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BOOK REVIEW

TOWARD CANTANKEROUS COMMUNITY: A Review of THE ROOSTER'S EGG: ON THE PERSISTENCE OF PREJUDICE, by Patricia J. Williams, Harvard University Press, 1995

CYNTHIA V. WARD*

In her book *Tell My Horse*, Zora Neale Hurston describes Jamaica as "the land where the rooster lays an egg."¹ Hurston's startling image illustrates the effect of racist societal norms on Jamaican children born to white men and black women:

[T]he black mother is literally and figuratively kept out of sight as far as possible, but no one is allowed to forget that white father, however questionable the circumstances of birth. You hear about "My father this, and my father that, and my father who was English, you know," until you get the impression that he or she *had* no mother. Black skin is so utterly condemned that the black mother is not going to be mentioned or exhibited. You get the impression that these virile Englishmen do not require women to reproduce. They just come out to Jamaica, scratch out a nest and lay eggs that hatch out into "pink" Jamaicans.²

This excerpt supplies the title of Patricia Williams's new book and succinctly encapsulates its four major themes. First, Hurston's account demonstrates the power of racism not only to disparage persons of a race deemed inferior, but actually to render them invisible, thereby artificially inflating the importance and influence of the dominant racial group and draining the "mainstream" culture of diversity it would necessarily possess if all persons were viewed and treated as equals. In a racist society, the dominant group does not merely fail to acknowledge the contributions of outsiders; it treats those contributions as part of the unformed, inanimate "natural" world over which domination is felt to be both necessary and appropriate.

Second, Hurston's essay implicitly names the social sphere as distinguished from that of politics and law, as the site of the most

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1. ZORA NEALE HURSTON, *TELL MY HORSE* (1938), reprinted in *I LOVE MYSELF WHEN I AM LAUGHING . . . AND THEN AGAIN WHEN I AM LOOKING MEAN AND IMPRESSIVE* 125 (1979).

2. *Id.* at 127.

stubborn and intransigent racism. Professor Williams takes up this theme more explicitly, drawing on common experience to point out how tenacious of life, how much a part of the daily existence of each and all of us, are our own racial identities and those of others. We cannot change that, Williams suggests, merely by passing laws. Fundamental change will not happen until we all recognize the persisting strength of the racial walls between groups and agree relentlessly to cultivate the ability to talk (and listen!) to each other through those walls.

Third, the Hurston story registers the destructive internal impact of racist social norms within subordinated groups. In the story, children born to parents of different races themselves participate in erasing their black mothers from their public lives. The story suggests that norms constructed out of hatred create self-hatred in individuals.

Finally, Hurston's account of Jamaica touches lightly on the difficult issues surrounding the relationship between race and gender, which have been the focus of much recent jurisprudential work by Professor Williams and others.³ Hurston discusses racism in a specifically gendered context, one in which the powerful racial figure, the figure that is socially endorsed and is thus made to appear capable of nature-transcending miracles, is both white and male, and is thereby a participant in two overlapping but distinct spheres of tradition-based social dominance.

With the directness and originality that always characterize her work, Patricia Williams traces these four themes in American experience.⁴ Among the most respected legal scholars who work in the narrative style, Williams uses personal stories to reinforce her substantive emphasis on the importance of attending to context in legal and political discussion; on the impossibility of maintaining community without first acknowledging difference; and on the inescapable influence of everyday social experience in creating and reinforcing theoretical ideas. Deliberately contradicting the impression of disembodied abstraction often conveyed by the work of theoretical scholars, Williams invites her readers to peer through her kitchen window where we see her

3. See, e.g., Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991).

4. See PATRICIA J. WILLIAMS, *THE ROOSTER'S EGG* (1995).

squeezing Lemon Joy into a wine glass while listening to Howard Stern — an experience that becomes the basis for the book's third chapter, "Radio Hoods," in which she discusses the meaning and influence of radio talk shows. In Chapter Eleven,⁵ "Black-Power Dream Barbie," she shares an experience at a dance class where, surrounded by a group of Japanese students who hip-hopped rings around her, she ruminates on the nature of cultural property and its complex connections to race. And her twelfth chapter, "In Search of Pharaoh's Daughter," takes us through the sometimes hilarious but also heartrending process of filling out an adoption agency questionnaire that unintentionally, but quite definitely, treats children like "the multiple combinations of meat offered at . . . Kentucky Fried Chicken."⁶

These personal stories, and many others, are chosen to make key points in Williams's argument and to illustrate her general belief in the importance of keeping real life in view while talking theory. And throughout *The Rooster's Egg*, Williams's personal stories weave a thread of optimism through her discussion of the difficulties of transcending bigotry to reach true, difference-respecting community.

