BLACK ALICE

EDUARDO CADAVA*

Dearest Pat:

I have wanted to write to you for a long time now, to tell you what your work has given me, and what it continues to give me, to tell you of the strength I receive because of your existence and friendship, to tell you that I thank you for everything that you are.

Like the alchemist who believes that value can be created out of heterogeneous elements, you repeatedly have given us stories of race and gender relations drawn from your own experiences, from history, critical theory, philosophy, newspapers, legal cases, television and radio, and fairy tales. Pointing to the violence of racism, to the histories sealed within legal cases, or to the injury that so often touches our everyday life, the effects and importance of your writerly, alchemical experiments are immeasurable, and our gathering here is a testament to this.

I promise to write a longer letter to you soon, but today I want to tell you about the three figures to which I have returned as I have thought of writing this letter to you and as I have been rereading your books these last days. I want to write to you about silence, water, and animals. In this way, I want to say something about what your work tells us about the essential interdisciplinarity of the law, something that, in your hands, prevents the law from ever being identical to itself, perhaps even tells us that what makes the law the law is that it can never be simply itself. Using an "intentionally double-voiced and relational, rather than a traditionally legal black-letter, vocabulary," you say that your writing is "staked out as the exclusive interdisciplinary property of constitutional law, contract, African-American history, feminist jurisprudence, political science, and rhetoric," something that already opens the law to its presumed others.[1]

But first, silence. You will remember that we first met in the 1988–1989 academic year, during the months when your essay, *On Being the Object of Property*,[2] had just

* Eduardo Cadava teaches in the Department of English at Princeton University, where he also is an Affiliated Faculty member of the Department of Comparative Literature, the School of Architecture, and the Center for African American Studies.

1 PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR 6 (1991).

2 Patricia J. Williams, *On Being the Object of Property*, 14 SIGNS 5, 5–24 (1988).

appeared. We were both inaugural fellows at the University of California Humanities Research Institute at UC Irvine. We had been invited to participate in a collaborative, interdisciplinary research project entitled "Interpretation and the Law," which included, among other participants, Jacques Derrida, Stanley Fish, Drucilla Cornell, Martha Minow, Joseph Raz, and Thomas Heller. Each session was devoted to a presentation by one of the fellows, and what I remember most about these sessions was the complicity that you and I shared, a complicity that was confirmed at the end of each day when we would spend time together commiserating and rehearsing this or that moment from the day's session, often in the mode of complaint. If I hadn't yet fallen in love with you—and I'm certain I already had—I did on the day it was your turn to present your work. Although you and I always talked after the sessions, you had not spoken a word during the sessions themselves. You began to speak this day, though, and I still remember the effect your voice had on everyone in the room, as you began to tell us the story of your having discovered the bill of sale that had sold your great-great-grandmother into slavery, along with goods and animals. We were, as everyone who hears your voice so often is, utterly mesmerized, not only by the story you were telling, but by the pace and breath of your telling, by the richness of your story's implications and consequences. At a certain point, as we continued to be led by your voice through your story, you stopped, and what we all experienced was the quiet, the silence that was our response. After an almost awkward amount of time, Stanley Fish, never one to remain silent for too long, addressed you directly, and somewhat loudly—or so I remember it, given the quiet with which we had been left—said: "Well, Pat, I find it very interesting that the very first time you break your silence in this seminar, everyone is reduced to silence." After a pause, after another moment of silence, you replied, with a question that was also a response: "Who said I broke my silence?" If I hadn't yet fallen in love with you—and, as I said, I'm certain I already had—I did from that moment onward, and not only because you seemed to have done the impossible—you had silenced Stanley again—but because you had signaled the strength of your voice in a declaration that sacrificed this same voice: a voice that, in all of its silences, nevertheless continued to speak.

