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Book Review [Faces at the Bottom of the Well: The Permanence of Racism and The Alchemy of Race and Rights]

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BOOK REVIEW

"A NEW SCHOLARLY SONG": RACE, STORYTELLING, AND THE LAW

FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM, By Derrick Bell. New York, NY: BasicBooks, 1992. Pp. xiv 220. Hardbound. $20.00.

THE ALCHEMY OF RACE AND RIGHTS, By Patricia J. Williams. Cambridge, MA: Harvard University Press, 1991. Pp. 320. Text Edition. $24.95. Softbound. $10.95.

Reviewed by **Margaret M. Russell***

Faces at the Bottom of the Well: The Permanence of Racism by Professor Derrick Bell and *The Alchemy of Race and Rights* by Professor Patricia J. Williams are two unique outstanding recent books with quite a bit in common. Each is a collection of thematically intertwined essays about the pervasiveness of racism and lingering legacies of slavery in legal, political, and social life in the United States. Each work is a prominent example of narrative jurisprudence, or "legal storytelling," which explicitly critiques and departs from normative assumptions of neutrality and objectivity in the law and in legal analysis.[1] Finally, each book is an eclectic synthesis of both the scholarly and the lyrical, crafted to express—at times in deeply personal ways—the intellectual philosophy of a leading critical race theorist; as Bell observes in one of his essays, " 'With what some of us are calling critical race theory, we are attempting to sing a new scholarly song—even if to some listeners our style is strange, our

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1. For recent examples and critiques of narrative jurisprudence, see Symposium, *Pedagogy of Narrative*, 40 J. LEGAL EDUC. 1 (1990); *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989).

lyrics unseemly.' "[2] This review briefly describes several key aspects of the uses of narrative in critical race theory, and assesses the Bell and Williams books as exemplars of this emerging strand of legal scholarship.

I. CRITICAL RACE THEORY AND NARRATIVE JURISPRUDENCE

In the past several years, the name "Critical Race Theory" has evolved to describe a burgeoning collection of post-modern legal scholarship which seeks to develop innovative approaches to problems of race and racism in the American legal system. The term was consciously chosen both to evoke and to distinguish itself from two antecedent legal movements of the past several decades: traditional civil rights scholarship of the 1960's through 1980's;[3] and the Critical Legal Studies movement of the 1980's, which focused heavily on a progressive critique of the notion itself of "rights" as conservative, counterproductive and ultimately illusory.[4] Professor Richard Delgado, a proponent of Critical Race Theory, has described its history as follows:

> Critical race scholarship sprang up in the late 1970's with the realization that the civil rights movement of the 1960's had stalled, and many of its gains were being rolled back. It was time to stop perseverating; we no longer could justify depleting our already frustrated energy on what we had been doing all along—filing amicus briefs, coining new litigation strategies, writing another law review article exhorting judges to exercise moral leadership in the search for racial justice—in hope of making things better. We needed new ideas and theories—sometimes if you are up a tree and a flood is coming, you have to climb down before climbing up a taller one.[5]

The "taller" tree of critical race scholarship—to use Delgado's

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2. DERRICK BELL, FACES AT THE BOTTOM OF THE WELL 144 (1992).

3. For an early leading example of a critical race assessment of the limitations of traditional civil rights strategies, see Kimberle Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Anti-discrimination Law*, 101 HARV. L. REV. 1331 (1988).

4. For critical race perspectives on the limitations of critical legal studies, see, e.g., Gerald Torres, *Local Knowledge, Local Color: Critical Legal Studies and the Law of Race Relations*, 25 SAN DIEGO L. REV. 1043 (1988); Robert A. Williams, Jr., *Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color*, 5 LAW & INEQ. 103 (1987); Symposium, *Minority Critiques of the Critical Legal Studies Movement*, 22 HARV. C.R.-C.L. L. REV. 297 (1987).

