



On Being the Object of Property

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ON BEING THE OBJECT OF PROPERTY

PATRICIA J. WILLIAMS

On being invisible

Reflections

For some time I have been writing about my great-great-grandmother. I have considered the significance of her history and that of slavery from a variety of viewpoints on a variety of occasions: in every speech, in every conversation, even in my commercial transactions class. I have talked so much about her that I finally had to ask myself what it was I was looking for in this dogged pursuit of family history. Was I being merely indulgent, looking for roots in the pursuit of some genetic heraldry, seeking the inheritance of being special, different, unique in all that primogeniture hath wrought?

I decided that my search was based in the utility of such a quest, not mere indulgence, but a recapturing of that which had escaped historical scrutiny, which had been overlooked and underseen. I, like so many blacks, have been trying to pin myself down in history, place myself in the stream of time as significant, evolved, present in the past, continuing into the future. To be without documentation is too unsustaining, too spontaneously ahistorical, too dangerously malleable in the hands of those who would rewrite not merely the past but my future as well. So I have been picking through the ruins for my roots.

What I know of my mother's side of the family begins with my great-great-grandmother. Her name was Sophie and she lived in Tennessee. In 1850, she was about twelve years old. I know that she was purchased when she was eleven by a white lawyer named

Austin Miller and was immediately impregnated by him. She gave birth to my great-grandmother Mary, who was taken away from her to be raised as a house servant.¹ I know nothing more of Sophie (she was, after all, a black single mother—in today’s terms—suffering the anonymity of yet another statistical teenage pregnancy). While I don’t remember what I was told about Austin Miller before I decided to go to law school, I do remember that just before my first day of class, my mother said, in a voice full of secretive reassurance, “The Millers were lawyers, so you have it in your blood.”²

When my mother told me that I had nothing to fear in law school, that law was “in my blood,” she meant it in a very complex sense. First and foremost, she meant it defiantly; she meant that no one should make me feel inferior because someone else’s father was a judge. She wanted me to reclaim that part of my heritage from which I had been disinherited, and she wanted me to use it as a source of strength and self-confidence. At the same time, she was asking me to claim a part of myself that was the dispossessor of another part of myself; she was asking me to deny that disenfranchised little black girl of myself that felt powerless, vulnerable and, moreover, rightly felt so.

In somewhat the same vein, Mother was asking me not to look to her as a role model. She was devaluing that part of herself that was not Harvard and refocusing my vision to that part of herself that was hard-edged, proficient, and Western. She hid the lonely, black, defiled-female part of herself and pushed me forward as the projection of a competent self, a cool rather than despairing self, a masculine rather than a feminine self.

I took this secret of my blood into the Harvard milieu with both the pride and the shame with which my mother had passed it along to me. I found myself in the situation described by Marguerite Duras, in her novel *The Lover*: “We’re united in a fundamental shame at having to live. It’s here we are at the heart of our common fate, the fact that [we] are our mother’s children, the children of a candid creature murdered by society. We’re on the side of society which has reduced her to despair. Because of what’s been done to our mother, so amiable, so trusting, we hate life, we hate ourselves.”³

Reclaiming that from which one has been disinherited is a good thing. Self-possession in the full sense of that expression is the companion to self-knowledge. Yet claiming for myself a heritage

¹ For a more detailed account of the family history to this point, see Patricia Williams, “Grandmother Sophie,” *Harvard Blackletter* 3 (1986): 79.

² Patricia Williams, “Alchemical Notes: Reconstructing Ideals from Deconstructed Rights,” *Harvard Civil Rights—Civil Liberties Law Review* 22 (1987): 418.

³ Marguerite Duras, *The Lover* (New York: Harper & Row, 1985), 55.

the weft of whose genesis is my own disinheritance is a profoundly troubling paradox.

Images

A friend of mine practices law in rural Florida. His office is in Belle Glade, an extremely depressed area where the sugar industry reigns supreme, where blacks live pretty much as they did in slavery times, in dormitories called slave ships. They are penniless and illiterate and have both a high birth rate and a high death rate.

My friend told me about a client of his, a fifteen-year-old young woman pregnant with her third child, who came seeking advice because her mother had advised a hysterectomy—not even a tubal ligation—as a means of birth control. The young woman's mother, in turn, had been advised of the propriety of such a course in her own case by a white doctor some years before. Listening to this, I was reminded of a case I worked on when I was working for the Western Center on Law and Poverty about eight years ago. Ten black Hispanic women had been sterilized by the University of Southern California—Los Angeles County General Medical Center, allegedly without proper consent, and in most instances without even their knowledge.⁴ Most of them found out what had been done to them upon inquiry, after a much-publicized news story in which an intern charged that the chief of obstetrics at the hospital pursued a policy of recommending Caesarian delivery and simultaneous sterilization for any pregnant woman with three or more children and who was on welfare. In the course of researching the appeal in that case, I remember learning that one-quarter of all Navajo women of childbearing age—literally all those of childbearing age ever admitted to a hospital—have been sterilized.⁵

⁴ *Madrigal v. Quilligan*, U.S. Court of Appeals, 9th Circuit, Docket no. 78-3187, October 1979.

