

The Alchemy of Race and Rights Study Guide

The Alchemy of Race and Rights by Patricia J. Williams

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Plot Summary

The *Alchemy of Race and Rights* concerns the relationship between race, critical legal theory, and the idea of legal and human rights. Patricia Williams, a black professor of law currently at Columbia University, is a member of the critical legal studies movement, which began in the 1970s.

The critical legal school tends to affirm several common thesis, such as that law is indeterminate and so judges end up making decisions based on their personal and social biases. If all law is politics and that every legal decision is a political decision, then there is no real distinction between the judicial and legislative. Both forms of activity construct a "social space," that the law more often than not serves the interests of those with power because it protects them from responding to the demands of the week. Finally, critical legal studies maintains that the legal order is based around a series of hard and fast distinctions that in reality are contradictory and trap individuals who do not fit in those categories.

Patricia Williams, while a member of the critical legal studies movement who teaches this philosophy of law to her students (sometimes against their vehement protest), uses the *Alchemy of Race and Rights* to criticize the school. While much of the book defends the main theses of critical legal theory, particularly through the lens of the oppression of blacks and women, Williams argues that rights for black Americans are an important part of the law. Critical legal studies tends to view "rights" as legal fictions that only protect rich whites and that real law should encourage social and informal decision-making and dispute resolution.

However, Williams claims that her experience as a black woman has shown her that whites will not sit down at the table with blacks to produce a real and living equality unless they are forced to recognize the claims of blacks. Rights are a rhetorical, spiritual, and social method of getting the attention of the rich and powerful. This is why blacks have pursued rights with such vehemence. The "alchemy" or race and rights uses rights to stop the denigration of the black race and promote their interests.

While the foregoing is Williams's main line of argument, the reader may have trouble discerning it due to Williams's writing style. While *The Alchemy* is a work of legal philosophy, Williams writes from a very personal and emotional perspective more often than not illustrating her points from her own personal experience. She acknowledges ordinary forms of discrimination in her own life that are quite less brutal than the vicious forms of oppression in the lives of other blacks. Thus, general arguments are harder to discern than they might otherwise be. Further, Williams ardently defends her personal and emotional method on the grounds that to do otherwise would be dishonest to herself and shove herself into the very rigid categories that critical legal theory seeks to undo.

The *Alchemy* is composed of four parts. Each contains three chapters, though the book itself ebbs and flows between the main line of argument and its illustration. Much of the

book focuses on defending the common themes of critical legal theory and elsewhere Williams criticizes it. Her stories and anecdotes throughout the book are meant to illustrate how she wants critical legal theory to develop. This arises in the light of the challenge the experience of American blacks present to it.



Part I, Excluding Voices, A Necklace of Thoughts on the Ideology of Style, Chapter 1, The Brass Ring and the Deep Blue Sea

Part I, Excluding Voices, A Necklace of Thoughts on the Ideology of Style, Chapter 1, The Brass Ring and the Deep Blue Sea Summary and Analysis

Patricia Williams hates being a lawyer. She practices and teaches commercial law and often finds herself confronted with heart-wrenching stories. Williams is a black woman and deeply sympathizes with the plight of women and blacks in the United States. She notes increasing crime rates, drug use, police brutality, and the like pervade the country. Racism penetrates even at the highest levels of culture, as demonstrated by the "inability" of Harvard to find more qualified black women to be professors.

The goal of the *Alchemy of Race and Rights* is to take a critical theory approach to rights, particularly to commercial and constitutional concerns. Williams will take three principles and try to show how they interact, conflict, and interlock: (i) autonomy, (ii) community and (iii) order. She also aims to bridge the gap between theory and practice. She wants to show how legal language often flattens complex issues and hides subtle social meanings.

Williams believes that law is inter-subjective and that it has no objective, mind-independent aspect. If we recognize that the law is inter-subjective, we can participate in its construction together. Williams's target in her book is the common conception of law as objective. This theoretical conception of the law in American jurisprudence has three features: (i) it draws bright lines between concepts to make life easier, such as between rights and needs, public and private and white and black, (ii) it looks for non-contextual universal legal truths, (iii) and it aims to find an objective, unmediated voice to express the nature of the law.

As a woman who in her differing social roles is treated both as black and non-black, Williams sees that social identities are constructed and that social concepts are as well. We construct truth together and by getting away from the idea of objective truth, we can extend a sense of social responsibility to all individuals in constructing their social and political world. This will empower the marginalized members of society. Traditional jurisprudence looks for an uncompromising point of reference, which obscures the mechanisms of social positioning and thereby covers up the opportunities for productive group struggle. Williams acknowledges that when she makes these arguments, her students are often confused. She admits that she is as well.



Part I, Excluding Voices, a Necklace of Thoughts on the Ideology of Style, Chapter 2, Gilded Lilies and Liberal Guilt

Part I, Excluding Voices, a Necklace of Thoughts on the Ideology of Style, Chapter 2, Gilded Lilies and Liberal Guilt Summary and Analysis

Williams's work concerns the line between contract and communion or the division between the commercial and the community, between the legitimate and the illegitimate. She believes that parts of the social contract in the United States involve social control through an ahistorical American symbolism that understands freedom in an abstract way. Private contract rights illustrate this point. Freedom of contract is often seen as a simple, straightforward freedom, as an express of a "will" theory of rights where choice determines the rights we have. Williams is not wholeheartedly against the will theory but wants it to be expressed through community will as well.

William's interest in property law comes from her family history. She recently comes into possession of the contract of sale for her great-great-grandmother. She often imagines herself in her ancestor's shoes, which leads her to think hard about the interplay between family and the market. Some examples of "black help" in the form of maids are used to demonstrate that many of the relations between property rights and family liberties that blacks endured under slavery still exist today.

When Williams teaches these ideas to her students, they often become angry. One student confronted her angrily because her father was a "slumlord" and she was being made to feel guilty. Williams did not respond kindly and she received a memo from an associate dean complaining that she was trying to silence moderates in her class.

