

Race, Labor, and the Law: A Conversation with Patricia Williams

by Drucilla Cornell

Patricia J. Williams is a Professor of Law at Columbia University and a regular columnist for *The Nation* magazine. After graduation from Wellesley College in 1972, she earned a law degree from Harvard. She then worked for three years in the Office of the City Attorney in Los Angeles and as a staff lawyer at the Western Center on Law and Poverty in 1978-80. Professor Williams has been on the faculty of the University of Wisconsin School of Law, City University of New York Law School, and Golden Gate University School of Law. She was a visiting professor of women's studies at Harvard, a visiting professor of law at Stanford University, a visiting scholar at Duke University and at Stanford's Institute for Research on Women and Gender, a fellow at the School of Criticism and Theory, Dartmouth College, and a fellow at the Center for Advanced Study in the Behavioral Sciences. She has published widely in both scholarly journals and the press in the areas of race, gender, and law, and on other issues of legal theory and legal writing. Her books include *The Alchemy of Race and Rights: The Diary of a Black Law Professor*, *The Rooster's Egg*, and *Seeing A Color-Blind Future: The Paradox of Race*. Last November in New York City, she spoke with Drucilla Cornell.

Q: You were one of the leading participants in the big Columbia University labor teach-in of 1996, which led to the creation of Scholars, Artists, and Writers for Social Justice (SAWSJ). Do you think that today there is the potential for a new and useful alliance between unions and progressive academics?

PW: I hope so. I've always thought that there is a role for academics, for people who are perhaps too glibly described as the non-working force. No, I think that academics have such a powerful role historically at any rate in shaping political ideology or in describing certain movements to the media and presenting it in ways that make it intellectually compelling that, of course, we should be there. And of course we have always been there. The idea of making more formal interventions or having more formal alliances, after a period in which those connections have become weak — I don't think it's a new thing, it's just perhaps the resumption in a

more public forum of an alliance that's always been there. Or perhaps a new underscoring in a time where there's a certain attack on both labor movements and civil rights laws, and a kind of anti-intellectualism that says that academics are the new enemy.

Q: AFL-CIO President John Sweeney spoke at the Columbia event of building a renewed labor movement with new organizing efforts and new coalitions with community groups and academic allies. Three years later, are your hopes as high as then that such a renewal will succeed?

PW: I'm a very hopeful person. I always think there's hope. But I also think that circumstances make it almost impossible for there *not* to be a renewed labor movement. The global economy, the forthright broadside attack on civil rights and labor rights and human rights globally, a sort of corporate conformity and new bottom-line econometric cost-benefit analysis of all of humanity have certainly roused the labor movement. And not just here but throughout the world. I think we'll see some crisis provoked by the actions of global economics, whether organized or disorganized. And my great hope is that it's better organized because that's more constructive.

Q: The reality of unions seems to have come home to universities. We now have nearly half of university teaching being done by part-time, adjunct instructors. Many of these adjuncts are minorities, as are other low-paid university staff. Do you feel that more union organizing within universities should be high on the agenda of a new labor-academic alliance?

PW: I see it as necessary. I also think that, within many of these academic institutions, that movement is still relatively invisible to the academics themselves and to administrators generally. That may be felt as more of a force and I see it as necessary, but I also see it as still very much in its early stages, in terms of its impact.

The relationship of the progressive movement and the labor movement in particular to the issue of race came home to me not long ago when I was overhearing a conversation between a couple of people whose faces I couldn't see. I was on the other side of a billboard actually. And one man said: "We progressives, we really have a lot of issues that are central and people are sympathetic with, but if we are so insightful, how come nobody's listening. How come there's not more movement going around these issues? Why can't progressives' agenda advance itself better?" And, the other voice said: "Well, I was just listening to Cornell West the other day and he was saying..." And the first voice said: "I'm not talking about black issues, I'm talking about the progressives' agenda. I'm not talking about race, I'm talking about progressives."

And it struck me that this is a real division, particularly among older progressives. The labor leaders or activists of a generation or two ago are still (even when very good-hearted) pretty dichotomized in terms of their analysis of race issues *over here* and the progressive agenda *over there*. And if you look at the issues that have really galvanized the progressive agenda for the better part of this century — including labor, health issues, a whole host of issues like that — what's interesting is that labor now is largely black and Latino, new immigrants. But, those who are considered progressives somehow are still very few in number, perhaps not connected, not listening to that force. The idea that somehow progressives aren't anywhere really ignores the extent to which the progressive causes are now being racialized. I think that the right has been very effective at racializing an issue and therefore making it seem to some as though it's on the other side of that great boundary. So much of civil rights, including affirmative action, for women, for economic disadvantaged people — as a legal matter rather than simply as a pronouncement — as well as for racial and ethnic minorities is really being marginalized. It's made invisible or made to seem

the exclusive province of a kind of iconic image. Of Al Sharpton, for example.