⁵ This was the testimony of one of the witnesses. It is hard to find official confirmation for this or any other sterilization statistic involving Native American women. Official statistics kept by the U.S. Public Health Service, through the Centers for Disease Control in Atlanta, come from data gathered by the National Hospital Discharge Survey, which covers neither federal hospitals nor penitentiaries. Services to Native American women living on reservations are provided almost exclusively by federal hospitals. In addition, the U.S. Public Health Service breaks down its information into only three categories: "White," "Black," and "Other." Nevertheless, in 1988, the Women of All Red Nations Collective of Minneapolis, Minnesota, distributed a fact sheet entitled "Sterilization Studies of Native American Women," which claimed that as many as 50 percent of all Native American women of childbearing age have been sterilized. According to "Surgical Sterilization Surveillance: Tubal Sterilization and Hysterectomy in Women Aged 15–44, 1979–1980," issued

As I reflected on all this, I realized that one of the things passed on from slavery, which continues in the oppression of people of color, is a belief structure rooted in a concept of black (or brown, or red) anti-will, the antithetical embodiment of pure will. We live in a society in which the closest equivalent of nobility is the display of unremittingly controlled will-fulness. To be perceived as unremittingly will-less is to be imbued with an almost lethal trait.

Many scholars have explained this phenomenon in terms of total and infantilizing interdependency of dominant and oppressed.⁶ Consider, for example, Mark Tushnet's distinction between slave law's totalistic view of personality and the bourgeois "pure will" theory of personality: "Social relations in slave society rest upon the interaction of owner with slave; the owner, having total dominion over the slave. In contrast, bourgeois social relations rest upon the paradigmatic instance of market relations, the purchase by a capitalist of a worker's labor power; that transaction implicates only a part of the worker's personality. Slave relations are total, engaging the master and slave in exchanges in which each must take account of the entire range of belief, feeling, and interest embodied by the other; bourgeois social relations are partial, requiring only that participants in a market evaluate their general productive characteristics without regard to aspects of personality unrelated to production."⁷

Although such an analysis is not objectionable in some general sense, the description of master-slave relations as "total" is, to me,

by the Centers for Disease Control in 1983, "In 1980, the tubal sterilization rate for black women . . . was 45 percent greater than that for white women" (7). Furthermore, a study released in 1984 by the Division of Reproductive Health of the Center for Health Promotion and Education (one of the Centers for Disease Control) found that, as of 1982, 48.8 percent of Puerto Rican women between the ages of 15 and 44 had been sterilized.

⁶ See, generally, Stanley Elkins, *Slavery* (New York: Grosset & Dunlap, 1963); Kenneth Stampp, *The Peculiar Institution* (New York: Vintage, 1956); Winthrop Jordan, *White over Black* (Baltimore: Penguin Books, 1968).

⁷ Mark Tushnet, *The American Law of Slavery* (Princeton, N.J.: Princeton University Press, 1981), 6. There is danger, in the analysis that follows, of appearing to "pick" on Tushnet. That is not my intention, nor is it to impugn the body of his research, most of which I greatly admire. The choice of this passage for analysis has more to do with the randomness of my reading habits; the fact that he is one of the few legal writers to attempt, in the context of slavery, a juxtaposition of political theory with psychoanalytic theories of personality; and the fact that he is perceived to be of the political left, which simplifies my analysis in terms of its presumption of sympathy, i.e., that the constructions of thought revealed are socially derived and unconscious rather than idiosyncratic and intentional.

quite troubling. Such a choice of words reflects and accepts—at a very subtle level, perhaps—a historical rationalization that whites had to, could do, and did do everything for these simple, above-animal subhumans. It is a choice of vocabulary that fails to acknowledge blacks as having needs beyond those that even the most “humane” or “sentimental” white slavemaster could provide.⁸ In trying to describe the provisional aspect of slave law, I would choose words that revealed its structure as rooted in a concept of, again, black anti-will, the polar opposite of pure will. I would characterize the treatment of blacks by whites in whites’ law as defining blacks as those who had no will. I would characterize that treatment not as total interdependency, but as a relation in which partializing judgments, employing partializing standards of humanity, impose generalized inadequacy on a race: if pure will or total control equals the perfect white person, then impure will and total lack of control equals the perfect black man or woman. Therefore, to define slave law as comprehending a “total” view of personality implicitly accepts that the provision of food, shelter, and clothing (again assuming the very best of circumstances) is the whole requirement of humanity. It assumes also either that psychic care was provided by slave owners (as though a slave or an owned psyche could ever be reconciled with mental health) or that psyche is not a significant part of a whole human.