Williams defends herself by arguing that she is only pointing out the effects of the law in placing some outside the "marketplace of rights." Williams explains that when blacks were "freed," they were really merely "unowned" and excluded from this marketplace of rights. They had no experience being free and were forced into the labor market with no skills. Consequently, they had little right to privacy because, as Williams argues, the right to privacy in a capitalist society is a function of wealth. The haves are entitled to privacy.

Both rich and poor suffer however under the current system. Capitalism "commodifies" everything, turning things that properly have no price into items exchanged and owned. This is a formula for class war and the plight of the homeless demonstrates this. Williams complains that there are only "negative" rights in the Constitution, lacking any rights to actual care and the basics like food. The homeless thus have no real rights

because they cannot get the resources they need to live freely. The "haves" often respond with rationalizations or "truth-denying truisms" that maintain that the haves deserve their possessions.

Students begin to complain to the dean about her. Williams presses on however. They complain that she teaches ideology rather than law but she maintains that she must explain how free speech has a "price" under capitalism and how the law ignores what is outside of the market. Capitalist societies merely amass capital for its own sake and this becomes a force in its own right. She then discusses how the marketization of rights has led some poor people to have to choose between sterilization or imprisonment.

Capitalism turns the public into the private and the state contributes to this. It substitutes money for discourse. To be part of the law, you must buy and sell property to be noticed. In response, the community must acknowledge their responsibility to aid others.

Williams argues that advertising is part of the manipulation of the people and that it is causing the concept of property to be changed. It generates a conception of property that creates mindless materialism. A "punitive" liberalism grows from liberty of contract. She says that classical liberals like John Stuart Mill defended freedom and liberty of contract against the tyranny of the majority through legislation. However, they missed that the market could undermine the law and the polis, thereby undermining freedom. Hence she says that the liberal capitalist conception of freedom and freedom of contract is narrow.



Part I, Excluding Voices, A Necklace of Thoughts on the Ideology of Style, Chapter 3, The Death of the Profane

Part I, Excluding Voices, A Necklace of Thoughts on the Ideology of Style, Chapter 3, The Death of the Profane Summary and Analysis

In the mid-80s small businesses in New York City start to install buzzers that would let people in stores only with permission of the attendant at the store at the time. They are rationalized as a method of protecting stores from crime, although Williams thinks that it is a means of discrimination. In fact, one day she is excluded from Benetton's by a white attendant who still has a number of white women in the store.

Williams is enraged and feels deeply humiliated. She writes the story up for a law review and then gives the paper at a symposium. She uses her story to illustrate that the privatization of space in society gives control to individuals to exclude others that they did not like. However, these individuals also escape any responsibility for the exclusion. Racism becomes therefore permissible. In the first edit of the piece, Williams's expressions of rage are omitted. In the second version, the reference to Benetton's is omitted along with the reference to William's race.

Williams gets on the phone with the law review and demands that her race be mentioned because of how important it is to her general point. While she wins the argument, Williams finds out that her experience with the law review indicates a blind application of the principle of liberal neutrality, which in fact imposes uniformity across diffuse and diverse experiences. In fact, there is a phantom of racism in neutrality because it often obscures past differences in being "racially blind." Williams supports affirmative action because she sees an expression of values in the omission of the discussion of race. Blacks are now "omitted" when formerly they were directly oppressed.

Williams often tells her Benetton's story when she gives talks and she receives certain questions over and over again. Many ask if she is just privileging her own view and others think that she is unfairly putting the salesman, who she never spoke to, on trial. Still others claim that Williams had not presented any opinion to counter her own interpretation. Rather than responding to the questions in the book, Williams simply ends the chapter.

Part II, Trial by Text, A Sequence of Sublimation, Chapter 4, Teleology on the Rocks

Part II, Trial by Text, A Sequence of Sublimation, Chapter 4, Teleology on the Rocks Summary and Analysis

When Williams is a student at Harvard Law, she feels all but invisible, ignored by fiercely competitive white men. However as a law professor she is highly visible, noticed by everyone, her race a fully public issue. Williams tells the story of a colleague and friend of hers who is held at gunpoint by a Swat team along with some of her friends in a white restaurant due to false allegations. The friend survives but the image of the black criminal that led to the false allegations is important as a form of oppression. In a related story, when some black men are walking through a white neighborhood in New York in the 1980s, someone calls the police on them and when the police came, they run in fear. One is run down by the police and dies.

These stories illustrate the strong segregationist instinct among whites. While whites often do not intend to engage in racist acts, they often do due to certain attitudes. Williams then lists the attitudes and analyzes them in detail. The first attitude is the "better safe than sorry" attitude, which leads whites to defend themselves even against a black presence in their neighborhood. This happens because they associate blacks with criminality and so overreact because they do not want to risk being hurt.

Second, there is the attitude that "a prejudiced society is better than a violent society." With this attitude, whites often allow racist impulses get the better of them because they want to avoid being hurt again. Younger whites are thus often socialized to have negative expectations of blacks. This in turn leads blacks to feel obligated to justify themselves for engaging in normal activities that should be accepted. A tension is produced when the black person is implicitly accused of criminality by this expectation, which hits a "zone of vulnerability."

In addition, there is the attitude of "evidentiary rules of legitimating turf wars," where whites come to believe that blacks are actively aggressively against them based on scant evidence. This plays upon the stereotype of black criminality. Finally there is the attitude of "privatized innocence and publicized guilt." Whites act innocent because they simply exist in their private sphere when blacks enter publicly into their neighborhoods and so bring upon themselves and expectation of violence.

In fact, blacks are pushed into "public" because their communities were basically created by force. In a society that ranks private property so highly as to relegate blacks

to marginalized areas of town, blacks are devalued. Blacks are in fact powerless but are seen as powerful, uncontrollable, and even violent. Hence the illusory threat of blacks in white minds creates fear. Blacks are dehumanized through the cultural image of a peaceful white community being interrupted by a black presence.

In Williams's view, this attitude towards blacks becomes a form of "spirit murder," which she believes is a capital moral offense. Blacks feel trapped by these expectations and dehumanized when they should be free to move about their cities in peace.