Q: Affirmative action, whether in university admissions policies or in the job market, has been under fierce attack for some years now. How do you respond to critics' charges that it is unfair and/or unnecessary today?

P.W.: Again, the images of affirmative action like those propounded by Ward Connelly and others have consistently trumped the data about affirmative action. The actual analysis of affirmative action, in all but

a very few of its forms, has almost universally been ruled by judicial action of one sort or another to be fair, and been upheld. But these are not what the voting public by and large imagines them to be. As I've said many times before, the number of people who seem to feel they have been specifically dispossessed by a less qualified minority far exceeds the actual population of blacks, every man, woman, and child in the country!

And that sense of exaggeration it seems to me is part of the legacy of racism itself in that the fear of being taken over, the fear of greediness; of being undeserving in some sense, has a long history. Particularly where it outstrips actual data against ethnic

groups around the world. That phenomenon of sort of imagining that: "They're everywhere! They're everywhere!" I think we're not totally in control of the way in which new stereotypes are emerging against lower or working-class or middle-class or upper middle-class people of color who have made it, as a result of the civil rights movement, by virtue of affirmative action. And those stereotypes of being greedy, or being overreaching, of being take-over, far beyond the numbers, is one perhaps more familiar in the context of anti-Semitism. A lot of people then take these stereotypes with the idea that once you are within a certain class you cannot be the victim of racism because racism in the United States is all about



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poverty, or redescribe it entirely as class. That's like saying there's no anti-Semitism! It can exist across class levels although it's true it may express itself differently. That is, the racism directed against those at the lowest end of the socio-economic spectrum may be different than the racism expressed against middle-income or working class people. And we have to be really aware of that.

I think that the discussion of affirmative action is absolutely riddled with these new formulations, these hybrid forms of racism that take off on what might be more familiar in the anti-ethnic vocabulary of an earlier era. Again, the actual data of affirmative action shows that our country has been transformed and is much the better for it. Our police departments, our fire departments, and it isn't just at the highest levels that people have been integrated. In *The Rooster's Egg*, I write that just looking at the courtrooms, in the wake of O.J. Simpson or any of these publicized cases. The court security guards, Judge Lance Ito, Marsha Clark, Christopher Darden. These presences in the courtroom are all the product of affirmative action. All of this has happened very recently and the idea that affirmative action hasn't worked is simply not true. It has transformed our country in ways that we have lost track of. People are also sort of embracing this "huge," supposedly new, interracial marriage rate — which has gone up from 1 percent to 2 percent! Nevertheless, I'll celebrate it. It has doubled. The majority of that has to do with affirmative action, that suddenly blacks and whites and other ethnic minorities have integrated again. To a minuscule degree, but it has brought about changes, not just in the workplace but at the most intimate levels. And this is all for the good. We should have more, not less.

It's certainly true that if you're poor and African-American, you are shut out of lots of the goodies of American society in a way that is unparalleled, except for perhaps Native Americans on reservations. At the same time, the idea that therefore anybody who has a job never experiences racism, or that racism doesn't exist apart from economic discrimination is simply wrong-headed. Suspect profiling, for example, occurs across the economic spectrum. Look at the data that has come out about health and the treatment of everything from lung cancer to heart problems. Diagnostic heart tests were done using photographs of black and white patients with exactly the same statistics. It was clear that, regardless of socio-economic status, black people get (for whatever reasons, conscious or unconscious) lesser care and fewer recommendations for intervention even in deadly dis-

eases. If you look at the beauty industry, so to speak, and the marriage market: over and over again there is a sense evaluation that across those economic spectrums holds true. If you look at the housing market, it doesn't matter how wealthy you are — unless you're Oprah Winfrey or Michael Jordan and people can then brag they live next door — simply being black will by all sorts of overt banking calculations actually lower the value of the house in which you are trying to invest. And that is regardless of how much money is at stake or how wealthy the neighborhood.

Those are not just forms of racism, they're economically significant matters that overlap. Again it is not quite the same as somebody living in the so-called "underclass," but it is nevertheless significant. It is significant at every level of society. Take the glass ceiling for women. We have no trouble acknowledging it is a problem of gender discrimination. The glass ceiling for blacks, for Asians, and for various other categories of newly arrived Americans is significant. It is not the same thing as living in utter poverty or being homeless, but it is a significant socio-economic indicator that we ought to be aware of. When it's not an economic indicator it's also a significant social indicator. This is a way that all of our rights have become economized: you only have a right to buy enough bread and luxuries. The question of social participation remains an important one for me, as does the question of civil rights. The question of access, the ability to shop, the ability to walk down the street, the ability drive a car and so forth are questions of civil rights, having nothing to do with economics. They're about corporeal integrity, human integrity. And so I think all of those are significant.

