Alchemy and the Law: Why This Marriage Can't Be Saved

The Alchemy of Race and Rights. By Patricia J. Williams.* Cambridge, Mass.: Harvard University Press. 1991. Pp. 263. $24.95.

*Reviewed by Jean Bethke Elshtain***

This is, perhaps, the most labile text I have ever encountered. To be sure, I am not and have never been a devotee of emotionally fraught literary genres. They rapidly lose their charm and become dated nearly as quickly as yesterday's bad mood or a three-month-old CNN news flash. Great and important works offer us a mediated view of the self and the world. I think, for example, of the staying power of Richard Wright's *Native Son*[1] in contrast to Eldridge Cleaver's *Soul on Ice*.[2]

Black rage is embodied in Wright's terrifyingly fierce yet undeniably human protagonist, Bigger Thomas. No demon, no force of nature, he is, quite simply, a man at the end of his tether driven by inner forces coalescing at a flash point of anger at a society that denies him dignity and recognition. Bigger's rage sweeps the reader up in waves of revulsion *and* sympathy. That Bigger's victims are no villains either is also important. Diffuse rage is not notable for discernment and selectivity in its targets.

By contrast, Cleaver's protagonist—himself—comes off as an adolescent in the worst sense, a volatile radical manqué, playing at politics. He is sufficiently self-deluded to redescribe his rape victims through a self-serving process—shall we call it alchemy?—as appropriate targets of his oh-so-radical ire.

Alchemy, the dictionary says, is that "science" whose great aim was to "transmute base metals into gold" in an effort to discover

---

* Visiting Professor of Law, Columbia University.
** Centennial Professor of Political Science and Professor of Philosophy, Vanderbilt University.

1 RICHARD WRIGHT, NATIVE SON (1940).

2 ELDRIDGE CLEAVER, SOUL ON ICE (1968).

the "universal cure to diseases and means of indefinitely prolonging life."[3] More casually, the word evokes the power to transform something common into something precious. This being the case, Williams's alchemical science works in reverse, transforming something precious—the rule of law and the equality of political standing that is the law's *raison d'etre*—into something common. Williams's hotch-potch of particularistic meanderings privilege one voice: her own. In the name of a critical theory of liberation, her alchemy winds up endorsing hostility towards the free play of the disciplined intellect and towards the aspirations of law itself as "a distinct context for human knowing," in the words of Mark G. Yudof.[4]

The problem begins at the beginning with Williams's declaration that "[s]ince subject position is everything in my analysis of the law, you deserve to know that it's a bad morning. I am very depressed."[5] She belabors the point endlessly. Williams tells the reader that "this is the sort of morning when I hate being a lawyer, a teacher, and just about everything else in my life. It's all I can do to feed the cats. I let my hair stream wildly and the eyes roll back in my head."[6] The reader "should know" further that:

> this is one of those mornings when I refuse to compose myself properly; you should know you are dealing with someone who is writing this in an old terry bathrobe with a little fringe of blue and white tassles dangling from the hem, trying to decide if she is stupid or crazy . . . . Sometimes I can just write fast from the heart until I'm healed . . . . I feel like a monkey . . . ."[7]

The theme of Williams's craziness is returned to again and again—by Williams herself.

The book ends as it begins, with Williams babbling about babbling. She describes herself talking in class:

> I notice suddenly that I am making no sense. I am babbling, though my words are heavy-jawed and consequential. My words are confined and undone; I am tangled in gleaming, bubbled words. I hear the sounds of my own voice but they make no sense. I know the words, but there is no connection; familiar words in an unfamiliar rush; the light from my words is furious

---

[3] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 50 (1969).

[4] Mark G. Yudof, *"Tea at the Palaz of Hoon": The Human Voice in Legal Rules*, 66 TEX. L. REV. 589, 590 (1988).

[5] PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 3 (1991).

[6] *Id.* at 4.

[7] *Id.*

and flickering.[8]

She describes long hours in the mirror every morning "wondering what my students will think, trying to see myself as they must see me; trying to make myself over in a way that will make them like me more. What does all this mean?"[9] What indeed?