Part II, Trial by Text, A Sequence of Sublimation, Chapter 5, Crimes Without Passion

Part II, Trial by Text, A Sequence of Sublimation, Chapter 5, Crimes Without Passion Summary and Analysis

The chapter opens with a first-year law student coming to Williams to complain. The student is upset about being called an "activist" by the dean for complaining that Othello was racist. Williams sympathizes and notes that she thinks that she is correct to believe that the relation of reader to the text is variable and that meaning is relative to each person. Some see Williams as militaristic for sharing these concerns with some of her students, but Williams maintains the racial constructions have great power. Some accuse Williams of being against academic freedom for making these criticisms.

Williams speaks out and students start to send her exams with questions they see as prejudiced. In response, Williams sends out a lengthy and emotional memo arguing that faculty should take their questions seriously since they subtly reinforce stereotypes. The entire memo is reproduced. Williams argues that professors assume that their questions, because they are hypothetical cases, are impersonal but she maintains that they are creating unknowingly racist students. Hypothetical cases are instructional mirrors.

Williams recommends an ongoing exam discussion that is focused on understanding power relations. The response to her memo is poor. She is accused of being didactic and condescending. Williams maintains however that she is merely worried about practices and principles. A friend called "Q" suggests that maybe Williams' "personal" style of writing is too much for people. Williams disagrees, maintaining that when she writes she sacrifices herself by putting her personality out there. Impersonal writing denies the self and no one should have to hide themselves.

Williams also once again gets terrible student evaluations which devastate her. People accuse her of not teaching law and makes many other claims that unfairly classifies and vilifies her. Many are upset by her paper criticisms. She admits that she once made a football player cry and that he threatens to "get her" before sobbing in front of the dean.

Part II, Trial by Text, A Sequence of Sublimation, Chapter 6, The Obliging Shell

Part II, Trial by Text, A Sequence of Sublimation, Chapter 6, The Obliging Shell Summary and Analysis

In Chapter 6, the standard of liberal neutrality comes in for greater assault. Williams' opinions are questioned by a teacher in a continuing education course. In her answers that are reprinted in the book, Williams emphasizes her themes of particularity and concreteness and how neutral classifications dehumanize. Adding race to the picture adds deep complexities in her opinion. In cases of affirmative action, understanding what freedom requires is complex. The paradox of democratic freedom requires enforced equality and affirmative action.

According to Williams, the real concept to consider lies between two ideas of freedom, the liberal and the radical. The liberal understands freedom as freedom of association. On the other hand, the radical wants a socialized evaluation of the worth of persons that can liberate people from being categorized and degraded. Privatized terms however dominate public discourse and isolate individual preferences. Racism is relegated to a time where it is an explicit code. There are still differences empirically and Williams cites them.

She then turns to analyze some of the recent affirmative action jurisprudence that rejects the constitutionality of racial preferences. Williams disagrees and rejects the arguments of the Supreme Court. The Supreme Court argues that racial preferences are a slippery slope to discrimination but Williams rejects this. The court uses clear cases that erase complexity. She argues that the court removes racial preferences in a "passive" rather than an active social decision. The court complains that accusations of institutionalized racism are too amorphous but Williams argues that the evidence is deep. Williams complains that these decisions have effectively gutted the Civil Rights Act.

Williams once worked on a consumer protection board where she had to fight with a sausage manufacturer over the definition of the term "sausage." Since then, Williams has used a "sausage-analogy" to demonstrate the entanglements that differing word uses can bring about. Williams encourages situational analysis and to avoid delineating clear definitions. To illustrate this, Williams raises a case of a Jewish student who defaces a Beethoven poster that has been altered to make Beethoven look black by a black fellow student. The student did this to make fun of the black student for maintaining that Beethoven had a partial black ancestry. While the Jewish student is not penalized, what really disturbs Williams is the fact the student received a "privatized" remedy.

Williams emphasizes that people must be careful in thinking that they can simply eliminate racist terms without eliminating the underlying emotion. We must avoid neutrality because it merely embeds psychic taboos. She argues that we need more than a mere formal equality of opportunity. Williams strongly supports affirmative action because it embodies a dynamic conception of equality and she wants the idea extended as a general moral norm. Affirmative action verifies a vision of equality and it is a form of performed speech. Williams even implies that affirmative action should be protected as speech.

Next Williams criticizes the increased focus on difference on college campuses. While focusing on difference brings out hidden features of the social world, it creates a form of private property that imposes mental restrictions on people. Williams claims that it is important for blacks to stand up and demand to be treated equally. Doing this will create tension and awkwardness but she believes that this is necessary in order to claim their rightful place in civilization. They must fight the generalization of white being good and black being bad. She relates her own experience of feeling paralyzed by her self-consciousness of her racial status and standing up for herself. She believes however that keeping silent is not a real shelter for awkwardness because it just maintains awkward tension.

Williams concludes that we need a "multivalent" perspective that is fluid and does not focus on similarity or difference. We must tear down boundaries. This takes effort and is an advanced form of cognition but we must try or accept oppression.

Part III, Ladder to the Light, A Series of Hinged Turning Points, Chapter 7, Fire and Ice

Part III, Ladder to the Light, A Series of Hinged Turning Points, Chapter 7, Fire and Ice Summary and Analysis

Chapter 7 opens with the story of Williams entering an apartment building as a white woman when two children storm out because there are "bums" in the lobby. The bum turns out to be simply an elderly black woman smoking a cigarette. When Williams informs the women of that, the woman complains about being mugged and shot at. She rushes away. Williams laments the "bum situation," where nothing is free in the city and everything must be bought. With so many people lacking anything, she argues that they are forced into bad situations. A year later, Williams notices that the complex has a security officer that Williams knows does not do any good.

Next Williams shares the story of Eleanor Bumpurs, a mentally ill black woman who is shot by armed policemen in her home in 1984. The police who shot and killed her said that she is brandishing a knife. After shooting the woman's hand half-off with a shotgun, making her anatomically incapable of hurting them, they find reason to shoot and kill them anyway. They claim it is "obvious" that she is a danger at the time and that they have engaged in a simple oversight although they are not at fault. Williams thinks that what is "obvious" is shaped by social forces and that judges must take this into account.