What I understood by your remarkable question was that, from the moment you had begun speaking, you had made a promise, and that this promise had overtaken "you"—the "you" that was speaking at that moment—in order to say something at the very limit of what could be said: that it is necessary to be silent, and to be silent especially about what one cannot speak. I thought then about what it meant to be silent, even in speaking, how, in speaking, you still could refrain from saying this or that, in this or that manner, how, in speaking, you still can move away from more recognizable modes of discourse. There is still speaking: the question "who said I broke my silence?" already implies the possibility

of speaking, of breaking a silence, if only because the question arises and is articulated in relation to a statement, to an earlier act of speaking. But, what I also understood in that moment is that, like Kafka's sirens, you had a more fatal weapon than the song of your voice, and that was your silence, a silence that gives your writing its paradoxical rigor, a silence that is at once the space into which you write (what calls for your writing, what calls for your thinking) and which you cannot keep in your writing. Cannot, because silence, as your writing makes clear, cannot be kept, because writing, like speaking, can break the silence that always surrounds it. Still, your question enacted a mode of silence that, in this instance, enabled you to resist reducing the experience of your great-great-grandmother to a single statement or sentiment, to resist the danger of imagining or believing that you had a clear sense of her life, and, more generally, to resist betraying the dead and the several silences that, still today, envelop them. Weaving together accounts of the many silences that work to efface or erase the violence of racism, the muffled sounds of strangled voices, the silences of complicity, you repeatedly have sought to conjure these forgotten and unrecorded struggles, to remain faithful to this history of silence, to write, within this zone of silence, in order to awaken the desire to respond, even in the face of not knowing how. You do so when you recall the "Sounds of Silence" conference you attended, and which was devoted to issues of race, gender, and oppression; when you evoke the muteness of Tawana Brawley or the speechlessness of Judge Maxine Thomas; when you find yourself in Dartmouth "manumitted back into silence"[3]; when you cite Joy Kogawa stating that, "[there] is a silence that cannot speak, a silence that will not speak,"[4] that to attend to a voice is to embrace its absence.

Without our registering it entirely, you had asked us to imagine, with you, how it is that the dead speak, how it is that the dispossessed can tell their stories, how it is that the past survives in the present and informs the future, silently, but without pacifying or silencing a single torment, or a single torture, what memory can be when it seeks to remember the trauma of captivity and loss, what makes someone choose death over living, in what way death leaves behind a trace that gives meaning to the memory, the violence, the wounds, the protests, the cries of anger or suffering, the several death sentences on which a nation—America, for example—has been founded. The very moment slavery exists, the very moment populations are removed and exterminated, wealth and rights are distributed unequally, acts of discrimination are committed in the name of democracy and freedom, a great-great-grandmother is sold into slavery, America finds itself in mourning, and what it mourns is America itself. This is why, if we wish to speak in the name of freedom, in

3 *Id.* at 236.

4 JOY KOGAWA, OBASAN proem (Anchor 1993).

the name of justice, you have shown us that we must speak of the past we inherit and for which we remain answerable; we must speak of ghosts, of generations of ghosts—of those who are not presently living, whether they are already dead or not yet born. We must speak of the victims of political, nationalist, racist, colonialist, and capitalist violence, or of any of the other forms of oppression and extermination that we still today have not overcome.

You are one of America's greatest mourners, Pat, which is to say one of its most significant and aggressive defenders. In asking us to remember the dead, to engage an inheritance that, even today, belongs to what we still call our future, you demonstrate that there can be no thought of the future, no experience of hope, which is not at the same time an engagement with the question: "How shall we conduct our life?" We can only begin to answer this question, you tell us, by learning to read historically, by learning to mourn, by exposing ourselves to the vicissitudes of a history in which we are inscribed and to which we remain urgently and dangerously responsible because it is we who are at stake. Nearly always silenced, this fact is rarely in our view, but you have enabled us to glimpse it more than once.

