

The Rooster's Egg: On the Persistence of Prejudice

Harvard University Press, 1995, ISBN 0674779428, 272pp

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I tried to make objective everything that until now had been subjective, by translating it before a visible public. My position as a writer was changed at that point ... I had to write for spectators in a group.¹

In this, Williams' second book,² she returns to the theme which has characterised her unique approach to sociological jurisprudence: the integration of everyday life within the broader tapestry of law, regulation, politics and enforcement. Moreover, it is, as the subtitle suggests, about the *persistence* of prejudice, the refraining from 'exerting the real ... while serving as someone else's weaponry, nemesis or language club' (p 200). Williams adopts the same style as her earlier work. Her approach is not one based on the straightforward presentation and recital of facts and instances of discrimination and subjugation.³ Rather, she takes such scholarship and makes it accessible to a wider range of readers through her use of the narrative style of authorship.

She aims in this book to mix legal theory with everyday practice, to use theory to explain common events. In doing so, she re-positions the now familiar arguments surrounding race, welfare, sexuality and sex equality *within* the everyday prism in which they occur. She takes the argument and theories back from lofty academe and places them in praxis, at the intersection of doctrine and individual conduct. Arguably, it is in this arena where this sort of discussion most needs to be taking place. The anti-intellectual cry against 'elites' has become too strong in recent times.⁴ The return of the arguments for equality to situations based on and couched in commonplace happenings denies status quo conservatives of one of their most potent rhetorical weapons: the claim that this sort of debate is no longer necessary because sufficient social and political equality for minorities has already been achieved. Williams' grassroots examples prove this position indefensible. While Williams writes in the social contexts of the United States, many of

1 Jean Genet, quoted in the introduction by Edmund White to *Splendid's*, Genet's play which was thought lost and only recently published: E White (1995) 'Introduction' in J Genet, *Splendid's*, trans N Bartlett, Faber and Faber, p x.

2 Her first, *The Alchemy of Race and Rights*, Harvard University Press, was published in 1991.

3 See MJ Frug, 'Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook' (1985) 34 *Am U LR* 1065. Interestingly, Frug is listed as one of the people to whom Williams has dedicated the book.

4 How often must we hear of the 'Sydney-Melbourne-Canberra' triangle of political elites who dictate the fabric of Australian society? This theme was a strong undercurrent in the Pauline Hanson/One Nation rhetoric during the 1998 Australian federal election.

her themes and arguments are translatable across the Pacific to our shores. Thus, despite its gestation and genesis in another culture, *The Rooster's Egg* has a good deal to offer its Australian audience.

The successful use of 'legal storytelling'⁵ is integral to a project of this nature.⁶ It is through this medium that Williams makes her central thesis: that the stereotypes and attitudes which exist today do so not only because of overt sexism, racism and homophobia but also because of a society which is willing to see such attitudes portrayed within certain spheres of life; within our individual 'stories'. Moreover, and more importantly, they exist and persist because of a willingness on the part of wider society (and in this Williams charges the media and news and current affairs programmes) to perpetuate stereotypes of what sectors of the community are *supposed* to look like and behave as opposed to how such fragments of the community *actually* behave. She makes a strong argument for the power of the cliché; that form (or supposed form) is counted as more worthy, more real than substance. Not surprisingly, these attitudes remain centred on crime, welfare dependence and poverty.

In this respect, her material in the first two chapters⁷ is well summarised and effectively used in the third chapter, 'Radio Hoods'.⁸ Chapter one refers