After arriving at Williams's characterization of her own self-amputation and invisibility; at the incessant manipulation of her self by other; at her lostness and anger; and at her skin turning "gummy as clay"[10] and her nose "slid[ing] around on my face"[11] as her "eyes drip down to my chin,"[12] the reader is prepared to go along with Williams's entirely unironical characterization of herself as crazy. Why should one enter a world that sounds like a depiction of the special effects in the latest Arnold Schwarzenegger film, with eyes dripping and noses sliding?[13] Does Williams mean the reader to take this seriously? To be embarrassed? Sympathetic? Overwhelmed by her self-absorption dressed up as candor and self-denial?

Williams batters the reader incessantly with reports on her headaches and disintegration and desire to "give birth to myself."[14] She insists that writing for her is a self-depleting act of surrender, a kind of martyrdom to principle and to a vaguely public persona. One doesn't know how to treat this text. Is it a clinical document, a self-confessional outburst, a candid exposé about what "really" goes on in legal argumentation once one blows off all that froth about rules and evidence, an attempt at critical theory, a polemic about race, or all or none of the above?

The special-pleading is relentless in such passages as the following: "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."[15] The reader who refuses is no doubt cold and heartless.

This much is certain: if one disagrees with Williams, one becomes a racial and political suspect. For disagreement can only arrive via the dubious transport of narrow interest and false-con-

---

8 *Id.* at 208.
9 *Id.* at 209.
10 *Id.* at 228.
11 *Id.*
12 *Id.*
13 *See* TERMINATOR 2 (Carolco 1991).
14 WILLIAMS, *supra* note 5, at 183.
15 *Id.* at 92.

sciousness. She writes her own composite version of the rejection letters she has received, describing this handiwork as a "carefully crafted"[16] representation of "rejection after rejection after rejection."[17] All of them indicate the refusal of others to grant Williams the privilege she claims.[18]

The upshot is that what any text, or exchange, or encounter, or event means is what Williams takes it to mean. She tells the reader that the "subject position is everything," is all; one cannot get beyond it. This suggests a world of infinitely clashing regress, of my particularity and "subject position" versus yours, as we babble away *at* each other until one of us gives way by "fessing up" that one hadn't *really* understood what was going on because one hadn't sufficiently plumbed the depths of one's own dubious and distorted position—if one is white, or male, or unself-consciously (read: falsely consciousness and) black.

In the name of the subject position, Williams aims to trump all other voices. Her subject position gives her entrée into what everybody else is thinking and why. She has the power to divine motivation. Take, for example, Williams's account of an encounter with a couple, their five-year-old child, and a wolfhound. She presumes that a creature she calls a "slathering wolfhound"[19] would perceive a little boy as looking "exactly like a lamb chop"[20]—this in a story about a couple telling their child that there is no real difference between a big dog and a little dog; they are all just dogs. Williams takes this as an instance of the imposition of inappropriate categorization by adults, in this case parents, on a child. She assumes the subject position of the "slathering wolfhound," meaning, it appears, that she can transmogrify herself into nonhuman creatures and tell us what the world looks like for them.[21]

In another encounter, Williams assumes the position of a student in one of her classes who disagreed with her. This student, she insists, was threatened by the class discussion. Williams puts words into the mouth of the student identified as "B.": "She was saying: haves are entitled to privacy, in guarded, moated castles; have-nots must be out in the open—scrutinized, seen with their

---

16 *Id.* at 214.
17 *Id.*
18 *See generally id.*
19 *Id.* at 13.
20 *Id.*
21 *See id.*

hands open and empty to make sure they're not pilfering."[22] Once again, Williams translates another person's comments into a very specific code of her own, assuming that her translation is *their* subject position.

Students who resist her perorations about the failure of American public policy to guarantee "rights to food, shelter and medical care"[23] become edgy. "They growl with a restless urge to go shopping."[24] This latter claim is almost hilariously ironic to any reader who perseveres with Williams's text. Williams admits that she "love[s] to shop."[25] In fact she is an obsessive shopper and the reader spends quite a bit of time with her in upscale clothing stores.