Market theory indeed focuses attention away from the full range of human potential in its pursuit of a divinely willed, invisibly handed economic actor. Master-slave relations, however, focused attention away from the full range of black human potential in a somewhat different way: it pursued a vision of blacks as simple-

⁸ In another passage, Tushnet observes: “The court thus demonstrated its appreciation of the ties of sentiment that slavery could generate between master and slave and simultaneously denied that those ties were relevant in the law” (67). What is noteworthy about the reference to “sentiment” is that it assumes that the fact that emotions could grow up between slave and master is itself worth remarking: slightly surprising, slightly commendable for the court to note (i.e., in its “appreciation”)—although “simultaneously” with, and presumably in contradistinction to, the court’s inability to take official cognizance of the fact. Yet, if one really looks at the ties that bound master and slave, one has to flesh out the description of master-slave with the ties of father-son, father-daughter, half-sister, half-brother, uncle, aunt, cousin, and a variety of de facto foster relationships. And if one starts to see those ties as more often than not intimate family ties, then the terminology “appreciation of . . . sentiment . . . between master and slave” becomes a horrifying mockery of any true sense of family sentiment, which is utterly, utterly lacking. The court’s “appreciation,” from this enhanced perspective, sounds blindly cruel, sarcastic at best. And to observe that courts suffused in such “appreciation” could simultaneously deny its legal relevance seems not only a truism; it misses the point entirely.

mind, strong-bodied economic actants.⁹ Thus, while blacks had an indisputable generative force in the marketplace, their presence could not be called activity; they had no active role in the market. To say, therefore, that “market relations disregard the peculiarities of individuals, whereas slave relations rest on the mutual recognition of the humanity of master and slave”¹⁰ (no matter how dialectical or abstracted a definition of humanity one adopts) is to posit an inaccurate equation: if “disregard for the peculiarities of individuals” and “mutual recognition of humanity” are polarized by a “whereas,” then somehow regard for peculiarities of individuals must equal recognition of humanity. In the context of slavery this equation mistakes whites’ overzealous and oppressive obsession with projected specific peculiarities of blacks for actual holistic regard for the individual. It overlooks the fact that most definitions of humanity require something beyond mere biological sustenance, some healthy measure of autonomy beyond that of which slavery could institutionally or otherwise conceive. Furthermore, it overlooks the fact that both slave and bourgeois systems regarded certain attributes as important and disregarded certain others, and that such regard and disregard can occur in the same glance, like the wearing of horseblinders to focus attention simultaneously toward and away from. The experiential blinders of market actor and slave are focused in different directions, yet the partializing ideologies of each makes the act of not seeing an unconscious, alienating component of seeing. Restoring a unified social vision will, I think, require broader and more scattered resolutions than the simple symmetry of ideological bipolarity.

Thus, it is important to undo whatever words obscure the fact that slave law was at least as fragmenting and fragmented as the bourgeois worldview—in a way that has persisted to this day, cutting across all ideological boundaries. As “pure will” signifies the whole bourgeois personality in the bourgeois worldview, so wisdom, control, and aesthetic beauty signify the whole white personality in slave law. The former and the latter, the slavemaster and the burgermeister, are not so very different when expressed in those terms. The reconciling difference is that in slave law the emphasis is really

⁹ “Actants have a kind of phonemic, rather than a phonetic role: they operate on the level of function, rather than content. That is, an actant may embody itself in a particular character (termed an *acteur*) or it may reside in the function of more than one character in respect of their common role in the story’s underlying ‘oppositional’ structure. In short, the deep structure of the narrative generates and defines its actants at a level beyond that of the story’s surface content” (Terence Hawkes, *Structuralism and Semiotics* [Berkeley: University of California Press, 1977], 89).

¹⁰ Tushnet, 69.

on the inverse rationale: that irrationality, lack of control, and ugliness signify the whole slave personality. “Total” interdependence is at best a polite way of rationalizing such personality splintering; it creates a bizarre sort of yin-yang from the dross of an oppressive schizophrenia of biblical dimension. I would just call it schizophrenic, with all the baggage that that connotes. That is what sounds right to me. Truly total relationships (as opposed to totalitarianism) call up images of whole people dependent on whole people; an interdependence that is both providing and laissez-faire at the same time. Neither the historical inheritance of slave law nor so-called bourgeois law meets that definition.

None of this, perhaps, is particularly new. Nevertheless, as precedent to anything I do as a lawyer, the greatest challenge is to allow the full truth of partializing social constructions to be felt for their overwhelming reality—reality that otherwise I might rationally try to avoid facing. In my search for roots, I must assume, not just as history but as an ongoing psychological force, that, in the eyes of white culture, irrationality, lack of control, and ugliness signify not just the whole slave personality, not just the whole black personality, but me.

Vision

Reflecting on my roots makes me think again and again of the young woman in Belle Glade, Florida. She told the story of her impending sterilization, according to my friend, while keeping her eyes on the ground at all times. My friend, who is white, asked why she wouldn’t look up, speak with him eye to eye. The young woman answered that she didn’t like white people seeing inside her.

My friend’s story made me think of my own childhood and adolescence: my parents were always telling me to look up at the world; to look straight at people, particularly white people; not to let them stare me down; to hold my ground; to insist on the right to my presence no matter what. They told me that in this culture you have to look people in the eye because that’s how you tell them you’re their equal. My friend’s story also reminded me how very difficult I had found that looking-back to be. What was hardest was not just that white people saw me, as my friend’s client put it, but that they looked through me, that they treated me as though I were transparent.