Williams argues that originally the term "law" referred to the code on the books whereas "justice" is abstract law. This distinction is important because it means that law should be shaped by our deep conceptions of justice that evolve and develop over time. Conformity with the abstract therefore ruins law because it ruins justice. Legalism hides motivations that shape the justice system as well. Williams thinks that laws should be redefined with cultural flux to keep society alive. Otherwise we risk public irresponsibility such as killing an "excessively emotional" woman.

According to Williams, the major problem with the police who kill Eleanor Bumpurs is their justification of public irresponsibility in privatized terms. They refuse to separate their private and public duties and they dare to impose victim responsibility. This reaction often leads blacks to be intimidated by police. Williams shares her own case of being briefly detained in a South Carolina jail by white police officers in South Carolina. One has a shotgun and if they appear "excessively emotional," they may be killed while their killers suffer no consequence.

Williams wonders what causes the fear and impatience in the men who kill Bumpurs. She does not know but she knows that the legacy of killing left by the police and events

like that work their way into public expectations. They shape our sense of the "obvious" and condemn as crazy or dangerous those outside of these expectations.

Part III, Ladder to the Light, The Pain of Word Bondage, Chapter 8, The Pain of Word Bondage

Part III, Ladder to the Light, The Pain of Word Bondage, Chapter 8, The Pain of Word Bondage Summary and Analysis

In Chapter 8, Williams teaches a course with Peter Gabel who is the founder of Critical Legal Studies. They discuss trust and distrust in the bargaining situation. Gabel has handed \$900 to a sublessor just out of trust and it works out. Williams realizes that because of her race, such trust would not happen. This also leads Williams to realize that she and Gabel have different relations to law because of their different social statuses. Gabel is a white male lawyer whereas Williams is simply a dangerous black female.

The Critical Legal Studies movement emphasizes that rights are unstable and indeterminate. This movement looks to end oppression and promote solidarity. They see rights as a symbol of mythic power that must be unmasked but different groups will find their own meaning in different symbols. For blacks, rights mean something different and so a "multilingual semantics" of evaluating rights is needed. It will be difficult to transliterate different experiences but such semantics would help understand the role of social concepts in the lives of different groups.

The Critical Legal Studies movement is troubling because they see discussions about rights generally as preventing political advancement and prefer informal and social relationships. This choice however troubles Williams because it overlooks black experience. The Critical Legal Studies movement wants to speak in terms of needs rather than rights. Williams argues that describing needs has not worked as a political strategy for blacks. Instead, they have to search for a mechanism to confront the denial of need and "rights-talk" is this mechanism. Rights allow the expression of difference and by making blacks visible, helps to heal disillusionment. That is why so many blacks have an almost religious motivation to seek rights since they never have had the chance for social intimacy that the Critical Theories recommend.

Williams then launches into describing her own experience as a black woman in a white world where she starts by appealing to white sympathies for recognition but she eventually has to demand recognition instead. From her experience, Williams sees that there is a general problem of matching signs and a system of rhetoric. Blacks have different perspectives on rights-talk. They see rights as related to law as conscious commitments are to the psyche. Social commitments to protect rights also make blacks visible.

Finally, Williams notes that under slavery, white men defined the family and excluded blacks from it. Since blacks were enslaved, marriages between slaves were not binding. This also affects future black development resulting in the single but strong black mother. The single mother is often a complaint of whites but Williams sees this role as just the result of careless white fatherhood. Williams notes that because of their experience with slavery, blacks in one sense did not believe in rights but in another sense strongly sought after them. From this she concludes that while sometimes the Critical Legal Studies movement is correct to unmask rights to expose powerlessness, they should not stop there. Instead, rights-talk should be expanded and recast so that all people have rights and no one has "inanimate-object" status.

Part III, Ladder to the Light, A Series of Hinged Turning Points, Chapter 9, Mirrors and Windows

Part III, Ladder to the Light, A Series of Hinged Turning Points, Chapter 9, Mirrors and Windows Summary and Analysis

One day in a faculty meeting, Williams complains that she needs support from the faculty to deal with racism. They tell her to laugh it off, not to take it too seriously, and to not give it power. Williams feels however that this attitude betrays the seriousness of racism and that instead of depriving racism of its power, we should give power to those suppressed by it. While Williams attends the Sounds of Silence Conference where she is asked to speak about the social construction of race and black rape, her mind returns to the case of Tawana Brawley.

Tawana Brawley, an African American girl from Wappinger, New York is raped in 1987 when she is fifteen years old. However her story receives a lot of media attention because she accuses six white men of raping her. Many of these men are members of the local police. Her accusations are amplified by her advisors, including Rev. Al Sharpton, along with the statements of public officials to the contrary, which increases media attention further. A grand jury concludes in 1988 that Brawley actually has not been raped and that she has made up the attack. Brawley's accusation of a local New York prosecutor results in a lawsuit against her.

Brawley however is strongly supported by the black community. Many members think that she is victimized due to reporting based on racial stereotypes. The black community fiercely criticizes the media. To this day, Brawley's family continues to defend the allegations.

In Williams' opinion, the events quickly get out of control and come to represent, not Tawana's actual experience, but instead black manhood versus white justice. One of a black woman's worst fears is to be raped by a white man because no one will believe her. Williams retains three pictures of Tawana in her mind that include Tawana the victim from her photos, the circulated photo of her standing behind Al Sharpton, and Tawana at a comedy show where the comedian makes a cruel joke at her expense. Williams remembers when Mike Tyson gives her free tickets to one of his fights. She is outraged at the irony that it is Tawana who is despised and not Tyson who actually beat his wife.

Williams thinks that Tawana's case illustrates how race is socially constructed and how social constructions contribute to oppression. White men simply will not rape black

women. Why would they? Are they even attracted to them? Consequently, black women are sexually degraded by racial preconceptions, as Tawana was, according to Williams.