Encountering a homeless man lying on a subway bench, Williams first thinks that he is dead, but then convinces herself that he is just sleeping. She then looks at another passerby who has also seen the homeless man. She tries to "flash worry" at the passerby.[26] But instead her look gives the passerby the reassurance (which Williams somehow knows the passerby was seeking) that the homeless man is just sleeping. "We looked at each other for confirmation that he was not dead; we, the grim living, determined to make profit of the dead."[27] Thus Williams and the passerby spiritually "murder" the homeless man. Perhaps the recognition that the homeless man was just sleeping could yield relief, but that would be far too mundane for Williams, who is compelled to up the ante in every discussion. A harsh word becomes a batter; a glance a form of murder.

One final example for now: Williams talks frequently about how keenly she seeks the approval of others and how crushed she is when that approval is not forthcoming. In one of her shopping examples, she excitedly depicts her complicity with some clerks in a store who made comments about Jewish people. Williams was privy to their comments, she assumes, because they designated her as " 'not-Jewish.' "[28] In thus designating her, they "made property of me, as they made wilderness of the others. I became

---

[22] *Id.* at 22.
[23] *Id.* at 25-26.
[24] *Id.* at 26.
[25] *Id.*
[26] *Id.* at 27.
[27] *Id.* at 28.
[28] *Id.* at 128.

colonized as their others were made enemies."[29] She was construed by the clerks, and at least temporarily became, an "antisemite."[30] She both joined and recoiled from this complicity. "I left a small piece of myself on the outside, beyond the rim of their circle, with those others on the other side of the store; as they made fun of the others, they also made light of me; I was watching myself be made fun of."[31] On and on in this vein. Her subsequent response to an utterly minor incident—snippets of conversations, no more; for no one was denied service, no one was openly insulted, no one was subjected to abuse—is to become agoraphobic. As I suggested above, the text is melodrama translated as incessant hectoring.

For all the critical theory and post-modern gloss on Williams's self-conscious panoply of terms and approaches, what emerges is, to borrow James Boyd White's characterization of Chief Justice Taft's reasoning in the *Olmstead*[32] case, a "kind of blunt and unquestioning finality, as if everything were obviously and unarguably as [s]he sees them, and in doing this [s]he prepares us for the conclusory and unreasoned characterizations upon which the case ultimately turns."[33] White, in a way that is cannily apropos to Williams's text, continues: "[Taft] makes a character for himself in his writing and then relies upon that created self as the ground upon which his opinion rests. This character . . . is that of a simple, even simple-minded, authoritarian."[34] Williams is not simple-minded by any means. But her mode of argument as overpersonalized fiat and her attack on tests of reasonableness and the "burden of proof" in law[35] pave the way for more, not less, coercion; for authoritarianism rather than an ongoingly contested and contestable rule-governed authority.

If, to Williams's unargued stance of epistemological privilege, one adds her overblown and overwrought prose, lurching between the perplexing and the obfuscatory, the melodramatic and the grandiose, peppered with occasional flashes of insight and power, one has but two choices as a reader. One can completely surrender in the name of solidarity that Williams couches

---

29 *Id.*
30 *Id.*
31 *Id.*
32 Olmstead v. United States, 277 U.S. 438 (1928).
33 James B. White, *Judicial Criticism*, 20 GA. L. REV. 835, 852 (1986).
34 *Id.* at 852-53.
35 *See infra* notes 50-64 and accompanying text.

in new-age quasi-therapeutic language about the self becoming or transforming itself into the other or some part of the other. Alternatively, one can keep an explicit and reasoned critical distance which one knows in advance that Williams will label cruel and unsympathetic; racist or sexist; the reiteration of hegemonic privilege; an unacknowledged fear of confronting the other—the whole panoply of bullying tactics being used these days to enforce conformity in the name of openness.

Because Williams's text presents no sustained argument, it cannot be taken up in the usual way. She tells us that her book is " 'about the jurisprudence of rights . . . . I will attempt to apply so-called critical thought to legal studies . . . . My book will concern itself with the interplay of commerce and constitutional protections and will be organized around discussion of three basic jurisprudential forces: autonomy, community, and order.' "[36] Now *that* might have been an interesting book. But there are, in fact, no apparent organizing features of the sort that autonomy, community, and order would bring to a discussion of the Howard Beach case, say, or the Tawana Brawley hoax, surrogate motherhood contracts, and other political and legal matters that Williams takes up. She discusses these matters to *display* the superior sensitivity and fusion of "theory and praxis" she claims *for* her approach, rather than showing us, straightforwardly, the entrée her collapse of the personal into the political affords that no other theory, or method, or epistemology can.