I. THE CONTINUING POWER OF RACE AND GENDER

"Witch-hunting misogyny is fiercely recurrent in this nation," Professor Williams declares in Chapter One. "Aimed particularly at black women, single women, and poor women on welfare, the attacks have handily condensed all three categories into the encompassing figure of 'the' black single mother on welfare."⁷ Williams attacks the now-popular view that the current structure of welfare, especially Aid to Families with Dependent Children (AFDC), encourages poor women to have children when they otherwise would not. Williams believes that this view targets both poor children and their mothers for social denigration. Indeed,

The war on illegitimacy is . . . a way of drawing lines between children who are thought legitimate and those who are not. In terms of its civic consequences, it builds a barrier

5. Professor Williams does not number the chapters.

6. WILLIAMS, *supra* note 4, at 219.

7. *Id.* at 4.

between legal and illegal children, between those who are all in the family and those who are deemed alien.⁸

This is not simply an empirical debate, for Williams does not only dispute the idea that AFDC, in fact, encourages poor women to have more children. She goes further, suggesting that the "war on welfare" is both motivated and perpetuated by racism and sexism.⁹ Of course, if the structure of welfare does in fact result in poor women having more children than they would otherwise, and these children do in fact grow up in poverty, then the motivations of those who attack AFDC might seem irrelevant. Professor Williams's larger point, however, concerns not the welfare issue in particular, but rather the general tone of contemporary political debate. Not only with respect to welfare, but also on a host of other issues, Williams sees a rise in the level of mean-spirited attacks on America's most vulnerable citizens.

She pursues this concern even more openly in Chapter Three, "Radio Hoods," in which she worries that "[i]n the four years since Clarence Thomas has assumed his post on the Supreme Court, crude, in-your-face racism, sexism, anti-Semitism, and homophobia have become commonplace, popularly expressed, and louder in volume than at any time since the beginning of the civil rights movement."¹⁰ Part of Williams's evidence for this belief is the prevalence of conservative talk shows, such as those of Howard Stern and Rush Limbaugh, and the large size of their mostly white male audiences who call in to attack affirmative action and other achievements of the Civil Rights Movement.¹¹ Williams

8. *Id.* at 8-9.

9. For example Professor Williams states:

Our present welfare war is pervaded with the assumption that black women have no business having any more children (its most common expression being the fiction, again, that women on welfare are having more children just to get more money) Yet this anxiety about population control does not seem to extend to middle-class whites . . . or to poor white women who have children out of wedlock, who are encouraged to give up their children for adoption and redistribution in the great "white baby shortage."

Id. at 9.

10. *Id.* at 44.

11. Williams discusses the "crude demagoguery" of talk shows that makes her: feel more and more surrounded by megawatt expressions of hate and discrimination — the coded epithets, the mocking angry glee, the endless tirades filled with nonspecific, nonempirically based slurs against "these people" or "those minorities" or "feminazis" or "liberals" American popular culture has suddenly been given a megadose of childish turnaround laced with a very adult kind of verbal brutality.

Id.

worries that the bigotry expressed by the callers on these shows evinces a new social permission to publicly embrace racism, sexism, and other forms of group-based hatred, and that First Amendment protections insidiously cloak the purveyors of such hatred with respectability.¹² She takes such bigotry to be evidence of

the reemergence, more powerful than at any time since the founding of the Ku Klux Klan and the institution of Jim Crow, of a socio-centered self that excludes "the likes of" [disadvantaged groups] from the civic circle, and that would rob [such groups] of [their] worth and claim and identity as . . . citizen[s].¹³

Not that racism and sexism have ever been absent from the American scene. Indeed, claims Professor Williams, "[d]espite the enormous social, political, and legal fluctuations of twentieth-century American life, there has been a remarkable stasis in race relations, an intractability of gender hierarchy, an entrenched power dynamic that has resisted the reordering of the very best rhetoricians and theoreticians."¹⁴ For Williams, the basis for racial oppression is no longer overt use of the law to enforce racial inequality; instead, such oppression is perpetuated via the language of freedom and privatization:

No longer are state troops used to block entry to schools and other public institutions—segregation's strong arm, states' rights, has found a new home in an economic gestalt that has simply privatized everything No longer is the law expressly discriminatory [as to race and ethnicity] . . . yet the phenomenon of laissez-faire exclusion has resulted in as complete a pattern of economic and residential segregation as has ever existed in this country.¹⁵

That statement is extreme — perhaps too extreme.¹⁶ But for Williams, this privatization phenomenon underlies a progressive dehumanization in our public discourse that shoves continued racial oppression under the protective covering offered by private freedoms, most prominently economic freedom and freedom of

12. See, e.g., *id.* at 51.

13. *Id.* at 51.

