my own experience with hate speech in law school.

While I said I too was concerned about regulating speech, I argued that certain types of speech specifically targeted or directed at individuals belonging to oppressed groups required some restrictions. The audience saw that a speech-protective position was not necessarily inconsistent with a desire to protect oppressed groups on campus from harassment and discrimination. My own experience with hate speech provided a clear example. In law school, I enjoyed my family law course and often spoke in class. Someone or some persons then began putting anonymous, foul, and sexually explicit notes in my student mailbox. These notes suggested that I spoke in class too much because I was sexually frustrated and spelled out in graphic detail what should happen to correct this perceived "disability." These notes were designed to humiliate me into silence. When I brought these incidents to the attention of the professor, she was sympathetic but could offer no assistance. While these notes did not succeed in silencing me, they did cause disorientation, anger, and humiliation that I had to endure alone, an experience women often have. No one in the school administration helped me. I

could not even confront those who did this to me.

I then asked how more speech could begin to remedy injuries like these. *Words wound* in ways that more speech cannot always help.[14] It would have helped me if the school administration had publicly condemned this kind of hate speech. At least then I would not have felt so vulnerable and alone. Condemnation, however, would not have eliminated the disorientation and humiliation of knowing that someone or some people hated me simply because I was a woman who committed the unpardonable sin of having and voicing my own opinions. To whom would I or anyone else direct condemnation? The notes were anonymous. I was left disoriented and suspicious of my classmates. While the perpetrators did not succeed in silencing me, the notes appeared in my box several times during the semester, each time they accomplished their purpose of knocking me off balance for some time. At the forum, I used this experience to illustrate my argument that universities are obligated to protect students from a "hostile study environment," in ways similar to Title VII's protection of employees in hostile work environments.[15]

I sat down after my speech relieved and exhilarated. I realized the audience was composed of a variety of students. Although organizers of the forum may have hoped the panel would promote their agenda, the mixed composition of the audience proved more independent. I felt far less isolated. Although conservative students and audience members dominated the question and answer period, the argument among the panelists ultimately was between myself and Nadine Strossen.

This experience taught me firsthand the power and potential of the personal narrative style. I also understood why Professor Williams felt so vulnerable when she used this style. Discussing one's own experience gives life and a human dimension to oppression. But the narrative style requires that one, like all true storytellers, be ruthless and spare nothing about herself or others in telling the story.[16] In the process of relating these experienc-

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14. *See* Richard Delgado, *Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 HARV. C.R.-C.L. L. REV. 133 (1982).

15. *See* 42 U.S.C. § 2000e-2(a)(1) (1988); *see, e.g.*, Meritor Sav. Bank v. Vinson, 477 U.S. 57 (1986).

16. Professor Williams's honesty extends to presenting searing critiques of her own behavior. She relates an incident where she was a "guilty bystander" rather than a victim of prejudice. While shopping at a neighborhood store, she heard the salespeople making anti-Semitic jokes. They continued making comments when four customers who the

es, the narrator has to relive all the anger, humiliation, and pain of the original experience. But reading about these experiences gives others strength and courage to face their own experiences of oppression. It is far harder for insensitive and bigoted commentators to dismiss these experiences in the ways they often do with more traditional doctrinal analyses. Perhaps the power of the narrative explains why more conservative commentators attack this work as "disorganized" and "unprofessional."[17] Conservative commentators prefer more remote doctrinal analysis that is less accessible to the victims of oppression. They find it hard to deny the power and truth of these experiences. For that reason, we are all indebted to Professor Williams for her courage and insight.

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salespeople deemed to be Jewish entered the store. Professor Williams wanted to say something to the salespeople but, much to her embarrassment, remained silent. She analyzed her silence as a desire to be an "insider," someone who is allowed to hear such judgments about others. But, Williams found, the cost of inclusion was the loss of her soul. WILLIAMS, *supra* note 1, at 126-29.

> What they had constructed around me was the architecture of trust. As strange as it sounds, I realized that breaking the bond of my silence was like breaking the bond of *our* silence. At the same time, I realized that their faith in me was oppressively insulting. I became an antisemite by the stunning audacity of their assumption that I would remain silent. If I was "safe," I was also "easy" in my desire for the illusion of inclusion, in my capitulation to the vanity of mattering enough even to be included. It did not occur to me that I was simply being ignored. I could have been Jewish, as much as the four random souls who wandered into the store; but by their designation of me as "not Jewish" they made property of me, as they made wilderness of the others. I became colonized as their others were made enemies.

Id. at 128.

17. One way to dismiss narrative and other works by "outside scholars" is simply to ignore them. *See* Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later*, 140 U. PA. L. REV. 1349, 1355-58 (1992). Another way to repudiate narratives is by making dismissive remarks in the evaluation process. *Cf.* Abrams, *supra* note 4, at 977. Another attack on narratives are claims that such works are designed to "exclude" those not within oppressed groups. *See* Epstein, *supra* note 7, at 1617-20.

Of course, even our highest Court seems to deny the reality of discrimination. As Justice Blackmun said, "One wonders whether the majority still believes that race discrimination—or, more accurately, race discrimination against nonwhites—is a problem in our society, or even remembers that it ever was." Wards Cove Parking Co. v. Atonio, 490 U.S. 642, 662 (1989) (Blackmun, J., dissenting).