Rather than a philosophy, she treats the reader to a potpourri—a document informed, she says, by "psychology, sociology, history, criticism, and philosophy."[37] But none of these complex disciplines and modes of discourse is a unitary and uniform entity. She most definitely is *not* informed by analytic philosophy, nor moral philosophy (save a wholly unaware commitment, on her part, to what comes down to act utilitarianism of the most brutal sort), nor natural right and natural law, nor cognitive structuralism, nor a whole list of other possibilities.

Acknowledging that there will be gaps in her writing, she asks the reader to fill them in as "an act of forced mirroring of meaning-invention."[38] This is a fancy way of saying one is stuck in a self-contained mimetic universe, hardly the most propitious

---

[36] WILLIAMS, *supra* note 5, at 5-6.

[37] *Id.* at 7.

[38] *Id.* at 8.

beginning for any critical vantage point that might help us come to grips with the genuine and not necessarily compatible normative choices that this culture, and law as a constitutive feature of this culture, place before us.

For Williams wants to forge a connection between quivering psyches—hers and her reader's. It is perhaps useful to remind her that the world is much wider, deeper, and more mysterious than that. It is filled with intractable stuff, concrete entities and stubborn realities, veils as well as mirrors, all sorts of people with deeply ingrained predispositions, structures of power and authority that both constrain and enable; much more in heaven and on earth, in other words, than is dreamt of in her mapping of self *onto* the world as if that, taken neat, constitutes a politics.

It is really no argument at all to proceed, as Williams does, by fiat. She proclaims that Anglo-American jurisprudence is a cold and abstract affair, dominated by the "hypostatization of exclusive categories and definitional polarities";[39] by the "existence of transcendent, acontextual, universal legal truths or pure procedures."[40] By contrast to this she offers a first person privilege—her experience, her subject position, as if that in itself was the incorrigible truth of the matter.

With nearly as much vehemence as she proclaims her own slippage into craziness, she belittles the very notion of objectivity and even the remotest possibility of offering up general rules for assessment and adjudication. All this is blasted as the sin of unemotionality and impersonality, part of what she casually refers to as "men's ways of knowing."[41] The fact that Martin Luther and John Stuart Mill or, for that matter, Adolf Hitler and Mahatma Gandhi, seem to have reasoned rather differently from one another does not compute in Williams's universe, although she bemoans the sin of bipolarity, *de rigueur* in much contemporary feminist criticism and endlessly repeated.

Minimally there is great irony in Williams's indulging in the by-now routinized incantation that assumes the existence of "male" versus "female" ways of knowing—itself an instance of bipolar thinking par excellence—and simultaneously thrashing those who engage in bipolar thinking. I will return to Williams's attack on

---

39 *Id.*

40 *Id.*

41 *Id.* at 13.

law itself below,[42] but first, more needs to be said about her manipulation of the subject position as a trump card in all arguments and a vehicle for self-promotion in the guise of an ideology of victimization.

Let me offer a flavor of how the text works these themes. Williams assumes that all blacks are affected by and afflicted with "social distress and alienation,"[43] a blight that infects all "oppressed people."[44] As both history and "an ongoing psychological force,"[45] she "must assume . . . lack of control, and ugliness, signify not just the whole slave personality, not just the whole black personality, but me."[46] "Me," of course, is the key term here. This "me" approaches a number of volatile instances of racial politics in a manner that closes space for alternative interpretations.

Williams assumes that all whites despise all blacks, whether they know this or not. The very "essence" of blacks is thereby defamed, for in a racist culture (our own) "blacks . . . are conditioned from infancy to see in themselves only what others, who despise them, see."[47] There are dominating powers abroad in the land promoting and protecting "child abuse, the mistreatment of women, and racism."[48] It is the "massive external intrusion into [the] psyche"[49] of these powers which "keep[s] the self from ever fully seeing itself."[50] Yet it is precisely *this* self, deformed, distorted, and defamed on Williams's own account, that has the power to understand the hostile other, a power reserved only for victims. From this stance, Williams pronounces on Howard Beach[51] and the Brawley[52] case in ways that either flatly ignore, or

---

42 *See infra* notes 62-69 and accompanying text.