In your words,

> The traumatically-induced determination not to speak hobbles our ability to grasp or heal those most painful bits of our history. The impenetrability of that past creates a portal for ghosts, if ghosts are a way of representing what we do not know. Thus we are shaped not only by the hard science of what happens in the world but also by the fairy tales and the half-truths, the willed ignorance and the escapism, the parables and the myths with which our desperate forebears cushioned us as we fell into the world.[5]

If you have used fables, parables, allegories, and all sorts of figures to tell your stories, to engage the law, it is because you wish to suggest that it is the fables and parables that make the law what it is (you say somewhere that "contract law" even "reduces life to fairy tale").[6] But who decides what makes the law the law? Who decides whether or not your writings belong to what we understand under the name of the law? Being the old deconstructionist that I am (someone recently told me that there are no longer any *young*

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5 PATRICIA J. WILLIAMS, OPEN HOUSE: OF FAMILY, FRIENDS, FOOD, PIANO LESSONS, AND THE SEARCH FOR A ROOM OF MY OWN 13 (2005).

6 WILLIAMS, *supra* note 1, at 224.

deconstructionists), you might expect me to offer an aporetic conclusion: one that would suggest that, when it comes to the law, we are not speaking of a particular field, that there is no such thing as a "legal" essay or a specifically "legal" domain. Perhaps the "law" even has something to do with the activity of naming and identifying, something that would account for why Melville's "Bartleby" is so unsettling to the story's lawyer-narrator.[7] His incapacity to understand Bartleby—Bartleby is the only character in the story whose name is not edible (as Turkey, Nippers, and Ginger Nuts are)—signals the law's incapacity to view Bartleby through a legal lens. Bartleby's eventual refusal to copy the law, to reproduce its forms, is the measure of his challenge to it. His "I would prefer not to" is a speaking that remains silent since it asserts without declaring, since it remains outside the lawyer's system of legal reasoning.[8] Like Bartleby, your own writing has remained indigestible to the law and this is its wonderful virtue.

Now, I want to turn to water, to seas and oceans, to tears and all kinds of dissolution, to all the different ways in which water, like a kind of secret, circulates and punctuates your writings, from the Deep Blue Sea in the fable with which *The Alchemy of Race and Rights* opens, in which drowning mortals grasp for chains they think are lifelines meant for them, to the moat in which a child is mauled to death by polar bears at the Brooklyn Zoo, from the "sensate sea" beneath the "speaking dreams" that cannot be made to speak in Joy Kagawa's poem "White Sound,"[9] a poem you cite as you tell the brutal and unspeakable story of Tawana Brawley,[10] to the "voices lost in the chasm" that, speaking from "the slow eloquent fact of the chasm," "speak and speak and speak, like flowing water."[11]

Water moves through your work like a kind of red thread, weaving together the relations between water and dissolution, water and earth, reflections and repetitions of all kinds, memory and forgetfulness, presence and absence, movement and stillness, life and death, and day and night. As we know from Paul Gilroy, Toni Morrison, and Eduoard Glissant, if modernity is linked to the globalization of relation, then this relational modernity is linked to what is Atlantic, terraqueous, and submarine. You suggest that the sea is never simply the sea, but an archive, a tomb, a memorial, a process of remembrance and forgetting. As Fred D'Aguiar puts it in his 1997 book, *Feeding the Ghosts*, the sea "refuses to grant the

7 HERMAN MELVILLE, BARTELBY, THE SCRIVENER: A STORY OF WALL STREET (Dover 1990) (1853).

8 *Id.* at 10.