By itself, seeing into me would be to see my substance, my anger, my vulnerability, and my wild raging despair—and that alone is hard enough to show, to share. But to uncover it and to have it devalued by ignore-ance, to hold it up bravely in the organ of my

eyes and to have it greeted by an impassive stare that passes right through all that which is me, an impassive stare that moves on and attaches itself to my left earlobe or to the dust caught in the rusty vertical geysers of my wiry hair or to the breadth of my freckled brown nose—this is deeply humiliating. It re-wounds, relives the early childhood anguish of uncensored seeing, the fullness of vision that is the permanent turning-away point for most blacks.

The cold game of equality-staring makes me feel like a thin sheet of glass: white people see all the worlds beyond me but not me. They come trotting at me with force and speed; they do not see me. I could force my presence, the real me contained in those eyes, upon them, but I would be smashed in the process. If I deflect, if I move out of the way, they will never know I existed.

Marguerite Duras, again in *The Lover*, places the heroine in relation to her family. “Every day we try to kill one another, to kill. Not only do we not talk to one another, we don’t even look at one another. When you’re being looked at you can’t look. To look is to feel curious, to be interested, to lower yourself.”¹¹

To look is also to make myself vulnerable; yet not to look is to neutralize the part of myself which is vulnerable. I look in order to see, and so I must look. Without that directness of vision, I am afraid I will will my own blindness, disinherit my own creativity, and sterilize my own perspective of its embattled, passionate insight.

On ardor

The child

One Saturday afternoon not long ago, I sat among a litter of family photographs telling a South African friend about Marjorie, my godmother and my mother’s cousin. She was given away by her light-skinned mother when she was only six. She was given to my grandmother and my great-aunts to be raised among her darker-skinned cousins, for Marjorie was very dark indeed. Her mother left the family to “pass,” to marry a white man—Uncle Frederick, we called him with trepidatious presumption yet without his ever knowing of our existence—an heir to a meat-packing fortune. When Uncle Frederick died thirty years later and the fortune was lost, Marjorie’s mother rejoined the race, as the royalty of resentful fascination—Lady Bountiful, my sister called her—to regale us with tales of gracious upper-class living.

¹¹ Duras, 54.

My friend said that my story reminded him of a case in which a swarthy, crisp-haired child was born, in Durban, to white parents. The Afrikaner government quickly intervened, removed the child from its birth home, and placed it to be raised with a “more suitable,” browner family.

When my friend and I had shared these stories, we grew embarrassed somehow, and our conversation trickled away into a discussion of laissez-faire economics and governmental interventionism. Our words became a clear line, a railroad upon which all other ideas and events were tied down and sacrificed.

The market

As a teacher of commercial transactions, one of the things that has always impressed me most about the law of contract is a certain deadening power it exercises by reducing the parties to the passive. It constrains the lively involvement of its signatories by positioning enforcement in such a way that parties find themselves in a passive relationship to a document: it is the contract that governs, that “does” everything, that absorbs all responsibility and deflects all other recourse.

Contract law reduces life to fairy tale. The four corners of the agreement become parent. Performance is the equivalent of obedience to the parent. Obedience is dutifully passive. Passivity is valued as good contract-socialized behavior; activity is caged in retrospective hypotheses about states of mind at the magic moment of contracting. Individuals are judged by the contract unfolding rather than by the actors acting autonomously. Nonperformance is disobedience; disobedience is active; activity becomes evil in contrast to the childlike passivity of contract conformity.

One of the most powerful examples of all this is the case of Mary Beth Whitehead, mother of Sara—of so-called Baby M. Ms. Whitehead became a vividly original actor *after* the creation of her contract with William Stern; unfortunately for her, there can be no greater civil sin. It was in this upside-down context, in the picaresque unboundedness of breach, that her energetic grief became hysteria and her passionate creativity was funneled, whorled, and reconstructed as highly impermissible. Mary Beth Whitehead thus emerged as the evil stepsister who deserved nothing.

Some time ago, Charles Reich visited a class of mine.¹² He discussed with my students a proposal for a new form of bargain by

¹² Charles Reich is author of *The Greening of America* (New York: Random House, 1970) and professor of law at the University of San Francisco Law School.

which emotional “items”—such as praise, flattery, acting happy or sad—might be contracted for explicitly. One student, not alone in her sentiment, said, “Oh, but then you’ll just feel obligated.” Only the week before, however (when we were discussing the contract which posited that Ms. Whitehead “will not form or attempt to form a parent-child relationship with any child or children”), this same student had insisted that Ms. Whitehead must give up her child, because she had *said* she would: “She was obligated!” I was confounded by the degree to which what the student took to be self-evident, inalienable gut reactions could be governed by illusions of passive conventionality and form.

It was that incident, moreover, that gave me insight into how Judge Harvey Sorkow, of New Jersey Superior Court, could conclude that the contract that purported to terminate Ms. Whitehead’s parental rights was “not illusory.”¹³

(As background, I should say that I think that, within the framework of contract law itself, the agreement between Ms. Whitehead and Mr. Stern was clearly illusory.¹⁴ On the one hand, Judge Sorkow’s opinion said that Ms. Whitehead was seeking to avoid her *obligations*. In other words, giving up her child became an actual obligation. On the other hand, according to the logic of the judge, this was a service contract, not really a sale of a child; therefore delivering the child to the Sterns was an “obligation” for which there was no consideration, for which Mr. Stern was not paying her.)