43 WILLIAMS, *supra* note 5, at 10.

44 *Id.*

45 *Id.* at 221.

46 *Id.*

47 *Id.* at 62.

48 *Id.* at 63.

49 *Id.*

50 *Id.*

51 In the Queens neighborhood of Howard Beach, white youths assaulted three black men. One was chased onto a busy parkway where he was hit and killed by a passing motorist. This occurred in 1986 and the incident led to racially charged claims and counterclaims.

52 In 1987, Tawana Brawley, a fifteen year old black girl, claimed she had been kidnapped and raped by a white gang. She alleged that the gang included law enforcement officers, one of whom was Dutchess County

contemptuously dismiss, empirical realities and evidence.

She decides that when the residents of Howard Breach defended their community, not necessarily exculpating those charged with the crime, but asserting that their *entire* community should not be condemned and judged as racist, their defense really amounted to nothing more nor less than the propositions, "No one here has a black friend,"[53] and "No white would employ a black here."[54] Both these statements are open to scrutiny and verification. They turn out to be false. Blacks were employed in Howard Beach establishments and these establishments were frequented by at least some black customers, including locally prominent officials, on their own account.[55]

Now Williams may find this trivial. She has bigger fish to fry. But in running roughshod over the particularity she claims to cherish by overstating the degree of racial segregation in this situation, she contributes to the cycle of racially charged proclamations of guilt versus innocence, of domination versus victimization. She joins hands with others determined to cast everything in terms of white racism. Ironically, this casting leaves "blacks the victims not only of whites but also of one another, just as whites' casting everything in terms of the black threat subtly

---

assistant district attorney Steven Pagones. The charges turned out to be part of an elaborate hoax. Brawley perhaps started the story herself to cover up a messy personal and family situation, but the story was then taken up by unscrupulous militants and turned into a symbolic affair that was somehow "true" even when it was discovered that the story was a hoax.

53 WILLIAMS, *supra* note 5, at 59.

54 *Id.*

55 *See* JIM SLEEPER, THE CLOSEST OF STRANGERS: LIBERALISM AND THE POLITICS OF RACE IN NEW YORK (1990). Sleeper's text offers what Clifford Geertz might call a "thick description" of the Howard Beach situation, enabling the reader to sort out the maze of conflicting injuries and claims. This stands in remarkable contrast to Williams's wholly abstract, removed treatment of the case. Sleeper's thorough descriptions include details of white-black interaction in Howard Beach. *Id.* at 18, 70, 139-40, 184-88, 202.

For example, Dominick Blum, whose car struck the victim Michael Griffith, was accused of somehow being a "racist accomplice." *Id.* at 184. In fact, Blum was driving on the freeway after having "just dropped off a fellow black actor," who was a member of his own acting company. *Id.* Also, one of the young men charged in the case, Jon Lester, had been friendly with a number of black officials. *Id.* at 196. Sleeper notes that "black attorney Charles Simpson . . . Congressman Ed Towns, . . . City Council member Priscilla Wooten" were among Lester's friends. *Id.* Lester had also dated a black girl. *Id.* at 70.

alienates whites from one another by grounding their alliances in fear."[56] One wouldn't know, from Williams's discussion, that a group of young white men were found guilty and given tough sentences.[57] But isn't that the most important outcome, after all?

Williams's handling of the Brawley case does acknowledge the manipulation of Brawley by her unscrupulous handlers. But Williams cannot bring herself to similarly acknowledge the depth and extent of the hoax and the real harm, including an apparent suicide, that it visited on those falsely and cynically accused.[58] For Williams, it suffices to claim that Brawley was "the victim of some unspeakable crime. *No matter how she got there. No matter who did it to her—and even if she did it to herself.*"[59] Even, Williams declares, if Brawley injured herself, "[h]er condition was clearly the expression of some crime against her, some tremendous violence, some great violation that challenges comprehension. And it is this much that I grieve about."[60] Brawley was the victim of a "metarape."[61] This is a breathtakingly dangerous argument that, with one sweep of what Williams takes to be the critical theory pen, eliminates such nagging matters as evidence and the burden of proof.