9 KOGAWA, *supra* note 4, at proem.

10 WILLIAMS, *supra* note 1, at 175.

11 *Id.* at 201.

body the quiet of a grave in the ground. Instead it rolls that body across its terrain, sends that body down into its depths."[12] When these drowning bodies appear at the opening of your first book, the link between law and subjection, between law and death, is evoked. In the worlds you create, the globe, the continents, stones, plants, fish, the air, all things inanimate and animate, and perhaps especially the ice that we imagine in the poles where your precious polar bears live—when they're not beside you, populating your dreams or attending your classes—are all animated by water. While water in your work is a figure for the mobility, instability, and even dissolution of perception itself, for the disintegration of the categories on which the law relies, it is perhaps more accurate to say that it is the enemy of everything that resists transformation. If water is a force of dissolution and transformation, survival and destruction, life and death, its initiation of a new "beginning" also includes the gesture of leaving something or someone behind. Within your world, it would seem, water points to the process of disappearance that you repeatedly stage in your work, as images repeatedly appear only to disappear, and as you assert yourself only in order to withdraw again. This is perhaps most legible in the movement of your writing, which is why you say that writing for you is "an act of sacrifice," and that you "deliberately sacrifice" yourself in your writing,[13] perhaps because your eyes are inundated with water—with the memories of all the bodies of water that remain haunted by the traces of slavery and death, and with all the tears that fell to mark their horrors, and that still fall to mark the after effects of their legacies.

Finally, your animals, the strange bestiary that inhabits your works, one that includes, among so many others, rabbits, whales, foxes, monkeys, cows, squirrels, peacocks, elephants, pigs, chickens, and your beloved polar bears. Throughout the trajectory of your work, animal figures multiply, increasingly become insistent and visible, but nevertheless constitute something more or less than a bestiary. But these figures can never be reduced to being either an animal or a non-animal. However tempting it might be to turn them into an anthropomorphic fable about man, about the animality of man, they resist returning to a story about men, and for men. You evoke the long tradition of legal and philosophical writing that, from Aristotle to Descartes and beyond, has claimed that man is a rational animal, able to reason, and to use language. Within this tradition, the animal is unable to respond to questions: deprived of language, it lacks the power to question or respond. But, in your works, the animal that is presumably without reason or language proves itself capable of both, and human creatures—especially politicians, radio hosts, and lawyers—often are the ones without these capacities. In each instance, the animality represented by

12 FRED D'AGUIAR, FEEDING THE GHOSTS 4 (1997).

13 WILLIAMS, *supra* note 1, at 92.

this or that creature cannot be simply opposed to humanity and, for this reason, the forces of reason and unreason cannot be attached solely with one or the other. If this artistic bestiary exists everywhere in your work, it is because you delineate a world in which the categories that would support the distinction between animals and non-animals, between humans and nonhumans, between reason and unreason, are blurred from the very beginning.

When we encounter one of the many polar bears that populate your writings, for example, we are confronted with a figure that, circulating throughout your first book especially, signals companionship, sorrow, hunting, survival, premonition, fear, wildness, witnessing, death, the relation between the visible and the invisible worlds, the human and the nonhuman, a force of aggression and violence, an avatar of the human, even a lawyer in shaman form, and silence. In each instance, the polar bear is never simply a polar bear, but rather a figure that carries all of the connotations and associations that throughout your work have gathered and accumulated within it. Your bears form an archive of everything they have signified, both inside and outside of your pages (what we might call your "skin"). It is because the traces encrypted within these many bears include references to the past, the present, and the future, and in such a way that none of these can be isolated from the other, that these bears are never "present" as such. They are not reducible to what you say at any given moment, to what could be presented to us as a theme, or recognizable as this animal. Instead they are a form of remembrance, a mode of gathering, but one that can never be comprehended or gathered in its entirety, since, with every stroke of your pen or keyboard, they are divided and fissured across the multiply-heterogeneous traits that they support—traits that, interrupting them, also interrupt any possibility that we might be able to identify them in a determinate fashion. Your bears tell us, in other words—if they can tell us anything at all—"I am not a bear," or rather: "I am a bear who is not a bear." In this way, the bear tells us what is true of all of your figures: like the law, none of them are ever only themselves.