5. Richard Delgado, *Brewer's Plea: Critical Thoughts on Common Cause*, 44 VAND. L. REV. 1, 6-7 (1991).

metaphor—seeks to offer a long-range vantage point from which to evaluate the intractable interrelationship of legal and cultural racism, the connection between legal knowledge and power, and "the role of liberal-capitalist ideology in maintaining an unjust racial status quo."[6] Although this theoretical approach shares with prior liberal race critiques a concern with the instrumental function of law to effect political change, it more explicitly emphasizes as a premise that ". . . massive social transformation is a necessary precondition of racial justice."[7]

With these broad objectives in mind, critical race scholars have drawn extensively from a wide array of disciplines and methodologies in their work; among the most distinctive of these is the use of narrative, or "legal storytelling," as a method of conveying perspectives on race relations which historically have been excluded from legal discourse and scholarship. According to a number of leading critical race scholars, this heightened attention to narrative serves several purposes. First, as Professor Mari Matsuda notes, such narrative or "outsider jurisprudence"[8] accords attention to the typically-ignored experiences and viewpoints of the victims of discrimination. She notes:

> This method is consciously both historical and revisionist, attempting to know history from the bottom. From the fear and namelessness of the slave, from the broken treaties of the indigenous Americans, the desire to know history from the bottom has forced these scholars to sources often ignored: journals, poems, oral histories, and stories from their own experiences of life in a hierarchically arranged world.[9]

A second function of critical race narrative is to use literary theory to question the limited nature of legal language, boundaries and categories, as well as to challenge predominant assumptions of what constitute "facts," "proof," and so-called "black-letter law." This approach is well-illustrated in the writing of Professor Patricia Williams, who wryly reports in the epilogue to *The Alchemy of Race and Rights* her conversations with her editors and the Library of Congress about how the book should be categorized for cataloguing purposes. She notes: "The librarians think 'Afro-Americans—Civil

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6. *Id.*

7. Kimberle Crenshaw, *A Black Feminist Critique of Antidiscrimination Law and Politics*, *in* THE POLITICS OF LAW 195, 213-14 n.7 (David Kairys ed., 2d ed. 1990).

8. Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2323-24. (1989).

9. *Id.* (citations omitted).

Rights' and 'Law Teachers' would be nice. I told my editor to hold out for 'Autobiography,' 'Fiction,' 'Gender Studies,' and 'Medieval Medicine.' The battle seems appropriate enough, since for me the book is not exclusively about race or law but also about boundary."[10]

Finally, a central objective of critical race narrative is to tell what Delgado has referred to as "counterstories" or "counterhegemonic stories," which aim to respond to and displace dominant narratives of racism and subordination with antiracist ones. Delgado describes such stories as having transformative potential: "They can open new windows into reality, showing us that there are possibilities for life other than the ones we live."[11]

II. THE USES OF NARRATIVE IN BELL'S "CHRONICLES" AND WILLIAMS'S "ALCHEMY"

Both Bell's *Faces at the Bottom of the Well* and Williams's *The Alchemy of Race and Rights* share a common point of departure: each book begins with a short allegorical narrative to convey the author's sense of despair over the fate of race relations in the United States. Bell notes in the frontispiece to his book:

> Black people are the magical faces at the bottom of society's well. Even the poorest whites, those who must live their lives only a few levels above, gain their self-esteem by gazing down on us. Surely, they must know that their deliverance depends on letting down their ropes. Only by working together is escape possible. Over time, many reach out, but most simply watch, mesmerized into maintaining their unspoken commitment to keeping us where we are, at whatever cost to them or to us.[12]

Williams's collection begins on a similarly sobering note; also employing vivid imagery to discuss the position of subordinated individuals, she describes the inefficacy of the "Celestial City" (perhaps a metaphor for the rarefied atmosphere of the legal system) to address the concerns of those who suffer at the bottom:

> *Under the Celestial City, dying mortals cried their rage and suffering, battered by a steady rain of sharp hooves whose thundering, sound-drowning path described the wheel of their misfortune.*

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10. PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 256 (1991).

11. Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2411 (1989).

12. BELL, *supra* note 2, at v.

At the bottom of the Deep Blue Sea,
drowning mortals reached silently and
desperately for drifting anchors dangling
from short chains far, far overhead, which
they thought were lifelines meant for them.[13]

By choosing such dramatic uses of literary form to begin these "legal" works, both authors signal clearly their intentions to explore themes of race and racism at levels both dispassionate and personal, intellectual and emotional.