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- 5 See C Menkel-Meadow, 'The Power of Narrative in Empathetic Learning: Post Modernism and the Stories of Law' (1992) 2 *UCLA Women's LJ* 287 and the discussion of this provided by Jennifer Di Toro: J Di Toro, 'Casting the Outsider' (1996) 48 *Stan LR* 1469. Here, Di Toro provides a greater coverage of both sides of the 'story telling method', an exposition which is not possible re-ignite here. Suffice to say that silence and perpetuation of the status quo is the natural opposite to the telling of our stories. In a less 'academic' context, similar themes were recounted in the recent 'joint autobiography' of Tsiolkas and Soldatow where, through their stories, they speak of their lives as gay men and their interaction with society as members of that group society deems as 'other': C Tsiolkas and S Soldatow (1996) *Jump Cuts*, Vintage.
 - 6 As indeed it is to a great deal of 'other voice jurisprudence'. For examples of the narrative method used in a different way and arguing for a different agenda, see the works of Camille Paglia: (1994) *Vamps and Tramps*, Vintage Books; (1992) *Sex, Art and American Culture*, Vintage Books; and (1991) *Sexual Personae*, Vintage Books. Both authors speak on issues of equality and feminist thought and theory, and both use the narrative method. However, they arrive at differing conclusions on some issues. Interestingly, early reports and reviews of Germaine Greer's new work *The Whole Woman* indicate she too has begun to adopt a less obviously academic approach in favour of a discourse styled more in the terms and parameters of the everyday: G Greer (1998) *The Whole Woman*, Doubleday.
 - 7 Chapter one is entitled 'Scarlet, the Sequel' and addresses single mothers and welfare while chapter two, called 'Pansy Quits', deals with race equality.
 - 8 A theme which is revisited in chapter six ('Town Hall Television'). Williams argues that the modern evolution of talk shows, the electronic town hall meeting (or perhaps a modern version of the travelling circus), facilitates the persistence of prejudice through: 1) creating a sense of false consensus and division; and 2) condoning and perpetuating racial/sexual/sexuality stereotypes while operating under the guise of challenging them (p 112) and the examples she offers.

to the oft trotted-out welfare bandit — the single mother — and the accompanying urban mythology that she will continue to have children for the extra welfare payment. Williams states:

the premises of the mean spirited welfare war against today's impoverished have grown into industrial strength clichés, beginning with the one that welfare recipients are oversexed single women who just want to have fun making babies so they can support themselves on grotesquely huge welfare cheques. This is the view of a nation totally uninvested in the humanity of poor children.... It is a formula that sees nothing to consider other than the cost of keeping them alive.
(p 7)

Later in the book, Williams summarises this by noting that the 'Victorian image of "fallen women gotten with child" has merged with that of the black Jezebel and produced the always rollicking "welfare queen"' (p 117). It is in this approach that we see Williams' point. Through the use of the stereotypes and cliché, the modern nation state has 'let itself off the hook by espousing single minded homilies as cures for complex political problems of race and class ... [I]f only blacks would stop reproducing, stop complaining, and get a father and a job, order would reign once more'.(p 8)' In chapter two, Williams visits this theme under the matrix of the changing notions of equality and race relations in the United States. She concludes, arguing that modern discussion of race interaction and multiculturalism,¹⁰ and the relative success made in these areas, stand in danger of stalling because of the overriding power dynamic of such discussions. She states that the conservative claims of 'political correctness' in speech and policy has presented a challenge in that:

if we are not to betray the hard won gains of the last forty years, [we must determine how we are to] relegitimate 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, and in which not talking about it is complete capitulation to the status quo...
(p 40)

The fruits of this discussion and groundwork become apparent in the third chapter, when the focus switches to the media and its role in the persistence of prejudice. In this chapter, the focus is on radio and the ever-increasing number of conservative commentators and talk shows. This chapter is particularly apposite to recent events in Australia and also the media culture here. This relevance is pointedly evident in Williams' notation of the conservative media's 'snide bigotry' as being presented as 'what people are really thinking' (p 44). Perhaps in Australia, this is better understood as 'keeping the dream alive'.¹¹ This is done, Williams argues, by:

9 The right wing fantasy is, of course, that single motherhood is a black (or predominantly black) phenomenon.

10 Or 'interculturalism', as is suggested: p 27.

11 Whatever that dream may be. Certainly for some, that dream was not a good

megawatt expressions of hate and discrimination — the coded epithets, the mocking angry glee, the endless tirades filled with non-specific, nonempirically based slurs against ‘these people’ or ‘those minorities’ or ‘feminazis’ or ‘liberals’ or ‘scumbags’ or ‘pansies’ or ‘jerks’ or ‘sleazeballs’ or ‘loonies’ or ‘animals’ or ‘foreigners’ [It is a] 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... (pp 44, 47)