Part IV, The Incorruptible Simplicity of Being: A String of Crystalline Parables

Part IV, The Incorruptible Simplicity of Being: A String of Crystalline Parables Summary and Analysis

While watching television, Williams encounters the story of a man who people claim is the black reincarnation of Elvis. Williams wonders whether a white man would ever pretend to be a reincarnated black man. Yet this is just another one of her "brown spills" that the world hates. To Williams the world has gone crazy. She illustrates this with the case of a pregnant woman in prison who sues the state because her child should not be in prison, making use of a Missouri anti-abortion statute. The imprisoned woman has been forced to make use of a statute assigning fetuses rights and thereby enslaving the woman to the state. It is enough to drive Williams crazy.

In the newspaper, Williams reads about a pregnant woman who has accidentally been given black sperm instead of white sperm. The pregnant woman is devastated, although she claims it is not due to the fact that the child is black. However she claims that the racial taunting her child endures is unbearable to witness. Williams sees this case as a tragic lack of love for the child. She then fantasizes about integrating the world from the inside out through guerilla insemination of white women with black sperm that would complicate the idea of choice. Of course, Williams is not serious but the image invoked by the hypothetical suggestion is interesting.

The next day, while at a reading group on race, gender, and critical legal thought, the group reads *And We Are Not Saved*, a book on the relevant topic. It contains a story where black women who are not married at twenty-seven fall asleep and when they wake up, they lose their professional skills. This represents the fact that single black women over twenty-seven are very unlikely to be married in part because black men start to see "professional" women as white, more masculine, and therefore less attractive.

Next Williams notes that how a lot of attention is given to Judge Maxine Thomas, a black woman, when she has a nervous breakdown. People offer many explanations. Williams identifies with Thomas because she often feels as if she is pressed into an occupation where she must wear "contradictions on her face." She thinks that Thomas breaks down because of the stress factors on black professional women.

Two days later, Williams continues to reflect on the problem of single black professional women. She notes that their plight is due to the historic white "master-mate" idea that leads black women of her sort to be cut off from the black community. Again, professionalism whitens because even in the minds of blacks, blackness represents the unclean. She then returns to the contradictions she feels because she is trapped in this way in another's fantasy. The power she has involves lying to others about who she is

while being trapped in their fantasy. She knows however that this lying creates tremendous psychological pressure that is dangerous. She ends the chapter by noting a dream she has that leads her to feel refreshed when she wakes up.

Part IV, The Incorruptible Simplicity of Being, A String of Crystalline Parables, Chapter 11, Arm's-Length Intimacies

Part IV, The Incorruptible Simplicity of Being, A String of Crystalline Parables, Chapter 11, Arm's-Length Intimacies Summary and Analysis

At the beginning of the chapter, Williams is surprised when some students ask her a question after class about contract law that disturbs her. At Christmas, she relates the story to her sister who tells her a similar story about a drive-through wake that she heard about. Both events worried Williams enough to wonder about her own sanity due to the concerns about death, life, and the space in between raised by both discussions.

Later Williams finds herself in New Orleans for two conferences. After one day of the first conference, Williams finds herself arguing with a law and literature professor. They enter a department store that is in the middle of a fashion show. Williams complains that the show exhibits a corrupted vision of the oppressed and her friend pressures her to admit that it does represent progress. While in the department store, Williams finds herself upset by a security guard that some women blindly submit to.

One night at the conference, Williams has a terrible dream where she imagines polar bears and herself talking about the law. The dream stops making sense and disturbs her. When she wakes up, she puts on a costume to go to a samba party and realizes how vain she is. As a vain black female and a commercial law professor, she is kind of a ridiculous oxymoron of a person. After dancing, she sees an old black man on a street corner that she considers worth mentioning.

At the second conference, a number of law professors arrive, including her friend who is a property law professor. He discusses a future where people implant microchips in their hands to identify their bank accounts. Williams thinks that he is talking about trying to make difference a fixed property. She later sees a homeless woman asking for money and someone refusing to help her. She then notes that when black people dance in the streets of New Orleans, white tourists see themselves "transported" to another world. However when white people dance in the streets, it is no big deal. At that moment, she realizes that her own dancing was akin to theirs and had a moment where she imagines a "world beyond difference."

In a postscript, Williams paraphrases a series of law review rejection letters and reprints an agglomeration of them. She submits the current chapter for publication and the reviewers say that the article is self-indulgent and too personal.

Part IV, The Incorruptible Simplicity of Being, A String of Crystalline Parables, Chapter 12, On Being the Object of Property

Part IV, The Incorruptible Simplicity of Being, A String of Crystalline Parables, Chapter 12, On Being the Object of Property Summary and Analysis

The slave owners of Williams's great-great grandmother are lawyers and so her mother has joked that she has law "in her blood." Williams acknowledges this truth in a complex sense. She notes that her mother wants her to reclaim her heritage but that in reality she is devaluing herself. Nonetheless, Williams takes having her "blood secret" to Harvard with both pride and shame.

Williams shares a story about a fifteen-year-old black girl who is pregnant with her third child. Her mother has a hysterectomy as a form of birth control because it is recommended by a white doctor. She asks a doctor whether this was a good idea. Williams thinks the white doctor recommends the hysterectomy to prevent a poor black girl on welfare from having more children. It turns out that the practice of sterilization, in Williams' view, is quite widespread. Williams analogizes sterilization with sterilizing the black personality to produce the "anti-will" by producing an interdependency between the dominant and the oppressed.

Williams thinks that the "master-slave" description is incomplete since blacks are never entirely deprived of control or humanity. Slave law define blacks as having no will but is not successful in making this a reality. Williams then references a conversation she has with a colleague about how markets also subtract from the range of human potential. In their shared opinion, the markets impose a conception of white personality as "bestowing" goods on black persons from which they take nothing. Both slavery and capitalism therefore lead to splitting the personality of the black person.