The other thing is that, and I've written about this as well, when you compare Britain or any variety of other countries and the United States, it is true that we're a society that has prided itself on being classless for a long time. And this new embrace of the idea that "maybe we do have a class problem" strikes me as really disguising a lot of the old race issues. The language of class is now really being used as a new code for race. Race has become so hard to talk about and so filled with enmity and backlash that the new way to talk about it without fear of being accused of racism is to recode it, to restructure it as class. And so the underclass rarely is heard to mean white underclass or to include whites, the poorest whites. That's why I'm intrigued by a new book out by a white man from South Boston. At one point South Boston was described as one of the poorest pockets of white poverty in the country. He describes the way in which the society in

South Boston, while being the poorest pocket of white poverty in the country, still saw itself as superior even though it was having exactly the same problems — from drugs to single-family homes — as the black communities across town. But it was invisible even to themselves, even to those in that situation. They did not see themselves as part of any sort of underclass. So this class language is really quite racialized.

The other thing is the degree to which a black working class has been completely written out of our discussions. You have the black underclass and then you have the “fat-cat black middle class.” This is another class way of writing out a whole range of forms in which racial discrimination can be coded. The black middle-class then becomes the object of ill-gotten gain, undue benefits. They’re living above what they should, they need to be cascaded down, or whatever, both in educational settings as well as employment settings. And the actual existence of the black working class, whether it’s the messengers, the xerox operators, or the union activists, is almost entirely invisible on the national scene. And the black middle-class is everybody from the fireman who gets his job through affirmative action through Oprah Winfrey. In fact you do get Bill Cosby more cited as an example of the black middle class, zillionaire though he be, than you do of any sector of the real black middle class. The struggling black middle-class is just a paycheck away from dire circumstances.

Q: You have written approvingly of comedian Chris Rock’s comment that “Clinton is the first black President!” Why?

PW: As I recall, I also cited Toni Morrison. I believe the full quote of Chris Rock’s was: “Clinton hands the cashier a hundred dollar bill and they hold it up to the light to make sure it’s not phony!” At the height of the attack by the far right, there was a way in which the kind of scrutiny he underwent was to many blacks familiar as the kind of fine-tooth scrutiny that anybody in black public life routinely goes through. The sense that, if you haven’t done it, we’re going to insinuate that you did it. From post-Reconstruction forward, black people in public life have been under an extraordinary scrutiny that white politicians, white public figures, white public intellectuals simply wouldn’t be exposed to. There was a sort of gentleman’s agreement that no matter how egregious their behavior, no matter how many illicit children in the back, that wouldn’t happen.

One example is the FBI investigating the marital habits of Martin Luther King, while the public never really cared until some generations later about the marital infidelities of JFK. Or to the extent that they did care it was because he was an Irish Catholic president. The history of that sort of investigation is that it has always been aimed at people who are marked in some sense. Hence the sense of blackness being an ideological kind of mark. Although Clinton betrayed a lot of the causes that blacks thought he would stand by, many black people have felt that he was attacked precisely because, as one person put it, he’s the first president in history to have *actual black friends* — as astonishing as that is. The Secret Service was taken to homes of black friends when he was first elected. Now he lost many of those over time. But, the sense that he was perceived as being the kind of 60’s baby-boomer radical who hung out with the integrationists and that the people by whom he was being attacked had connections to the old white citizen’s councils was not lost on many in the black community. So I think that that’s really where that sense of connection comes from. Even as many people felt deeply betrayed that Clinton, under pressure, ran away from those alliances. It may feel contradictory but I also think that it’s not necessarily. You can countenance those two.

Q: Is affirmative action one of the issues on which Clinton can be seen as betraying African Americans?

PW: At moments. On the one hand, I think there was a great deal of support that he expressed for it time and again. But the questions are, I think, about the actual implementation. I think that the resistance he faced was extraordinary, unprecedented. I’m thinking of things like judicial nominations. There were a fair number (though not as many as we would have liked) of appointments of women, of minorities, of Latinos, of Asian candidates. More than at any time in history, including the court packing days of the Roosevelt administration, the judicial nominations process came to a blinding halt. That wasn’t Clinton’s fault.