14. *Id.* at 16.

15. *Id.* at 25.

16. See *infra* notes 58-59 and accompanying text.

speech. In a gripping illustration that immediately brings to mind the battles over lunch-counter segregation during the Sixties, Williams discusses the current phenomenon of "Rush Rooms" in restaurants around the nation, where Rush Limbaugh fans come to:

surrender to the naughty luxury of a room in which a Ku Klux Klan meeting could take place in orderly, First Amendment fashion Everyone's "free" to come in [to these rooms] . . . , but mostly the undesirable nonconformist non-dittoheads are gently repulsed away. It's a high-tech world of enhanced choice, you see. Whites choose mostly to sit in the Rush room; feminists, blacks, and gays "choose" to sit elsewhere. No need to buy black votes, you just pay blacks not to vote; no need to insist on white-only schools, you just sell them on the desirability of black-only schools. No need for signs and police to enforce the separation of gay from straight; non conformist troublemakers will herd themselves nicely in the face of a din of racist, sexist, homophobic babble. Just sit back and watch it work, like those invisible shock shields that keep dogs cowering in their own backyards.¹⁷

Just as segregation laws erected barriers between the races, so does protected racist speech. And this type of speech, which for decades had been ashamed enough of itself to stay out of the limelight, is now charging back onto center-stage, literally with a vengeance.¹⁸

Williams argues that racist stereotypes are also reinforced via economic freedoms. Just as free speech protections in a racist society can perpetuate racial dominance of minorities, so can private market forces reinforce negative racial stereotypes. By way of illustration, she recalls seeing a bin full of mother and father dolls in a store. The dolls were identically crafted except that some, the higher-priced ones, were white, while the lower-priced ones, priced for "sacrificial sale", were black. Williams points out that from a color-blind perspective this pricing scheme was simply irrational; it becomes understandable only when racial prejudice is factored in. The lower market demand for the black dolls, reflected in their lower price, must proceed from a

17. *Id.* at 53-54.

18. See, e.g., *id.* at 49 (quoting former Secretary of Education William Bennett for the statement: "People were afraid of censure by gay activists, feminists, environmentalists — now they are not because Rush takes them on.").

difference perceived by potential purchasers between these dolls and the white dolls. Black dolls are valued less, and that lower value results from consumer views about race.

Williams offers a more dramatic example of the market's unconscious mirroring of societal racism in her twelfth chapter, "In Search of Pharaoh's Daughter." Here she discusses the "market valuation of children,"¹⁹ in part by sharing her own experience as an adopting parent. Having adopted her son, Williams received a call from the agency asking her which fee schedule she had selected, the "standard" or the "special."²⁰ It turned out that the "standard" fee schedule was higher than the "special," in that the latter applied to "older, black, and other handicapped children," and that it was set at a lower level in order to encourage the adoption of "less requested" children, including black children.²¹ At the very least, this illustration demonstrates the importance of race in the minds of parents; the fact that the race of their prospective child typically matters to adoptive parents, and that most such parents prefer a child of the white race, is itself a statement about the power of racial categories.²²

Williams traces this phenomenon to the continuing power of racial categories that restrict the ability of a black person to "exist as a real human being in the cage of those too-easy assumptions" about personhood that are drawn from race.²³ Race and class coding are two important ways in which the individuality, authenticity, and basic personhood of blacks are denied in this society.²⁴ Such coding provides the basis not only for negative views of blacks, but also for white denial of black additions to the "mainstream" culture, the unthinking absorption into the white mainstream, for example, of black contributions to American dance and music, while the history and source of those contributions are erased from our collective memory.²⁵ Blacks are

19. *Id.* at 217.

20. *Id.* at 222.

21. *Id.* at 223.

22. Williams seems to go even further. Describing her reaction to being told about the "special" price schedule, she writes:

Suddenly what had been a price system based on services rendered became clearly, sickeningly, a price system for 'goods,' a sale for chattel, linked not to services but to the imagined quality of 'things' exchanged [I]n our shopping-mall world it had all the earmarks of a two-for-one sale.