Williams then returns to her own life and talks about how whites do not see her for who she is but only relations of equality. This sterilizes her personality as well. Again Williams emphasizes how capitalism through the right and power of contract deadens the soul and reduces life to a fairytale. She then argues that contract law implies the idea of an illusory contract which she discusses at some length. Williams shows how the issue of an illusory contract comes up in the Sorkow case, which is a trial concerning the legal status of surrogate motherhood. Sorkow apparently employs certain boundaries of valuation in the decision that Williams finds objectionable.

Williams transitions to describe the decay in health of her godmother Marjorie and her visits to her in the hospital. When Marjorie is too ill to speak, Williams tells her stories and in those moments she feels like she is part of a collective community where she is not valued based on her race. She then notes that today in the hospital where Marjorie dies, AIDS patients are housed en masse.

Next Williams lists some frustrating notes in her journal around Easter of the same year. She has been watching the Phil Donahue show and discusses the issues raised in it. From the story, she argues that rights are tied to empowerment and in fact carry their own images of power. Williams wants to spread image diversity to spread power. She then transitions into an extended analogy about polar bears as related to her own sense of personal power. She illustrates her polar bear spirit on day at Dartmouth when she is practically trampled by a large group of adolescents returning from playing basketball. She demands that they stop and yells, "I have my right."

Characters

Patricia Williams

Patricia Williams, born in 1951, is the James L. Dohr Professor of Law at Columbia Law School. She currently writes a column for The Nation. Williams receives her J.D. from Harvard Law School in 1975 and teaches at Dartmouth College thereafter. Williams is a well-known member of the critical legal studies movement and a famous defender of crucial race theory. This theory defends structuring law in part around a fundamental category of race.

Williams' first book is *The Alchemy of Race and Rights*, which explains her unique perspective on the critical legal studies movement as a black woman. While the book defends many of the movement's main ideas, Williams adds some of her own.

While Williams' book, at its most general level, concerns the connection between the concepts of race and rights, she puts herself on prominent display and opens up her emotions and details of her personal life. She often describes her deepest dreams and aspirations, her private reactions to events in her life, and her intense emotional reactions to the events she describes in the book. She discusses times that events in the world have made her feel crazy, disturbed, and outraged.

Williams discusses how some find her emotional and personal method of argument inappropriate for a scholarly sessions but stridently defends her approach. She argues that by particularizing her arguments and helping them to avoid rigid categorization, she is able to avoid the same rigid categorization.

The Critical Legal Studies Movement

The Critical Legal Studies Movement is a school of thought within law that began in the 1970s. Original critical theorists who arise from the Frankfurt School of political philosophy enter the legal profession and the legal part of the Academy in part because they are inspired and drawn to issues raised by the Civil Rights Movement and the Anti-War movements of the late 1960s.

The main ideas of the movement are as follows:

(i) They argue that in opposition to common views, many legal statutes and case law do not entail their outcomes but rather are indeterminate. As a result, they see a large role for the personality of the judge to impose his or her values. They argue that judges should interpret the law in line with principles of equality focused on the particular situation of the case.

(ii) They deny the essential distinction between judicial and legislative activity, claiming that all law is political. Both produce and sustain social spaces.



(iii) A third element of the school is that the law serves the wealthy and the powerful more often than not because it shields them from the rights and demands from weaker members of society. The law claims to uphold equality but in fact it does not.

(iv) Critical legal theorists see contradictions at the heart of the law through its maintenance of strict distinctions between different legal concepts.

Williams affirms these theses but adds to it a defense of race as a separate category of the law and believes that African-Americans should be accorded rights by the law. Her argument is in contrast to traditional critical legal studies, which is suspicious of rights discourse.

American Blacks

Williams often discusses the plight of American blacks and uses their struggles to defend her philosophy of law.

The Rich and Powerful

The rich and powerful twist the law to defend their interests against the demands of the weak for justice according to Williams.

Professional Blacks

Williams maintains that professional blacks are isolated from the black community because having a career is associated with being white. Williams attributes the association of whiteness and success as part of the legacy of slavery.

Williams's Colleagues and Friends

Williams often mentions her colleagues and friends without naming them. The issues they raise play a prominent role in the book.

Williams's Sister

Williams' sister is a source of inspiration for her and is her close friend.

Williams's Students

Many of Williams' students resist her emotional and unstructured method of teaching. Williams reports their complaints and how much they hurt her.

Tawana Brawley

This is a young black girl who claims to have been beaten and raped by six white men in the mid-eighties. Her case raised a media frenzy. Williams uses her case to illustrate the deep racism in American culture.

Sophie Miller

This is Williams' great-great grandmother who is a slave. Williams has her slave contract and identifies with what little she knows of her.

Austin Miller

A prominent lawyer in his day, he owns Sophie Miller and impregnates her as a young teen. He is Williams's great-great grandfather.

The Poor, Criminal and Oppressed

Williams conceives of herself as a defender of the oppressed and understands critical theory as part of that defense. She often discusses concrete cases of poverty, crime and oppression in the book to illustrate her points.

Objects/Places

Harvard Law School

This is the institution where Williams went to law school. Williams often feels ignored and marginalized due to her race.

Dartmouth

This is the institution where *The Alchemy* is written. Williams is a professor at Dartmouth.

Williams's Classroom

Williams often describes events in her classroom that occur while she is teaching. Her students are often hostile to her teaching methods.

Williams's Journal

Williams regularly reproduces excerpts from her journals.

Discrimination

Racial discrimination is constantly featured in *The Alchemy*.

Property Law

Williams mostly teaches Property Law when she is writing *The Alchemy* and so often discusses legal cases from Property Law.

Faculty Memo

Williams sends out an infamous faculty memo where she objects to what she sees as racist and sexist hypothetical questions on student exams.

Student Evaluations/Law Review Rejections

Williams is forthright about her negative student evaluations and rejections of her articles from law reviews.

Polar Bears

Polar Bears play an odd role as symbols of strength for Williams in *The Alchemy*.

Racist Violence

Williams uses a number of cases of racial violence in *The Alchemy*.

Poverty

Poverty is a constant topic in the book. Williams thinks poverty is caused by the law constraining the poor from acquiring more property.

Oppression

Williams is constantly focused on all manner of oppression. Some are explicit, while others are implicit, and much is in between.