Consider the following: Williams writes of "the evidentiary rules *of* legitimating turf wars."[62] Notice the work "of" has to do in this statement. The burden of the discussion is to delegitimize evidentiary rules by connecting them via "of." Evidentiary rules are finally about nothing but this preposition; about nothing but legitimating forms of dominance and power. This would seem to indicate that, depending on one's subject position, evidentiary rules can be dispensed with for what they are: a real pain in the neck. And this is precisely the move Williams makes by speaking

---

56 *Id.* at 188.

57 Most of the young men were found guilty on second-degree manslaughter charges. *See Transition*, NEWSWEEK, Feb. 22, 1988, at 38 (noting length of sentence of one of three teenagers convicted in Howard Beach attack). Their sentences ranged to the maximum, 10-15 years. *See id.*

58 For details on the hurling of unsubstantiated and, finally, false charges, see SLEEPER, *supra* note 55, at 18, 203-04, 206-07, 315-16. For certain left-wing conspiracy theories supporting the charges, whether they were true or not, see *id.* at 254-59. Sleeper also includes a bibliography of opinion magazine coverage of the case. *See id.* at 329.

59 WILLIAMS, *supra* note 5, at 169-70 (emphasis added).

60 *Id.* at 170.

61 *Id.* at 176.

62 *Id.* at 67 (emphasis added).

of "the real burdensomeness of proof in such cases."[63]

The entire tradition of "innocent until proven guilty" assumes that proof *must* be burdensome; it is required to be. The burden is designed in part to protect those without coercive power from the caprice of those who have it and are prepared to use it. Williams, however, gets this pesky feature of the common law tradition out of the way by declaring that "social life is based primarily on the imaginary" in any case.[64] We must place our faith in some "true self," in our own experiential knowledge, not in rules and procedures and standards of fair play.

This, of course, is a real muddle. Here Williams assumes a true or essential self—in the case of women and blacks an " 'intuitive,' " hence "real," self by contrast to the abstractions of white males.[65] This ontological claim is difficult to square with her stated commitment to perspectivalism, but leave that aside for the moment. More problematic, going unargued and simply claimed, is her declaration that social life is based "primarily on the imaginary." What can this possibly mean?

Rather than helping us understand what is at stake, Williams trails off into the ether of abstraction without any solid, concrete grounding at all. Nevertheless, she relies on such murkiness to argue that it is "the imaginary" which permits dramas like Howard Beach or the Brawley case to unfold. Forget class. Forget history. Forget social context. Forget racial politics, save as a "meta" drama. Forget economics. These are indeed burdensome. Far easier to attack yet embrace essentialism; to attack the notion of "objective meaning" yet to claim for one's own position an absolute epistemological privilege for "subjective preference."

Standards get reduced to "socially accepted subjective preference."[66] This means, of course, that there is no possible way to make qualitative distinctions other than to simply lurch for whatever it is one "feels" is true. And when Williams "feels" something is true, she is prepared to call upon the sort of data she otherwise rules out of court.

For example, she opposes the Supreme Court decision *City of Richmond v. J.A. Croson Co.*[67] because the Court described situa-

---

[63] *Id.* at 67-68.
[64] *Id.* at 63.
[65] *Id.*
[66] *Id.* at 99.
[67] 488 U.S. 469 (1989).

tions for which there was "clear, hard statistical data"[68] as "inherently unmeasurable."[69] Yet just a few pages before launching this demand for adjudication on the basis of measurable evidence, she resists the notion that evidence counts for anything by lambasting the evidence that the percentage of crimes committed by young black males is higher overall than the percentage of crimes committed by young whites.[70] This *is* a fact,[71] one requiring scrutiny and interpretation. If one even cites it, however, one risks that Williams will call one a racist, or, perhaps better put, that Williams will say that one manifests the racism that is assumed to be "there" as constitutive of the self if one is white in a "racist society."