Judge Sorkow’s finding the contract “not illusory” is suggestive not just of the doctrine by that name, but of illusion in general, and delusion, and the righteousness with which social constructions are conceived, acted on, and delivered up into the realm of the real as “right,” while all else is devoured from memory as “wrong.” From this perspective, the rhetorical tricks by which Sara Whitehead became Melissa Stern seem very like the heavy-worded legalities by which my great-great-grandmother was pacified and parted from her child. In both situations, the real mother had no say, no power; her powerlessness was imposed by state law that made her and her child helpless in relation to the father. My great-great-grandmother’s

¹³ See, generally, *In the Matter of Baby “M,” A Pseudonym for an Actual Person*, Superior Court of New Jersey, Chancery Division, Docket no. FM-25314-86E, March 31, 1987. This decision was appealed, and on February 3, 1988, the New Jersey Supreme Court ruled that surrogate contracts were illegal and against public policy. In addition to the contract issue, however, the appellate court decided the custody issue in favor of the Sterns but granted visitation rights to Mary Beth Whitehead.

¹⁴ “An illusory promise is an expression cloaked in promissory terms, but which, upon closer examination, reveals that the promisor has committed himself not at all” (J. Calamari and J. Perillo, *Contracts*, 3d ed. [St. Paul: West Publishing, 1987], 228).

powerlessness came about as the result of a contract to which she was not a party; Mary Beth Whitehead's powerlessness came about as a result of a contract that she signed at a discrete point of time—yet which, over time, enslaved her. The contract-reality in both instances was no less than magic: it was illusion transformed into not-illusion. Furthermore, it masterfully disguised the brutality of enforced arrangements in which these women's autonomy, their flesh and their blood, were locked away in word vaults, without room to reconsider—*ever*.

In the months since Judge Sorkow's opinion, I have reflected on the similarities of fortune between my own social positioning and that of Sara Melissa Stern Whitehead. I have come to realize that an important part of the complex magic that Judge Sorkow wrote into his opinion was a supposition that it is "natural" for people to want children "like" themselves. What this reasoning raised for me was an issue of what, exactly, constituted this "likeness"? (What would have happened, for example, if Ms. Whitehead had turned out to have been the "passed" descendant of my "failed" godmother Marjorie's mother? What if the child she bore had turned out to be recessively and visibly black? Would the sperm of Mr. Stern have been so powerful as to make this child "his" with the exclusivity that Judge Sorkow originally assigned?) What constitutes, moreover, the collective understanding of "un-likeness"?

These questions turn, perhaps, on not-so-subtle images of which mothers should be bearing which children. Is there not something unseemly, in our society, about the spectacle of a white woman mothering a black child? A white woman giving totally to a black child; a black child totally and demandingly dependent for everything, for sustenance itself, from a white woman. The image of a white woman suckling a black child; the image of a black child sucking for its life from the bosom of a white woman. The utter interdependence of such an image; the selflessness, the merging it implies; the giving up of boundary; the encompassing of other within self; the unbounded generosity, the interconnectedness of such an image. Such a picture says that there is no difference; it places the hope of continuous generation, of immortality of the white self in a little black face.

When Judge Sorkow declared that it was only to be expected that parents would want to breed children "like" themselves, he simultaneously created a legal right to the same. With the creation of such a "right," he encased the children conforming to "likeness" in protective custody, far from whole ranges of taboo. Taboo about touch and smell and intimacy and boundary. Taboo about ardor, possession, license, equivocation, equanimity, indifference, intol-

erance, rancor, dispossession, innocence, exile, and candor. Taboo about death. Taboos that amount to death. Death and sacredness, the valuing of body, of self, of other, of remains. The handling lovingly in life, as in life; the question of the intimacy versus the dispersion of death.

In effect, these taboos describe boundaries of valuation. Whether something is inside or outside the marketplace of rights has always been a way of valuing it. When a valued object is located outside the market, it is generally understood to be too “priceless” to be accommodated by ordinary exchange relationships; when, in contrast, the prize is located within the marketplace, all objects outside become “valueless.” Traditionally, the Mona Lisa and human life have been the sorts of subjects removed from the fungibility of commodification, as “priceless.” Thus when black people were bought and sold as slaves, they were placed beyond the bounds of humanity. And thus, in the twistedness of our brave new world, when blacks have been thrust out of the market and it is white children who are bought and sold, black babies have become “worthless” currency to adoption agents—“surplus” in the salvage heaps of Harlem hospitals.