What your wonderful, wildly literary, and inventive stories about silence, water, and animals have enabled us to imagine, dear Pat, is a world that is both open and closed not only to many laws but also to what cannot be assimilated to any familiar concept of law, to another law, and to something other than law. What you help us call for is a democracy that would begin with a reconceptualization of the relation between law and its presumed others—all the fields from which we cannot separate it, which intervene in it and which cannot be said to be simply fields: ethics, politics, economics, psychology, sociology, philosophy, literature, etc. It would call for new experiences of communities, frontiers, and identities, without models, and perhaps even without laws as we generally have understood them, laws of tomorrow that would match a democracy that is still yet to come and yet to be

imagined. You gesture toward this democracy by asking us to invent laws anew—to invent a discipline that would be open to the future because it would be open to its own alterity. Such laws would ask us, in the words of Jean-Luc Nancy,

> to measure up to what nothing in the world can measure, no established law, no inevitable process, no prediction, no calculable horizon—absolute justice, limitless quality, perfect dignity—and it is necessary to invent and create the world itself, immediately, here and now, at every moment . . . which is the same as saying that it is necessary at one and the same time to affirm and denounce the world as it is . . . to *make* the world into the place, never still, always perpetually reopened, of its own contradiction, which is what prevents us from ever knowing in advance *what is* to be done, but imposes on us the task of never making anything that is not a world.[14]

But what would it mean to make a world (I remember that, when you were adopting Peter, you wrote to his birth-mother that you would offer him "a taste of the world," that you would make a world for him)? We can never know what will happen, but we work together to create a world that would be open to its own uncertainties. We must invent a world, instead of being determined by one, or dreaming of another. Invention is always without model or guarantee, but, as Nancy goes on to say, "where certainties come apart, there too gathers the strength that no certainty can match."[15] This is something that the Black Alice in Wonderland that you are confirms for us—the Black Alice that jumps into the "deep rabbit hole" of her book and finds there a whole host of wild characters whose stories help her look at law, liberation, and the jurisprudence of rights anew—the Black Alice who, through her writing, and like the white Alice, exclaims "I am real!", even though her voice is perhaps more fragile, more uncertain, and more mad than that of the Alice we know, the Black Alice who undergoes a series of transformations and, fusing what the law views as a brand of nonsense with potentially melancholic subject matter, learns to see, through the looking glass, what she is not supposed to see. She teaches us how to re-read an entire lexicon of the law: autonomy, freedom, choice, testimony, contract, rights, jurisprudence, property, authority, equality, community, decision, self, person, human, and justice.

This Black Alice, having gone down the rabbit hole of her book, has thankfully emerged to remind us that, from their very beginnings, human rights always have been a

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14 Jean-Luc Nancy, *What is to be Done?*, *in* PHILIPPE LACOUE-LABARTHE & JEAN-LUC NANCY, RETREATING THE POLITICAL 158 (Simon Sparks ed., 1997).

15 *Id.* at 152.

way to think about what it means to be human, and what it means to have the right both to live and to be human. If the challenge of human rights seems to be infinite, however, it is because we have yet to enact a politics that can ensure justice and dignity throughout the world. What is clear, however—and this is one of the many lessons that your remarkable work conveys to us—is that the world is not a place where humanity or rights are shared, and this despite their respective claims to universality. Instead, it is a place of inequality and injustice, a place of loss and death, a place where every day there are more people who are displaced and dispossessed, who starve, who are mutilated and raped, who are exiled and marginalized, and who live without the full exercise of political and civic rights. It is a place where, because of the inequality and injustice often written into the very formulations and definitions of humanity and rights, the task of defining and realizing human rights is infinite, and therefore permanently urgent and necessary, and perhaps best secured by Black Alices, Black, female Bartlebys, your precious polar bears, and all the other figures and animals that have come to your rescue, and, because of you, to ours.

Thank you, dear Pat.
With my enduring love,
Eduardo
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