Where, finally, does she leave the reader? Williams holds forth as what might be called her positive case an attack on privatization together with an occasional, if sporadic, celebration of rights. She questions rights talk from her critical theory, subjective perspective insofar as it fits into what she considers to be an unwarranted argument for privacy.[72] Yet this challenge to rights talk is hard to square with her support for the reasoning in *Roe v. Wade*,[73] which privatized the matter of abortion.[74] Similarly, she taxes a thinker who claims that children *lack* rights even as Williams herself clamors against privatization as a form of what might be called the desocialization of the self.[75] But to construe children as free-standing juridical subjects is explicitly to wrench

---

68 WILLIAMS, *supra* note 5, at 105.

69 *Croson*, 488 U.S. at 506.

70 *See* WILLIAMS, *supra* note 5, at 73-74.

71 The text reference to crime is per capita, violent crime by blacks being the most destructive *to* black communities. *See* WILLIAM J. WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY (1987) (discussing destructive effects of crime in black communities); Cornel West, *Nihilism in Black America: A Danger that Corrodes from Within*, DISSENT, Spring 1991, at 223 (same). Williams cites aggregate statistics: more whites in any given year are arrested than blacks. WILLIAMS, *supra* note 5, at 73. But the important feature for political and legal purposes is the *percentage* of young black men entangled in the criminal justice system by contrast to their white cohorts. This is a terrible, pressing tragedy, and proclamations about "white collar" crime do nothing to restore communities ravaged by violence.

72 *See, e.g.*, WILLIAMS, *supra* note 5, at 36, 141.

73 410 U.S. 113 (1973).

74 *See id.* at 154 ("We . . . conclude that the right of personal privacy includes the abortion decision . . . .").

75 WILLIAMS, *supra* note 5, at 35.

them from the contexts of family and community; it is to desocialize their lives. Nowhere does Williams explore the tension between her endorsement of rights and her condemnation of privatization. Nowhere does she take on the whole question of rights discourse with the comparative and philosophical depth of, say, Mary Ann Glendon.[76]

Williams's world is a world of injuries, claims, and counterclaims stripped of any talk about responsibility. She rises to heights of genuine murkiness in depicting affirmative action as being "as mystical and beyond-the-self as an initiation ceremony. It is an act of verification and vision, an act of social as well as professional responsibility."[77] Mystical? Beyond the self? Affirmative action is a public policy. But how can one even begin to discuss it cannily and wisely and politically if it is a mystical, "beyond-the-self" entity? To even raise questions about affirmative action, its benefits, its weaknesses, its necessity, and so on, must needs be an assault tantamount to religious apostasy if one accords it a metaphysical status. The way to critical, open dialogue is once again blocked; alternative possibilities are once again occluded; judging from self-privilege is once again affirmed. Consider the alternative view of black possibility and responsibility noted by Stephen Carter:

> We must never lose the capacity for judgment, especially the capacity to judge ourselves and our people. We can and should celebrate those among us who achieve, whether in the arts or in the professions, whether on the athletic field or the floor of the state house, whether publicly fighting for our children or privately nurturing them; but we must not pretend that they are the only black people who make choices. Standards of morality matter no less than standards of excellence. There are black people who commit heinous crimes, and not all of them are driven by hunger and neglect. Not all of them turn to crime because they are victims of racist social policy . . . . We are not automatons. To understand all may indeed be to forgive all, but no civilization can survive when the capacity for understanding is allowed to supersede the capacity for judgment. Otherwise, at the end of the line lies a pile of garbage: Hitler wasn't evil, just insane.[78]

Eschewing judgment as a serious reflective activity, and choos-

---

[76] *See generally* MARY ANN GLENDON, RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE (1991).

[77] WILLIAMS, *supra* note 5, at 121.