The imagination

“Familiar though his name may be to us, the storyteller in his living immediacy is by no means a present force. He has already become something remote from us and something that is getting even more distant. . . . Less and less frequently do we encounter people with the ability to tell a tale properly. . . . It is as if something that seemed inalienable to us, the securest among our possessions, were taken from us: the ability to exchange experiences.”¹⁵

My mother’s cousin Marjorie was a storyteller. From time to time I would press her to tell me the details of her youth, and she would tell me instead about a child who wandered into a world of polar bears, who was prayed over by polar bears, and in the end eaten. The child’s life was not in vain because the polar bears had been made holy by its suffering. The child had been a test, a message from god for polar bears. In the polar bear universe, she would tell me, the primary object of creation was polar bears, and the rest of the living world was fashioned to serve polar bears. The clouds took their shape from polar bears, trees were designed to give shel-

¹⁵ Walter Benjamin, “The Storyteller,” in *Illuminations*, ed. Hannah Arendt (New York: Schocken, 1969), 83.

ter and shade to polar bears, and humans were ideally designed to provide polar bears with meat.¹⁶

The truth, the truth, I would laughingly insist as we sat in her apartment eating canned fruit and heavy roasts, mashed potatoes, pickles and vanilla pudding, cocoa, Sprite, or tea. What about roots and all that, I coaxed. But the voracity of her amnesia would disclaim and disclaim and disclaim; and she would go on telling me about the polar bears until our plates were full of emptiness and I became large in the space which described her emptiness and I gave in to the emptiness of words.

On life and death

Sighing into space

There are moments in my life when I feel as though a part of me is missing. There are days when I feel so invisible that I can't remember what day of the week it is, when I feel so manipulated that I can't remember my own name, when I feel so lost and angry that I can't speak a civil word to the people who love me best. Those are the times when I catch sight of my reflection in store windows and am surprised to see a whole person looking back. Those are the times when my skin becomes gummy as clay and my nose slides around on my face and my eyes drip down to my chin. I have to close my eyes at such times and remember myself, draw an internal picture that is smooth and whole; when all else fails, I reach for a mirror and stare myself down until the features reassemble themselves like lost sheep.

Two years ago, my godmother Marjorie suffered a massive stroke. As she lay dying, I would come to the hospital to give her her meals. My feeding her who had so often fed me became a complex ritual of mirroring and self-assembly. The physical act of holding the spoon to her lips was not only a rite of nurture and of sacrifice, it was the return of a gift. It was a quiet bowing to the passage of time and the doubling back of all things. The quiet woman who listened to my woes about work and school required now that I bend my head down close to her and listen for mouthed word fragments, sentence crumbs. I bent down to give meaning to her silence, her wandering search for words.

She would eat what I brought to the hospital with relish; she would reject what I brought with a turn of her head. I brought fruit

¹⁶ For an analysis of similar stories, see Richard Levins and Richard Lewontin, *The Dialectical Biologist* (Cambridge, Mass.: Harvard University Press, 1985), 66.

and yogurt, ice cream and vegetable juice. Slowly, over time, she stopped swallowing. The mashed potatoes would sit in her mouth like cotton, the pudding would slip to her chin in slow sad streams. When she lost not only her speech but the power to ingest, they put a tube into her nose and down to her stomach, and I lost even that medium by which to communicate. No longer was there the odd but reassuring communion over taste. No longer was there some echo of comfort in being able to nurture one who nurtured me.

This increment of decay was like a little newborn death. With the tube, she stared up at me with imploring eyes, and I tried to guess what it was that she would like. I read to her aimlessly and in desperation. We entertained each other with the strange embarrassed flickering of our eyes. I told her stories to fill the emptiness, the loneliness, of the white-walled hospital room.

I told her stories about who I had become, about how I had grown up to know all about exchange systems, and theories of contract, and monetary fictions. I spun tales about blue-sky laws and promissory estoppel, the wispy-feathered complexity of undue influence and dark-hearted theories of unconscionability. I told her about market norms and gift economy and the thin razor's edge of the bartering ethic. Once upon a time, I rambled, some neighbors of mine included me in their circle of barter. They were in the habit of exchanging eggs and driving lessons, hand-knit sweaters and computer programming, plumbing and calligraphy. I accepted the generosity of their inclusion with gratitude. At first, I felt that, as a lawyer, I was worthless, that I had no barterable skills and nothing to contribute. What I came to realize with time, however, was that my value to the group was not calculated by the physical items I brought to it. These people included me because they wanted me to be part of their circle, they valued my participation apart from the material things I could offer. So I gave of myself to them, and they gave me fruit cakes and dandelion wine and smoked salmon, and in their giving, their goods became provisions. Cradled in this community whose currency was a relational ethic, my stock in myself soared. My value depended on the glorious intangibility, the eloquent invisibility of my just being *part* of the collective; and in direct response I grew spacious and happy and gentle.

My gentle godmother. The fragility of life; the cold mortuary shelf.

Dispassionate deaths

The hospital in which my godmother died is now filled to capacity with AIDS patients. One in sixty-one babies born there, as in New

York City generally, is infected with AIDS antibodies.¹⁷ Almost all are black or Hispanic. In the Bronx, the rate is one in forty-three.¹⁸ In Central Africa, experts estimate that, of children receiving transfusions for malaria-related anemia, “about 1000 may have been infected with the AIDS virus in each of the last five years.”¹⁹ In Congo, 5 percent of the entire population is infected.²⁰ The *New York Times* reports that “the profile of Congo’s population seems to guarantee the continued spread of AIDS.”²¹

In the Congolese city of Pointe Noir, “the annual budget of the sole public health hospital is estimated at about \$200,000—roughly the amount of money spent in the United States to care for four AIDS patients.”²²

The week in which my godmother died is littered with bad memories. In my journal, I made note of the following:

