“FICTIONAL VISIONS”: AUTOBIOGRAPHICAL REFLECTIONS ON RE-READING THE ALCHEMY OF RACE AND RIGHTS

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I read Patricia Williams’ seminal book for the first time well before I understood its significance or had ever contemplated that I would one day aspire to law teaching myself. At the time, I was struck by its simultaneous playfulness and rage, Williams’ seemingly effortless balancing of critique and aspiration, and her enunciation of a politic approaching not merely hope, but grace. I had just made my first tentative forays into the realm of Critical Legal Studies, and found myself both buoyed and humbled by Duncan Kennedy’s exhortation that “[w]hat is needed is to think about law in a way that will allow one to enter into it, to criticize it without utterly rejecting it, and to manipulate it without self-abandonment to their system of thinking and doing.”

I had gone to law school as a young activist dissatisfied with the state of social movements, never expecting that my years of legal education would dovetail exactly with the rise and decline of the anti-globalization movement. In the fall of 1997, while I sat buried in casebooks during my first semester at Osgoode Hall Law School, my comrades in Vancouver were on the receiving end of what would become known as ‘PepperGate’, as protesters against the Asia Pacific Economic Cooperation meeting, already fenced off from the sight of APEC delegates, were doused in a river of pepper spray. Four years later, some of the last weeks of my articling term were spent in Québec City providing legal support for the hundreds of demonstrators arrested protesting the Summit of the Americas, caught up this time in a river of tear gas. In between, I enviously watched coverage of the now-infamous Battle of Seattle in the staff room of the community legal clinic where I spent my second-last semester as a JD student and wrote a family law take-home exam on the weekend of A16, as the demonstrations against the IMF and World Bank meetings in Washington, DC became known.

‘Law’ was everywhere and far more often than not, it was the site of harm, inequality, injustice. Law was visible in the force of state power unleashed on protesters as well as the framework of neoliberalism being constructed behind the barricades, juridically reinscribing a global order inextricably shaped by the legacy of colonialism. Despite my organizing experience, and an undergraduate degree in Political Science, it was in law school that I seriously grappled with the politics unveiled by the burgeoning movement taking over the streets of the global north. The global justice movement (this change in nomenclature itself signalling a political shift) sharpened existing ideological and strategic divisions among progressives – between liberalism and radicalism, but especially between proponents of ‘diversity of tactics’ and advocates of strict non-violence – and made them suddenly urgent, if not as dispositive, or even crucial, as we hoped. In hindsight, my grasp of these praxes of resistance was

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shaped as much by my participation in the global justice movement as by critical legal theory and two formative stints in clinical legal education. Ultimately, however, the sum total of these experiences left me deeply ambivalent about the lawyer role I now inhabited, wielding a tool that had seemed so promising and now felt so compromised, if not ineffectual.

I recall only a nascent recognition that the core of my ambivalence concerned the notion of rights. As I entered private practice – in criminal defence and constitutional law – I saw the limits of the Charter of Rights and Freedoms laid bare almost immediately and I struggled to not fall victim to what appeared to me to be the ultimate crit failing, the sin of ‘nihilism’. I turned, not for the last time, to The Alchemy of Race and Rights, seeking a way out of the contradictions these tumultuous years had highlighted for me. As I continued my baby steps toward full lawyer-dom, I found myself in courtrooms full of overwhelmingly non-white accused, in a province ruled by a neo-conservative government with a body count, the deaths of Dudley George and Kimberly Rogers marking the boundaries – legal and extra-judicial – of law enforcement. In this context, Williams’ argument that to be “unrighted is to be disempowered, and the line between rights and no-rights is most often the line between dominators and oppressors” resonated, despite my growing disenchantment with rights discourse and practice.²

I began preparing for my bar exams in September of 2001. In the immediate aftermath of the events of that month, those words resonated anew, taking on an ever increasing salience in light of both the emerging legalized lawlessness of the ‘war on terror’ and the demise of the global justice movement. As once-bourgeoning dissent was criminalized or defused into symbolic but ineffective anti-war mobilizing, I was called to the Bar of Ontario a few months later, in early 2002. I had already moved, temporarily it turned out, to San Francisco, where I worked in a Tenderloin storefront, assisting homeless veterans (the vast majority of them men of color), claiming medical and other benefits from the Department of Veterans Affairs. Nearby, the federal building looming over the sidewalk homes of my clients grew increasingly fortress-like as the war on terror further demarcated categories of exception, exclusion and risk, within and beyond the borders of the United States. A decade of organizing and critical pedagogy had left me skeptical of claims that 9/11 had suddenly changed everything,³ and yet the present moment suggested a turn away from the emancipatory trajectory described by Williams:

For the historically disempowered, the conferring of rights is symbolic of all the denied aspects of their humanity: rights imply a respect that places one in the referential range of self and others, that elevates one’s status from human body to social being.⁴

After only a few years of practicing law, I found myself in grad school, writing a master’s thesis exploring that very turn: why, I asked, were the guarantees of the Charter in national security cases so contingent, so inextricably drawn along historically-derived lines of origin, allegiance, and (non-)citizenship? Why did rights offer such a limited mode of resistance against sovereign power? In concluding that the terrains of rights, territory and security were political categories open to disruption,

³ See e.g. Obiora Okafor, “Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective” (2005) 43 Osgoode Hall LJ 171.
⁴ Williams, supra note 2 at 153.
re-definition and liberatory strategy, I took seriously Williams’ suggestion that “[w]hat is needed, therefore, is not an abandonment of rights language for all purposes, but an attempt to become multilingual in the semantics of evaluating rights.”

Most recently, I have been writing about my experiences during and after the Toronto G20 summit of 2010. In my reflections on both providing legal support for activists and teaching a seminar on law and social change, I confronted once again the phenomenon whereby people harmed, marginalized and/or oppressed by law and the state looked to those same institutions for redress and reform. Rights remain at the core of this problematic, (il)legality, (un)constitutionality, human rights and civil liberties having been the dominant measures for evaluating expressions of opposition to the G20, but I struggled to marshal the insights of critical legal theory as pedagogical tools. I borrowed from internationalist arguments about shaping, defending and historicizing resistance, but ultimately, accounting for that chaotic week, especially for the police violence and state malfeasance, required a step back and once again, I drew on The Alchemy of Race and Rights. Our ability to interpret laws, wrote Williams, is not so unrelated to our navigation, our endurance of everyday injustices: “not merely a rationalization but an imposition of order – the ironclad imposition of a world view requiring adherence to fictional visions cloaked in the comfort of familiar truth-denying truisms”. Our fictional visions weren’t the same but they arose from the same dissonance and a seemingly shared pedagogical instinct, and once again, I was grateful.

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6 Williams, supra note 2 at 149.
7 Ibid at 28.