Id.

23. *Id.* at 59.

24. *See id.* at 58-73.

25. *See, e.g., id.* at 84-85.

thus given the message that assimilation into "mainstream" society, or at least inclusion in its spheres of power, can come only at the price of self-erasure.

Williams discusses the impact on blacks of "mainstream" devaluation of their personhood and their creativity. Encountering a young black girl with her mother in the subway, Williams takes note of the child's "Barbie" hat and wonders: "Is Barbie, that anorexic instrument of white women's oppression, capable of being black?"²⁶ Recalling the choices about the ideal female image which went into the original (white) Barbie, she wonders about the transmitted effect of that ideal, which includes the ideal of whiteness, on black girls.²⁷ Regretting the "striking absence" of positive role images of black women today,²⁸ Williams recalls the black children in Kenneth Clark's famous study, who preferred white dolls to black ones,²⁹ and she sees continuing racial self-denial in Michael Jackson's apparent attempts to erase his blackness;³⁰ in the self-rejection of a man born to a Vietnamese mother and an African American father, who confesses his shame at having a black father and wishes he were a white Amerasian;³¹ and in an American black woman who chose to be implanted with the egg of a white woman and to have a white child so that her child would be "spared the misery of racism."³²

Williams notes that when affirmative action is taken to recognize socially inflicted harms to blacks, such efforts are seen to victimize whites.³³ How quick we are to see ourselves as victims, Williams reminds us, and how slow to see ourselves as oppressors. The view that affirmative action programs favor the undeserving draws upon images of blacks as inferior that predate affirmative action, and, Williams theorizes, "will probably outlast" it.³⁴

Throughout her wide-ranging discourse about race, Williams never loses sight of other dimensions of social injustice, especially

26. *Id.* at 183.

27. *See id.* ("It's pathetic enough that little white girls yearn so for the conical breasts and vaulted arches of a trophy-wife-in-training; but when little black girls don blond wigs and spike heels they pass home and go all the way to straight-out prostitution.").

28. *Id.* at 184-85.

29. *See id.* at 184.

30. *See, e.g., id.* at 226, 242.

31. *See id.* at 225.

32. *Id.* at 240.

33. *See id.* at 88-108.

34. *Id.* at 104-05.

that of gender. In Chapter Eight, "A Hearing of One's Own," she invokes the case of Lani Guinier, the African American law professor who was nominated by President Clinton to serve as director of the Civil Rights Division of the Justice Department, and then un-nominated following a media furor over her views on affirmative action and the legislative representation of blacks.³⁵ Williams writes that Guinier's voice, the voice of a highly educated, articulate, and experienced black woman, was "completely . . . obliterated at that moment in history when she came close to assuming a position invested with the power of law."³⁶ Williams also takes note of the ongoing political assault on Hillary Rodham Clinton, whose professional accomplishments, independent status, and feminist views have attracted vituperous attacks from a wide range of sources.³⁷ "Three centuries after Salem," challenges Professor Williams, "[w]hy are we still burning witches, or even just low-simmering them to death?"³⁸

Williams condemns the revival of the most traditional, oppressive ideas of womanhood through the contemporary concern prevalent in conservative circles about "family values" and "preserving the family" — concerns that often take as a root premise the notion that women belong at home and not in the professional workplace. Hillary Rodham Clinton, who alone among America's first ladies has rejected this vision, has been compared unfavorably by Republicans to Barbara Bush and Marilyn Quayle, both defenders of women's traditional role as wives and mothers.³⁹ Mrs. Clinton, and by implication all women who defy the home and hearth stereotype, run the risk of public scorn for being too "masculine" (or, in a related attack, for being lesbian) even as the masculine world of work refuses to accept them on any other terms but its own.⁴⁰ These attacks also involve President Clinton, for Hillary Clinton cannot be strong unless her husband is weak. Bill Clinton is therefore vilified for not being able to "control his woman."⁴¹ Again, Williams urges a shift by men from automatic defensiveness ("I can't even say hello

35. *See id.* at 138-49.

36. *Id.* at 139.

37. *See id.* at 151-68.

38. *Id.* at 153.

39. *See id.* at 160-62.

40. *See id.* at 160-65 (discussing the assault on the women's movement by "assimilationist models of civil belonging," and the prevalence of attacks on the sexuality of feminist women).