Good Friday: Phil Donahue has a special program on AIDS. The segues are:

a. from Martha, who weeps at the prospect of not watching her children grow up

b. to Jim, who is not conscious enough to speak just now, who coughs convulsively, who recognizes no one in his family any more

c. to Hugh who, at 85 pounds, thinks he has five years but whose doctor says he has weeks

d. to an advertisement for denture polish (“If you love your Polident Green/then gimmeeya SMILE!”)

e. and then one for a plastic surgery salon on Park Avenue (“The only thing that’s expensive is our address”)

f. and then one for what’s coming up on the five o’clock news (Linda Lovelace, of *Deep Throat* fame, “still recovering from a double mastectomy and complications from silicone injections” is being admitted to a New York hospital for a liver transplant)

g. and finally one for the miracle properties of all-purpose house cleaner (“Mr. Cleeean/is the man/behind the

¹⁷ B. Lambert, “Study Finds Antibodies for AIDS in 1 in 61 Babies in New York City,” *New York Times* (January 13, 1988), sec. A.

¹⁸ Ibid.

¹⁹ “Study Traces AIDS in African Children,” *New York Times* (January 22, 1988), sec. A.

²⁰ J. Brooke, “New Surge of AIDS in Congo May Be an Omen for Africa,” *New York Times* (January 22, 1988), sec. A.

²¹ Ibid.

²² Ibid.

shine/is it wet or is it dry?" I note that Mr. Clean, with his gleaming bald head, puffy musculature and fever-bright eyes, looks like he is undergoing radiation therapy). Now back to our show.

h. "We are back now with Martha," (who is crying harder than before, sobbing uncontrollably, each jerking inhalation a deep unearthly groan). Phil says, "Oh honey, I hope we didn't make it worse for you."

Easter Saturday: Over lunch, I watch another funeral. My office windows overlook a graveyard as crowded and still as a rush-hour freeway. As I savor pizza and milk, I notice that one of the mourners is wearing an outfit featured in the window of Bloomingdale's (59th Street store) only since last weekend. This thread of recognition jolts me, and I am drawn to her in sorrow; the details of my own shopping history flash before my eyes as I reflect upon the sober spree that brought her to the rim of this earthly chasm, her slim suede heels sinking into the soft silt of the graveside.

Resurrection Sunday: John D., the bookkeeper where I used to work, died, hit on the head by a stray but forcefully propelled hockey puck. I cried copiously at his memorial service, only to discover, later that afternoon when I saw a black rimmed photograph, that I had been mourning the wrong person. I had cried because the man I *thought* had died is John D. the office messenger, a bitter unfriendly man who treats me with disdain; once I bought an old electric typewriter from him which never worked. Though he promised nothing, I have harbored deep dislike since then; death by hockey puck is only one of the fates I had imagined for him. I washed clean my guilt with buckets of tears at the news of what I thought was his demise.

The man who did die was small, shy, anonymously sweet-featured and innocent. In some odd way I was relieved; no seriously obligatory mourning to be done here. A quiet impassivity settled over me and I forgot my grief.

Holy communion

A few months after my godmother died, my Great Aunt Jag passed away in Cambridge, at ninety-six the youngest and the last of her siblings, all of whom died at ninety-seven. She collapsed on her way home from the polling place, having gotten in her vote for "yet another Kennedy." Her wake was much like the last family gathering

at which I had seen her, two Thanksgivings ago. She was a little hard of hearing then and she stayed on the outer edge of the conversation, brightly, loudly, and randomly asserting enjoyment of her meal. At the wake, cousins, nephews, daughters-in-law, first wives, second husbands, great-grand-nieces gathered round her casket and got acquainted all over again. It was pouring rain outside. The funeral home was dry and warm, faintly spicily clean-smelling; the walls were solid, dark, respectable wood; the floors were cool stone tile. On the door of a room marked "No Admittance" was a sign that reminded workers therein of the reverence with which each body was held by its family and prayed employees handle the remains with similar love and care. Aunt Jag wore yellow chiffon; everyone agreed that laying her out with her glasses on was a nice touch.

Afterward, we all went to Legal Seafoods, her favorite restaurant, and ate many of her favorite foods.

On candor

Me

I have never been able to determine my horoscope with any degree of accuracy. Born at Boston's now-defunct Lying-In Hospital, I am a Virgo, despite a quite poetic soul. Knowledge of the *hour* of my birth, however, would determine not just my sun sign but my moons and all the more intimate specificities of my destiny. Once upon a time, I sent for my birth certificate, which was retrieved from the oblivion of Massachusetts microfiche. Said document revealed that an infant named Patricia Joyce, born of parents named Williams, was delivered into the world "colored." Since no one thought to put down the hour of my birth, I suppose that I will never know my true fate.

In the meantime, I read what text there is of me.

My name, Patricia, means patrician. Patricians are noble, lofty, elite, exclusively educated, and well mannered despite themselves. I was on the cusp of being Pamela, but my parents knew that such a me would require lawns, estates, and hunting dogs too.

I am also a Williams. Of William, whoever he was: an anonymous white man who owned my father's people and from whom some escaped. That rupture is marked by the dark-mooned mystery of utter silence.