[78] STEPHEN L. CARTER, REFLECTIONS OF AN AFFIRMATIVE ACTION BABY 244-45 (1991).

ing instead an overdramatized and hyperbolic lurching in entirely predictable directions, Williams celebrates rights in a manner that locates them in a metaphysical *cordon sanitaire*, what might be called a zone of mystification. Rights are "deliciously empowering,"[79] the "regard for another's fragile, mysterious autonomy,"[80] a "reflection of the universal self."[81] Rights must not be discarded, not because they are central to our legal tradition and history, not because they provide for immunities by persons against the depredations of governments, not because they are essential to political identity and standing, but because they are a symbol "too deeply enmeshed in the psyche of the oppressed to lose without trauma . . . ."[82] Therapeutized, psychologized rights become the coin of the realm in a verbal potlatch that Williams unleashes. Instead, "[S]ociety must *give* them [rights] away. Unlock them from reification by giving them to slaves. Give them to trees. Give them to cows. Give them to history. Give them to rivers and rocks. Give to all of society's objects and untouchables the rights of privacy, integrity, and self-assertion; give them distance and respect."[83] It is not at all clear what rights might mean for rocks, nor, for that matter, for history, which exists as tens of thousands of texts.

But consider just how astonishing and flimsy is her formulation of the question. *Give* rights away? Society must do this? Society is not an agent. What institutions of society are to engage in this bargain-basement dispensation? Perhaps we are not supposed to think of matters so pointedly, with so much attention to divers and various powers, limits, and possibilities. Perhaps we are supposed to join Williams in an evanescent dream world. I prefer to stay on terra firma.

Williams is no doubt a rather extreme case of the more common current tendency to disparage laws and rules as nothing but concatenations of coercive force. That is, Williams does this when she isn't granting them supernatural, quasi-mystical status as in the matter of affirmative action.

Another tendency, one that shows up nowadays in feminist scholarship more frequently than elsewhere (although feminism

---

79 WILLIAMS, *supra* note 5, at 164.

80 *Id.*

81 *Id.*

82 *Id.* at 165.

83 *Id.*

is by no means uniform on this or any other matter), is to contrast rules and laws with the assumption "that the human voice is natural and genuine—the 'real thing'—and that formal rules and doctrines are contrived, artificial, and heedless of the human experience of the parties."[84] But as Yudof insists, the "urge to conceptualize and to generalize is as 'natural' as the urge to be concrete and to speak in ordinary human terms. . . . I believe that conceptualization and ordering *are* natural, indeed inherent in the human voice, which can be heard or can exist only through a mental structuring of experience."[85] There is, as critical theorists themselves insist, no pure, preconceptual human voice or experience; no "essence" of the self of the sort Williams calls up and then calls upon to speak to the truth of her subject position: the feeling, intuitive truth by contrast to the cold mechanisms of formal structures.

The danger in the notion that we can strip away rules and evidence and the "burden of proof" is, as I suggested above, that it opens us up to more, not less, coercive and naked force. It tends toward caprice, and that is incompatible with equal treatment as a flawed but vital ideal. Again, Yudof:

> But the law and the professional voice also must accommodate, however imperfectly, the concerns of ordinary persons and their human voices. There is no reason to assume that they fail in this accommodation, that legal rules and doctrines ignore or are antithetical to genuine human voices, or that their articulation overlooks and trivializes basic human needs and values.[86]

If Williams were consistent in her empathetic celebrations; if she granted respect to the subject position of others, her repetitious screed might be more defensible. But she is, in fact, contemptuous and patronizing—when students and colleagues disagree with her, when people fail to snap to attention and concur absolutely with her judgments, when parents reassure a child about a dog, even when people revolt against years of imperial suppression to seek freedom. Her throwaway comment on an entire region and its people, smuggled in with the story of her early morning decomposition and intimations of craziness, is that "Eastern Europe wants more freedom in the form of telephone-answering machines and video cassettes."[87] I daresay that Vaclav

---

84 Yudof, *supra* note 4, at 591.

85 *Id.* at 592.

86 *Id.* at 603.

87 WILLIAMS, *supra* note 5, at 4.

Havel and all the others who paid the price for their advocacy of political freedom would scarcely recognize themselves in this condescending pronouncement. If memory serves, there was nothing in the judgment against him and all the other dissidents and gulag prisoners and exiles over all the years that suggests they were imprisoned, beaten, starved, tortured, and ostracized because they had the audacity to demand telephone answering machines. One so cavalier about the quest for political freedom by those who lack it is surely not the best defender of rights or any other precious, complex, and contested idea.