It is, as Williams suggests, ‘oral sex; radio racism with a touch of S & M ... [an] unusually violent game of “Simon Says”’ (p 47). It should concern us all. It is at this juncture that Williams’ thesis falls into place. The alarming aspect of this is, as she argues, that this ‘commerce of retribution, control and lashing out, [is] fed not by fact but fantasy and very powerful myth’ (p 51) that the mass audience to which this material is fed is contemporaneously made to feel that it is in the minority in society and, indeed, is endangered. As Williams asks, ‘did the civil rights movement guarantee us nothing more than the freedom to use public accommodations while surrounded by raving

one and not worth prolonging; see M Kirby (1996) *Speech on the Occasion of His Swearing in and Welcome as a Justice of the High Court of Australia*, Tuesday, 6 February. Here, Kirby J stated that:

the ‘good old days’ were not always so good in the law of Australia, including the common law. They were not so good if you happened to be an Australian Aboriginal [as explained in *Mabo v State of Queensland (No 2)* (1992) 175 CLR 1. See also eg *Namatjira v Raabe* (1959) 100 CLR 664; *Stuart v The Queen* (1959) 101 CLR 1]. Or indeed, a woman [eg *Skinner v The King* (1913) 16 CLR 336; *Yerkey v Jones* (1939) 63 CLR 649, 685. Cf *Merchandise Mutual Life Insurance Co Ltd v Gosper* (1991) 25 NSWLR 32 (CA) 36]. Or an Asian confronted by the White Australia policy [eg *Ling Pak (Otherwise An Sing) v Gleeson* (1913) 15 CLR 725; *Donohoe v Wong Sau* (1925) 36 CLR 404]. Or a homosexual Australian [eg *R v McDonald* (1878) 1 SCR (NZ) 173; *R v Kemp* (1949) 50 SR (NSW) 1 (CCA)]. A conscientious objector [eg *R v The District Court; Ex parte White* (1966) 116 CLR 644]. A person with heterodox political views [eg *The King v Sharkey* (1949) 79 CLR 121; *Burns v Ransley* (1949) 79 CLR 101]. A homeless person [eg *Lee Fan v Dempsey* (1907) 5 CLR 310]. A publisher of the mildly erotic [eg *Crowe v Graham* (1968) 121 CLR 375 or *Guthrie v Herbert* (1970) 122 CLR 527]. A complainant against official oppression [eg *Hough v Ab Sam* (1912) 15 CLR 452; cf *McDermott v The King* (1948) 76 CLR 501; *McKinney v The Queen* (1991) 171 CLR 468]. A person with little English involved in a court case [eg *Gaio v The Queen* (1960) 104 CLR 419; *Acquitina v Dairy Farmers* (1963) 109 CLR 458, 464]. We in Australia have now taken a confident turn in our legal journey towards enlightenment and justice for all under the law. But the lesson of our present enlightenment must be that there are other injustices to which we are still impervious, or indifferent or which we do not yet see clearly. We need to defend our legal institutions and to adhere to time-honoured legal principles. Not blindly. And not mechanically. But with ears, minds and hearts always open to the call of justice. Only the quest for justice gives our profession its claim to nobility.

bigots?' (p 52). This theme, of equality but at arms length and, perhaps, in name only, infuses Williams' book with a genuineness and truly original nature. I would suggest this is again a function of the use of narrative and legal storytelling. It is this 'meditation on the various conditions of otherness'¹² and how modern society, media and political attitudes and agendas reinforce this sense of exclusion that makes the book (and Williams' argument) so compelling.

Williams also addresses the use of humour as a means of inflicting racial, sexual and homophobic 'spirit murder'.¹³ Noting the penchant for members of society to disguise racial and sexual epithets under the guise of humour, Williams asks:

What does this humour mask? At what point does blackface minstrelsy converge with white hooded threats? Look at *this* and fear for your life; look at *that* and laugh.... I wonder how the line crossing from non-funny to funny seems to redeem any degree of threat or insult. (pp 119-20, original emphasis)

This passage sends a potent message, especially in a time where people claim to be suffering under speech codes and 'political correctness'. This, despite the fact that race and gender neutral language serve only to open and make available public discourse to those who have traditionally been excluded. It is no great discovery that those most against inclusive discourse are those who traditionally have had unfettered access, those never classed as others. This use of humour is particularly hard to combat, especially when, as Williams argues, it is passed off (if not approved of) as just a joke and thus not able to hurt or wound. Williams suggests this is perhaps the exact reason such material needs to be regulated so that hatred can not 'cross dress as virtue aggrieved' (p 29). That is, 'in bigotry's insistent blindness, humour is precisely the device by which discussion of the roots of pain is most consistently deflected' (p 120).

Stereotypes in humour, hate in laughter, let us enjoy, guilt free, the old biases and prejudices which we would otherwise not use in polite conversation. Williams forces us to ask ourselves what is it exactly that we are saying and why should we approve of it in one genre of speech but not another. This is an important and timely point.