Williams is the second most common surname in the United States; Patricia is *the* most common prename among women born in 1951, the year of my birth.

Them

In the law, rights are islands of empowerment. To be un-righted is to be disempowered, and the line between rights and no rights is most often the line between dominators and oppressors. Rights contain images of power, and manipulating those images, either visually or linguistically, is central in the making and maintenance of rights. In principle, therefore, the more dizzyingly diverse the images that are propagated, the more empowered we will be as a society.

In reality, it was a lovely polar bear afternoon. The gentle force of the earth. A wide wilderness of islands. A conspiracy of polar bears lost in timeless forgetting. A gentleness of polar bears, a fruitfulness of polar bears, a silent black-eyed interest of polar bears, a bristled expectancy of polar bears. With the wisdom of innocence, a child threw stones at the polar bears. Hungry, they rose from their nests, inquisitive, dark-souled, patient with foreboding, fearful in tremendous awakening. The instinctual ferocity of the hunter reflected upon the hunted. Then, proud teeth and warrior claws took innocence for wilderness and raging insubstantiality for tender rabbit breath.

In the newspapers the next day, it was reported that two polar bears in the Brooklyn Zoo mauled to death an eleven-year-old boy who had entered their cage to swim in the moat. The police were called and the bears were killed.²³

In the public debate that ensued, many levels of meaning emerged. The rhetoric firmly established that the bears were innocent, naturally territorial, unfairly imprisoned, and guilty. The dead child (born into the urban jungle of a black, welfare mother and a Hispanic alcoholic father who had died literally in the gutter only six weeks before) was held to a similarly stern standard. The police were captured, in a widely disseminated photograph,²⁴ shooting helplessly, desperately, into the cage, through three levels of bars, at a pieta of bears; since this image, conveying much pathos, came nevertheless not in time to save the child, it was generally felt that the bears had died in vain.²⁵

In the egalitarianism of exile, pluralists rose up as of one body, with a call to buy more bears, control juvenile delinquency, eliminate all zoos, and confine future police.²⁶

²³ J. Barron, "Polar Bears Kill a Child at Prospect Park Zoo," *New York Times* (May 20, 1987), sec. A.

²⁴ *New York Post* (May 22, 1987), p. 1.

²⁵ J. Barron, "Officials Weigh Tighter Security at Zoos in Parks," *New York Times* (May 22, 1987), sec. B.

²⁶ *Ibid.*

In the plenary session of the national meeting of the Law and Society Association, the keynote speaker unpacked the whole incident as a veritable laboratory of emergent rights discourse. Just seeing that these complex levels of meaning exist, she exulted, should advance rights discourse significantly.²⁷

At the funeral of the child, the presiding priest pronounced the death of Juan Perez not in vain, since he was saved from growing into "a lifetime of crime." Juan's Hispanic-welfare-black-widow-of-an-alcoholic mother decided then and there to sue.

The universe between

How I ended up at Dartmouth College for the summer is too long a story to tell. Anyway, there I was, sharing the town of Hanover, New Hampshire, with about two hundred prepubescent males enrolled in Dartmouth's summer basketball camp, an all-white, very expensive, affirmative action program for the street-deprived.

One fragrant evening, I was walking down East Wheelock Street when I encountered about a hundred of these adolescents, fresh from the courts, wet, lanky, big-footed, with fuzzy yellow crew cuts, loping toward Thayer Hall and food. In platoons of twenty-five or so, they descended upon me, jostling me, smacking me, and pushing me from the sidewalk into the gutter. In a thoughtless instant, I snatched off my brown silk headrag, my flag of African femininity and propriety, my sign of meek and supplicatory place and presentation. I released the armored rage of my short nappy hair (the scalp gleaming bare between the angry wire spikes) and hissed: "Don't I exist for you?! See Me! And deflect, godammit!" (The quaint professionalism of my formal English never allowed the rage in my head to rise so high as to overflow the edges of my text.)

They gave me wide berth. They clearly had no idea, however, that I was talking to them or about them. They skirted me sheepishly, suddenly polite, because they did know, when a crazed black person comes crashing into one's field of vision, that it is impolite to laugh. I stood tall and spoke loudly into their ranks: "I have my rights!" The Dartmouth Summer Basketball Camp raised its collective eyebrows and exhaled, with a certain tested nobility of exhaustion and solidarity.

I pursued my way, manumitted back into silence. I put distance between them and me, gave myself over to polar bear musings. I allowed myself to be watched over by bear spirits. Clean white wind and strong bear smells. The shadowed amnesia; the absence

²⁷ Patricia Williams, "The Meaning of Rights" (address to the annual meeting of the Law and Society Association, Washington, D.C., June 6, 1987).

of being; the presence of polar bears. White wilderness of icy meat-eaters heavy with remembrance; leaden with undoing; shaggy with the effort of hunting for silence; frozen in a web of intention and intuition. A lunacy of polar bears. A history of polar bears. A pride of polar bears. A consistency of polar bears. In those meandering pastel polar bear moments, I found cool fragments of white-fur invisibility. Solid, black-gummed, intent, observant. Hungry and patient, impassive and exquisitely timed. The brilliant bursts of exclusive territoriality. A complexity of messages implied in our being.

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