Of the two, Williams strikes a more intimate autobiographical tone in her collection of twelve essays; informally subtitled "Diary of a Law Professor," *The Alchemy of Race and Rights* is a rich and complex blend of painful personal revelations, cogent legal analysis, searing political commentary, and incisively humorous social critique. Williams's overarching theme is the difficulty of forging an honest, committed, coherent professional identity as an African-American female professor of commercial law—a concept described by one of her former employers as "oxymoronic."[14] Interweaving poem and parable, personal anecdote and case analysis, Williams observes the "legal" world surrounding her in a compelling and challenging style, the power and cadence of which is difficult to paraphrase or recapitulate. Her "stories" range from the banal to the fantastical in subject matter; in each instance, the sophistication and lyricism of her writing push the reader to think in a deeper and more complicated fashion about seemingly well-settled assumptions. For example, in "The Obliging Shell," Williams employs a clever story about "sausage-making machines" both to advance a final argument in a consumer protection trial against a sausage manufacturer *and* to question the very nature of legal definitional constructs. In "On Being the Object of Property," the book's final essay, she explores notions of property ownership and self-realization through personal recollections of her great-great-grandmother's enslavement. One of the most startling aspects of Williams's use of narrative is the frankness with which she "tells stories" about herself; in "Crimes Without Passion," she sadly assesses her law students' evaluations of her teaching:

> 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

13. WILLIAMS, *supra* note 10, at viii.
14. *Id.* at 6.

> law." The non-substantive evaluations are about either my personality or my physical features. I am deified, reified, and vilified in all sorts of cross-directions. . . . 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 marvel, in a moment of genuine bitterness, that anonymous student evaluations speculating on dimensions of my anatomy are nevertheless counted into the statistical measurement of my teaching proficiency.[15]

The dozen essays in the volume, many of which were previously published in different forms as law review articles, reveal a scholarly voice that eloquently expresses ambivalence and disillusionment about the role of law in eradicating racial discrimination, yet never slides into cynicism or defeat.

In contrast to the more overtly autobiographical tone of Williams's book, Bell's *Faces at the Bottom of the Well* conveys its author's personal reflections in the form of quasi-confessional "chronicles," which blend Bell's legal and life philosophies into dialogues with a number of fictional characters. Like Bell's earlier collection *And We Are Not Saved*,[16] these chronicles express the frustrations and disappointment of a veteran civil rights scholar and advocate, who has concluded that nearly all of his well-intended litigation and policy strategies have been at least ineffectual and quite possibly counterproductive. Continuing the doubts about the future of civil rights expressed in *And We Are Not Saved*, Bell devotes substantial attention in *Faces at the Bottom of the Well* to illustrating his central premise: that ". . . racism is an integral, permanent, and indestructible component of this society."[17] According to Bell, he considers his role no longer to persuade his readers that racism is eliminable through perseverance, creative legal thought, and political organizing; rather, he wants simply to ". . . tell what I view as the truth about racism without causing disabling despair."[18]

Accordingly, the volume contains nine essays, each of which is devoted to a critique of some aspect of civil rights law and/or interracial relationships: "Racial Symbols: A Limited Legacy" suggests that perhaps even "positive" advancements, such as the hard-won battle for government recognition of a national holiday for Dr. Martin Luther King, are of minimal value given the persistence of struc-

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15. *Id.* at 95.
16. DERRICK BELL, AND WE ARE NOT SAVED (1987).
17. BELL, *supra* note 2, at ix.
18. *Id.*

tural racism in our daily lives; "The Racial Preference Licensing Act" wittily proffers the calmly reasoned, economics-based argument that perhaps employers and property owners should be given the opportunity to purchase a license authorizing them to engage in racial discrimination, with the profits from such a licensing scheme to be used for the benefit of African-Americans and others from whom the licensees pay to be disassociated.

Ultimately, Bell's superficially pessimistic premise—that racism should be acknowledged as a permanent evil in our society and in our legal system—is tempered by his spiritual and political commitment never to concede the fight for social justice. He concludes that the true story of Black History is ". . . a story less of success than of survival through an unremitting struggle that leaves no room for giving up."[19]

In this respect as well, both Bell's and Williams's compelling racial "stories" communicate similarly powerful messages: that working toward the elimination of racism is at least as important as achieving that end, and that the nobility of the effort should undergird and inspire our understandings of law and of the struggle for social justice.

19. *Id.* at 200.