On the other hand, Clinton squandered much of the power he had through, perhaps, not being aware. I think that’s where a lot of blacks also feel betrayed, because blacks, and black issues, and the ideological concerns of blacks have always been so scrutinized by their enemies. The idea of a Monica Lewinsky being able to bring down his credibility, when he almost seemed to have a degree of popularity that would have enabled him to bring many other things to pass,

feels unbelievably stupid. That he was not aware of how much he would be scrutinized — there are very few black politicians who wouldn't have been more careful or who wouldn't have ended their careers a lot earlier than the President of the United States.

One of the things that I haven't had the chance to write is an article that I wanted to call "Clinton's Other Women." It was to look at all of the minority women, in his administration, from Hazel O'Leary to Lani Guinier to Jocelyn Elders, who were under tremendous attack. And in fact any minority associated with the Congress, like Carol Moseley Braun. There's just been an enormous backlash against those people. And clearly there is the sense that, with such scrutiny going on at every move of everybody in his administration, how he could permit something like the Monica Lewinsky thing to happen, after Jennifer Flowers, after Paula Jones. All of this makes a lot of black people quite impatient with a man with enormous brains, such a smart man, and yet so deficient in other ways. Again, that dovetails with his lukewarm support for affirmative action because he lost a lot of his bargaining power.

Q: We are on the verge of a new century. On any or all of these issues, care to make predictions?

P.W.: Oh no, I'm not a futurist. I'm really not. I think that I'm very worried, however, that such enormous amounts of money are going into the concentration of certain kinds of powers that have been behind a certain agenda. For example, the media is so concentrated now. Media conglomerates have concentrated power and a certain kind of technology that far

exceeds what we've seen before. And so the squeezing out of certain faces and expressions of ideology from the major media is a great concern.

I'm perhaps too old to know how the Internet will affect that. But I also see the Internet being made into large webbed conglomerates as well. Right now there may be hope for low-wave radio. But now I don't know what will happen with the media. I guess I get concerned because the source of information for purposes of political activism and for electoral information is so driven by these same moneyed interests. I'm not going to be hopeful before something changes. I

see it getting not better but worse for at least a little while. So that's one of my principal concerns, the function of the media in discussion of these things.

I'm also concerned about, again, global capital being so powerful that it is able to overrule local norms and protections. Political battles that have been waged and successfully won in various locales now are being run over roughshod by the new globalism. That

is too bad. We will see where those protests go. It's generating many more protests in other parts of the world than it is here. So we'll see. And again one of the things that makes me a little tentative about it is that here it gets racialized. Black people fighting for affirmative action or black people making a lot of trouble claiming this or that, are not really seen as part of a labor movement but instead seen as minority malcontents. Over and over again, in place after place. This makes me a little worried about whether or not these new labor activists will be viewed as equivalent to the French farmer. An icon of the pure and the true that will make this heard in the American context.

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Q: Sometime in the twenty-first century, a major demographic shift is expected: non-Hispanic whites will no longer be a majority of the U.S. population. What impacts on all this might come from the growth of the Hispanic, Asian, and African-American populations?

PW: We'll see how that happens. A lot of people feel that this will change the dynamics altogether and I hope that is true. I hope that it makes us much more interesting, that it shakes up the power dynamics of whose in charge or who is not. The sense of shared power, of shared images on television in workplaces in schools will be challenged by this.

However, I'm not entirely optimistic that will be the case. There are some initial indicators showing that, after a generation or two, Latinos in those populations where it has happened have assimilated in the United States as either white or black and not as Latino. If the language is lost, then the sense of identity is no longer linguistic but a racial one of either white or black. Or it will be replaced by a certain kind of Latin American sense of identity — which still is a more layered one, but sort of resembles what we have also seen in this country before in parts of the deep South: a kind of social hierarchy of whites on top and of lighter skinned blacks or quadroons or so forth down the line in terms of a social hierarchy. If you look at television in Latin America, some of the advertisements are horrendous, much worse than you find in

the United States. The racism against dark-skinned people, even by light- or brown-skinned people is a force to be reckoned with. That's what I hope we don't find taking hold here.

That's no guarantee against new forms, again a hybridized racism. What's that famous quote? "If they didn't have the Jews, they would have to invent the Jews." There's this way in which old prejudices are part of a very hard socio-psychological pattern or psychosocial pattern that will reiterate itself no matter who the population is. Again if you look at the history of where racism began in this country and see how malleable it has been already. Southern Europeans, Italians, Portuguese people at one time were not described as white in this country, but have now become viewed as white. And the same thing certainly can happen with new variations. The principle of anti-discrimination has to be uppermost. I don't think we can just take comfort that there will be new brown people who will somehow make us a new gray nation with no distinctions at all.

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