Rights

Unlike the Critical Legal Theorist, Williams sees rights as important legal sources of empowerment for American blacks.

Themes

The Defense of Critical Legal Studies

Patricia Williams is a prominent member of the critical legal studies community, although she has her criticisms. The school arises in response to the liberal theory of law, which holds that law is best administered impartially and that the law must be stable, predictable over time, and structured in general terms, abstracting from the particularities of race, class and the like. Law is made determinate over time through the build-up of precedent, which is thought to be a fairly structured accretion of discovery about the proper application of the law. The liberal theory of law also sees a lot of law as actually fair, restraining the rich and powerful from taking advantage of the weak.

The traditional and classical liberal view also emphasize that law should be classified into clear and distinct categories that everyone can understand. It calls judicial activism dangerous because it allows law to be manipulated by judges who are often corrupted by political power. It also sharply distinguishes legislation from judging. While the former expresses the popular will and aims at justice, whereas the second impartially administers the law according to clear rules. Generally speaking, the liberal theory of law, perhaps best embodied in the United States Constitution, attempts to restrain government power and create a social space for individuals to live their lives according to their own lights. Liberal theories of law place a great emphasis on the importance of the right of contract and typically defend the right of private property.

As a member of the critical legal studies movement, Williams repeatedly rejects all of the above theses in their entirety. She argues that law can never be impartially administered because it is indeterminate and therefore will only represent the interests of those who have the power to resolve that indeterminacy. Law should adjust to differing circumstances to accommodate social development and predictability is downplayed in the face of the autonomy of the democratic community. Law should be composed of particulars rather than general classes that Williams believes artificially divide reality into false dichotomies and oppress those who do not fit in those categories.

From Williams' point of view, furthermore, race should be a particular category in the law and stare decisis should not be given as much emphasis. Law is seen as inherently political. Judicial activism is a fact of life and the good guys, who are the representatives of the weak, must simply wrest power from the representatives of power. Legislation and judging are therefore not distinguished.

Critical legal theorists are highly critical of the US Constitution and are less worried about government power so long as it is democratic. They do not seem to care if oppression they see arises in the private sphere, which they regard as rendering private and hidden profound forms of oppression that the state must bring into the public and legal sphere. The coercion of the state must therefore extend into the deep social

structures of society as a whole. The right of contract is seen as trapping and destroying the weak and impoverished who have no resources to offer in the market. Hence there is simply no genuine right of private property on the critical legal view.

Race, Rights and the Critique of Critical Legal Studies

Although Williams is a passionate supporter of the critical legal studies movement, the book issues a number of criticisms of the movement as well. Since critical legal studies sees rights-talk as a cover for protecting the rich and powerful from the demands of the weak and marginalized for justice, they reject the idea of rights. Instead they prefer participatory and democratic forms of dispute resolution spread throughout all social institutions. Conflicts are to be resolved through informal and fluctuating methods that are sensitive to evolving social circumstances.

Williams counters that some forms of marginalization are so deeply entrenched that the recognition of the poor and marginalized is impossible through democratic institutions as they stand. The rich and powerful are so powerful that they will simply ignore the oppressed. For this reason, rights have a crucial role in forcing the powerful to acknowledge the demands of the poor. Critical legal studies see rights-talk as a tool of the powerful and concludes that it should not be used. Williams disagrees, saying that rights-talk is such a powerful tool that the oppressed must claim the tool for their own use.

Williams pushes her view by sharing her perspective as a black woman and discussing cases of discrimination against blacks that reveal the incredibly entrenched forms of racism in American society. Attention to race, in Williams' view, will demonstrate that rights-talk is absolutely crucial to achieving justice for blacks and other marginalized groups.

Emotional and Anecdotal Method

Williams seeks to both defend the critical theory approach to law and to critique it. She accepts the movement's basic theses and emphases but wants to amend its spirit by recovering rights-talk to raise the marginalized and the oppressed. However, while Williams' book is a work of legal philosophy, it hardly reads like one. Instead, *The Alchemy* reads more like an autobiography with news items thrown in for good measure. Only occasionally does Williams make her arguments explicitly and in principled terms and aim them directly at the reader. Instead, her arguments are often left to reader interpretation from the stories she tells and the conversations she recounts.

Williams is particularly eager to defend her style of writing and argument. She also reveals that she is sensitive to criticism of her method. Often Williams will explain how her students rebel at her emotional and personal style of teaching. She also reports that law reviews often reject her articles on similar grounds.

People regard Williams as unprofessional, self-indulgent, and melodramatic. However Williams radically embraces her method on the grounds that her method reflects her philosophy. Williams' approach to legal philosophy emphasizes particularity against universality and difference. She is more interested in development over similarity and stasis. She takes this to entail acting and writing in the way that she does, while ignoring the reaction of her colleagues, reviewers, and students. Often Williams is so sure of her method that she simply reports the negative reactions of her colleagues and students as if they are obviously mistaken.

Style

Perspective

Patricia Williams is a professor of law at Columbia University who teaches law at Dartmouth. Born in 1951, she earns her law degree in 1975 from Harvard Law School. Williams is a prominent proponent of critical legal theory and critical race theory. She therefore emphasizes the indeterminacy and deeply political nature of law and believes that race should be treated as a separate category within the law. On these grounds and because of her experience as a black woman, Williams is a strong defender of racial preferences in the law and affirmative action generally.

The Alchemy of Race and Rights is the first of a number of Williams' books. It details the reasons why she is a member of the critical legal theory movement and explains her critiques of the movement as well. Williams argues that critical legal theory should make room for the recognition of rights as a way of repairing and eliminating racial oppression.

Granting that *The Alchemy* is a work of legal philosophy and an analysis of race, rights, and their connection, the book has a distinctly and revealingly personal and emotional element. It reads more as a narrative than a philosophical work. Williams recounts intimate moments in her life including her dreams and fears, and her sense of connection with others, particularly with her great-great grandmother, Sophie Miller. Miller is a slave and Williams has her ancestor's original slave contract. Williams is keen to defend her method of argument, teaching, and writing in various places in the book.