41. *Id.* at 161-62.

to a female coworker without being accused of sexual harassment!") to genuine engagement with women's concerns.⁴²

II. ON TALKING, AND LISTENING, THROUGH WALLS

Thus, Williams emphasizes the limitations of the First Amendment while simultaneously celebrating the possibilities of open dialogue. She wonders,

how to relegitimate the national discussion of racial, ethnic, and gender tensions so that we can get past the Catch-22 in which merely talking about it is considered an act of war, in which not talking about it is complete capitulation to the status quo, and in which not talking about it is repeatedly covered up with a lot of high-volume substitute talk about the legalities of censorship and the First Amendment.⁴³

As Williams reminds us, the First Amendment does not turn protected speech into virtuous speech; we should not draw from the statement, "this speech is protected by the First Amendment," the conclusion that "this speech is true, or moral, or good."⁴⁴ The First Amendment offers an essentially negative protection; it prevents the state from banning most speech. This protection should never end an important political argument, argues Williams, but should instead prompt "more constructive conversations about how we might reinfuse our pedagogy with dignity and tolerance for all."⁴⁵ Professor Williams urges that such conversations cannot be free and fair if already burdened groups are forced to initiate and conduct them. In the academic setting, for example, Williams argues against the idea that institutional interference in the speech of campus community

42. *Id.* at 166.

43. *Id.* at 40.

44. *Id.* at 33.

45. *Id.* at 29. Williams expresses concern that the "noisy rush to discuss the legalities of censorship and the First Amendment preempts such conversations." She states:

it is as if the First Amendment has become severed from any discussion of the actual limits and effects of political, commercial, defamatory, perjurious, or any other of the myriad classifications of speech. It is as if expressions that carry a particularly volatile payload of hate become automatically privileged . . . as a bludgeon of paradox — "I have my First Amendment right to call you a monkey, so you shut up about it." As the legal anthropologist Richard Perry observes, hatred thereby gets to cross-dress as Virtue Aggrieved.

Id.

members is always wrong. This laissez-faire approach, she writes, "makes only certain students — those who are most frequently the objects of harassment — the perpetual teachers, not merely of their histories, but of their very right to be students. This is an immense burden, a mountainous presumption of noninclusion that must be constantly addressed and overcome."⁴⁶

Williams's call for "empathic relation" — for sensitive, and difference-respecting, talking and listening — lies at the core of her hopes for true national community.⁴⁷ It is a pragmatic vision of community, as such visions go. Although she (somewhat ruefully) identifies herself as a "communitarian moralist,"⁴⁸ Williams advises that "simple cantankerous coexistence may be what we should be aiming for in a democracy based on live-and-let-live."⁴⁹

But the achievement of even this pared down goal, she writes, requires that we improve our ability to talk to each other. In this regard, Williams worries about the denigration of the language of civil rights, not merely from conservatives in the form of attacks on "political correctness," but also from some who seek to advance the agenda of minorities. Thus, while she regrets that the term "multiculturalism" has been drummed out of polite discourse by the critics of political correctness,⁵⁰ she also bewails the transformation of the concept of racial integration into an evil and the growing support for resegregation among minority rights advocates.⁵¹

If discourse is the way to reform, then communication, and particularly the use and abuse of language, becomes centrally important. Williams blames the mass media, especially the electronic media, for affirmatively failing to shape the important political debates of our day. "While it is probably true that the media is a reflection of America in general," she writes,

I resist the temptation to say that they are *just* a mirror. From Churchill to Hitler to the old Soviet Union, it is quite clear that radio and television have the power to change the course of history, have the power to proselytize and to

46. *Id.* at 39.

47. *Id.* at 39.

48. *Id.* at 180.

49. *Id.* at 192.

50. *Id.* at 27.

51. *See id.* at 25.

coalesce not merely the good and the noble but also the very worst in human nature.⁵²

She repeatedly calls on the mass media to promote dignified discussion (rather than mindless fueling) about real issues.⁵³ This is not a new idea, but it does highlight Williams's larger point — that what counts is not what the law says, but how we view, and talk to, each other. The First Amendment can serve either as a vehicle for the public infliction of hateful speech on despised others, or as a vehicle for reaching out and communicating in an atmosphere of respect. When we personally are not willing to include and equalize, the law cannot do it for us.