The foregoing serve as the meta-themes of the book. Naturally, in a work such as this, there are more specific examples and discussions which

12 P Reidinger, 'Separate But Unequal Lives' (1995) 81 (Dec) *ABA Journal* 86.

13 Williams used this term in her first work: Williams (1991). She describes 'spirit murder' as 'the disregard for others whose lives qualitatively depend on our regard' (p 73). Williams and Mari Matsuda have been the central figures in the emerging debate on 'spirit murder': M Matsuda, 'Public Response to Racist Speech: Considering the Victim's Story' (1989) 87 *Mich LR* 2330; and P Williams, 'Spirit Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism' (1987) 42 *U Miami LR* 127. See also M Jones, 'Empowering Victims of Racial Hatred by Outlawing Spirit Murder' (1994) 1 *Aust JHR* 299.

Williams presents to the reader. She discusses the difficulties of identity politics for those of a group who do not display the characteristics expected of them,¹⁴ affirmative action generally¹⁵ and specifically in terms of the attempted appointment of Lani Guinier as Head of the Civil Rights Division of the Justice Department.¹⁶ Williams also considers questions of sexual harassment and sexual politics looking not only at single motherhood through the rubric of the Dan Quayle/Murphy Brown debacle but also sexual harassment in terms of the Clarence Thomas/Anita Hill incident as well as 'suitable' sex roles for women by discussion of the position and power of Hillary Clinton¹⁷. She also tackles the issues tied up with surrogacy and adoption and the resulting commodification of life and babies that has followed the expansion of these opportunities.¹⁸ Throughout these chapters, Williams continues to successfully and effectively distil and use these issues to demonstrate the persistence of prejudice and show how opinions are formed and decisions made on the basis of supposed facts and, often, as a means of defence of (or perhaps deference to) traditional power boundaries for the sake of the boundaries, a concession made not necessarily because any threat has actually been made to the status quo. These examples show the 'knee-jerk' reaction which highlights the racial stereotypes which often lay the foundational beliefs of society. It is a telling expose done with disarming wit, empathy, fact and verismo. The use of narrative in this process again, I believe, assists Williams' argument and perhaps makes it more accessible to a wider audience. This is a good thing.

Williams states that '[h]ate learned in a context of love is a complicated phenomenon. Love learned in a context of hate endangers all our family' (p 115). At its core, this is the crux of this work. It tells us of the establishment of boundaries, the entitlement of some, the privilege of a few, the refusal of the other. All this, done in a context of a society which is otherwise seemingly committed to equality and justice. It is a society which proclaims the equity of its citizens but which contemporaneously denies access, speech, input, participation from certain sectors. Williams exposes, through her stories and significant empirical evidence,¹⁹ a society which determines

14 Ch 4 ('Unbirthing the Nation'); ch 10: ('The Unbearable Autonomy of Being'); and ch 11 ('Black Power Dream Barbie').

15 Ch 5 ('White Men Can't Count').

16 Ch 8 ('A Hearing of One's Own'). Williams recounts how Guinier received the tag of 'quota queen' soon after the nomination (p 138).

17 These issues are discussed intermittently through both ch 7 ('Clarence X') and ch 9 ('Quayle has a Cow').

18 Ch 12 ('In Search of Pharaoh's Daughter'). Here, she provides an interesting critique of the Chicago school of economic theory as espoused by Richard Posner and its possible interaction with these issues.

19 It seems an interesting technique, but Williams provides significant authorities in notes to the text included at the end of the book. This is interesting in that the use of such authorities is not immediately obvious when reading the text as orthodox indicators such as endnote markers are not used. The supporting material and evidence for many of Williams' claims is, however, there.

entitlement on predisposed, predetermined and prejudged qualities. The book speaks of the the persistence of prejudice, of love learned in a context of hate; of entitlement learned in a context of denial. It is for these reasons that Williams' book is of such significance and importance. Its use of the narrative form in demonstrating such facts makes its impact especially strong. It is writing which seeks to link theory, evidence and law with the human condition. It is an integral part in a broader project that seeks a community which:

affirms difference, affirms diversity, plurality, polyvocality. [Which] speaks of politics as debate and creation, where even fundamental and enraging differences are, for that reason, an essential part of the public agenda, the subject of debate and dialogue and of an ultimate consensus which is forged out of dispute and out of inclusion, not exclusion.²⁰

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20 SS Berns, 'Embodiments of Justice, Economies of Clôture' (1997) 6 *Griffith LR* 169, pp 179–80.