Tone

The tone of *The Alchemy of Race and Rights* follows on the heels of its perspective. Williams is a deeply passionate and emotional individual. She reveals her passion and emotion in a way that few legal scholars do in their books. The tone therefore is personal and passionate as well. Williams usually begins chapters with anecdotes, news stories, and descriptions of the setting of a particular day, dream, or event that she is party to.

The tone covers a gamut of personal emotions. The reader will feel Williams' exhaustion with the many cases of injustice she confronts and see Williams' feelings of fear on display when she feels disempowered. Williams seems to be losing a grip on her sanity due to the stress of being a black woman in a profession made up almost entirely of white men. In some moments however, Williams' tone achieves a scholarly quality. She seems passionate but she clearly states her arguments in a principled form and consequently, emits a tone in stark contrast to the rest of the book.

The most common tone nonetheless is one of rage. Sometimes it is loud and other times, it is quiet. In its louder moments, Williams' rage is expressed when she screams a demand for the recognition of rights as a large group of adolescents passing her, nearly trample her. At its quietest moment, Williams' rage is expressed through the simple presentation of stories of injustice.

Structure

Despite the ebbing, flowing, and emotional quality of *The Alchemy of Race and Rights*, Williams has divided the chapters of the book neatly into four parts and three chapters in each part. Many of the names of the parts and chapters are not clearly attached to the subject matter and the connections are left largely to the reader to discern. For instance, in Chapter 4, "Teleology on the Rocks," Williams hardly explains what she means by teleology and how it figures into her argument.

The chapters are structured in a way that combines the organized and disorganized, much like the superstructure of the book as a whole. Many chapters begin with a news story and then immediately transitions into a personal anecdote from Williams. Williams clearly subdivides the chapters into subsections, though she does not clearly connect them. The reader must struggle to grasp the underlying unity between the events that lack critical analysis. While some chapters have a clearly delineated main thread, Williams' focus on difference and avoiding rigid categorization makes it hard to uncover the relevance each anecdote has.

Part I, *Excluding Voices*, *A Necklace of Thoughts on the Ideology of Style* partly focuses on Williams' method of teaching and explaining herself and its connection to her legal philosophy. Part II, *Trial By Text*, *A Sequence of Sublimation* partly focuses on deeply entrenched and often not obvious forms of discrimination. Part III, *Ladder to the Light*, *A Series of Hinged Turning Points* brings attention to some important distinctions that place stress on individuals and Part IV, *The Incorruptible Simplicity of Being*, *A String of Crystalline Parables* is a compilation of stories, which are not really distinguished from the rest of the book, that focuses on property relations between individuals.

Quotes

"It will be a book 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." (Chapter 1, pg. 6.)

"I was acutely aware that the choice of identifying as black (as opposed to white?) was hardly mine; that as long as I am identified as black by the majority of others, my own identifying as black will almost surely follow as a simple fact of human interdependency." (Chapter 1, pg. 10.)

"My conviction is that aspects of the social contract are characterized by strategies of evasion or control embedded in American symbology, a symbology that is rooted in a certain ahistoricism." (Chapter 2, pg. 15.)

"I see her shape and his hand in the vast networking of our society, and in the evils and oversights that plague our lives and laws. The control he had over her body...In his attempt to own what no man can own, the habit of his power and the absences of her choice." (Chapter 2, pg.19.)

"Law and legal writing aspire to formalized, color-blind, liberal ideals. Neutrality is the standard for assuring these ideals; yet the adherence to it is often determined by reference to an aesthetic of uniformity, in which difference is simply omitted." (Chapter 3, pg. 48.)

"Whites must take into account how much this history has projected onto blacks all criminality and all of society's ills. It has become the means for keeping white criminality invisible." (Chapter 4, pg. 61.)

"Law professors can thus set up irresponsibly authoritarian constructs that give permission to, and legitimize, some really warped world views. The result will be students who are cultured to hate; yet who still think of themselves as very very good people; who will be deeply offended, and personally hurt, if anyone tries to tell them otherwise." (Chapter 5, pg. 87.)

"I think: the great paradox of democratic freedom is that it involves some measure of enforced equality for all." (Chapter 6, pg. 101.)

"Neutrality is from this perspective a suppression, an institutionalization of psychic taboos as much as segregation was the institutionalization of physical boundaries." (Chapter 6, pg. 119.)

"My intention in this chapter is to analyze the task facing judges and lawyers in undoing institutional descriptions of what is 'obvious' and what is not; and in resisting the general pre-digestion of evidence for jury consumption." (Chapter 7, pg. 137.)

"Similarly, while the goals of CLS and of the direct victims of racism may be much the same, what is too often missing is acknowledgment that our experiences of the same circumstances may be very different; the same symbol may mean different things to each of us." (Chapter 8, pg. 149.)

"The argument that rights are disutile, even harmful, trivializes this aspect of black experience specifically, as well as that of any person or group whose vulnerability has been truly protected by rights." (Chapter 8, pg. 152.)

"I see the problem at hand not as one of my giving racism too much power, but of how we may all give more power to the voices that racism suppresses." (Chapter 9, pg. 168.)

Topics for Discussion

What is Critical Legal Theory? What is Williams a critical legal theorist of?

What are Williams' defenses of the main thesis of Critical Legal Theory? Discuss two of them in detail.

What is Williams' critique of Critical Legal Theory? How is it tied to race?

On what grounds does Williams defend the use of legal rights?

What do you think of Williams' anecdotal and emotional style of argument? Is it effective? Do you find it annoying? Why or why not? What do you think of Williams's defense of her style?

What do you think of Williams' analogies between her own experience as a black woman and the experiences of women like Tawana Brawley? Are the analogies self-indulgent as the law reviews often suggest to her or are they appropriate?

Suppose that you were one of Williams' students listening to her lecture in the same manner as she writes in the book or that you are a reviewer for one of Williams' articles that her chapters are based on. Williams reports that her students and reviewers respond negatively to much of her teaching and work. Would you? Why or why not?