Williams sees the power of the electronic media as "enormous,"⁵⁴ and she calls on the media to use that power to further a "long-overdue" national dialogue on the issues of race, gender, and class which continue to divide Americans.⁵⁵ To escape the "cultural anorexia" which now encourages us to assault our bodies and submit our imaginations in the service of socially generated norms that exclude those who are different,⁵⁶ we must begin by recognizing and respecting our differences, and we must then use our ability to communicate to reach common understandings which transcend difference.

Professor Williams delivers her message in realistic terms that notice the blemishes even on its heroes,⁵⁷ that do not turn away from the limitations even of its messenger,⁵⁸ but that simultaneously remain hopeful that honest communication is enough to produce difference-respecting community. She often bends over backward to understand those whose views she disputes.⁵⁹ This effort gives integrity to her claims that human beings cannot be reduced to abstract principles but must be seen in all their varieties of virtue and vice,⁶⁰ and that a person's

52. *Id.* at 45.

53. *See, e.g., id.* at 75-76.

54. *Id.* at 110.

55. *Id.* at 122.

56. *Id.*

57. *See, e.g., id.*, in the chapter entitled "Clarence X," at 121-36.

58. *See, e.g., id.* at 198-99 (recounting author's own painful lesson on the power of racial categories).

59. *See, e.g., id.* at 73-74 (arguing that the media's bigoted depiction of poor whites offers insight into that group's hostility toward blacks).

60. *See, e.g., id.* at 121-36 (discussing heroes in general, and Malcolm X in particular).

concept of justice is inevitably influenced by his or her own socialization and experience.⁶¹

On the other hand, Williams's stories do sometimes lapse into political cliché. She quite forcefully argues that "[w]e must get beyond the stage of halting conversations filled with the superficialities of hurt feelings and those 'my maid says blacks are happy' or 'whites are devils' moments."⁶² But too often she does not move beyond this stage herself, depicting whites as idiotic cartoon characters⁶³ and arguing that the injustices suffered by minorities and women are as bad today as they have ever been.⁶⁴ No one would deny that racism and sexism are still with us; but to suggest that the situation of American blacks today is one of slavery, or that American women are as downtrodden in 1997 as they were a century ago, is to strain credulity past the breaking point.

61. Recounting her early job in a Los Angeles prosecutor's office dominated by white males, Williams remembers:

[L]istening to some of the more senior prosecutors shoot the breeze. They were talking about a case whose charge one of them had just reduced to a misdemeanor. It was a child-molestation case, involving an eleven-year-old girl whose stepfather was the defendant. They were looking at a photo of the little girl and in the most crude and unselfconscious terms they were admiring the state of her physical development — who could blame the stepfather, they said. They decided they'd never convince a jury to convict, so what the hey.

Id. at 92.

62. *Id.* at 24.

63. See, e.g., *id.* at 3-4 (a white man boards a subway, points disdainfully at an elderly black woman asleep in the train, and loudly informs a twelve year-old black passenger, "You see that? That's why you'd better learn how to work!"); *id.* at 66-67 (a white supervisor of two minority employees rolls his eyes at Williams and "sigh[s] in all apparent seriousness, 'It's so hard to find good help these days.'"); *id.* at 84-85 (citing as an example of white cultural power "the young white person who, having attended her first African dance class, announced that it was 'nice to see how many moves they've borrowed from aerobics.'").

64. See, e.g., *id.* at 16 ("[d]espite the enormous social, political, and legal fluctuations of twentieth-century American life, there has been a remarkable stasis in race relations, an intractability of gender hierarchy, an entrenched power dynamic that has resisted the reordering of the very best rhetoricians . . ."); *id.* at 16-17 (discussing focus on markets and freedom as rationale for modern slavery); *id.* at 25 ("the phenomenon of laissez-faire exclusion has resulted in as complete a pattern of economic and residential segregation as has ever existed in this country."); *id.* at 230 ("[t]he transformation of slavery's rationales from one discourse to another has been . . . an extraordinary force in the shaping of the modern world"). In contrast, Williams states:

We have accomplished much in the last twenty or thirty years that is too easily forgotten. As the reality of Asian-American police officers, women firefighters, close-captioned TV, and a Caribbean-American general named Colin Powell fade in the backdrop of the "normal," we lose sight of how recent, costly, and precarious this much inclusion has really been.

Id. at 94-95.

Such glitches detract unnecessarily from the force of Williams's main argument. One assumes she would be the first to acknowledge that difference-respecting dialogue requires, at a minimum, that we all bring to the discussion at least a reasonable degree of interpretive charity. This appears, in fact, to be Williams's fundamental belief which makes her own occasional digressions from it regrettable, rather than fatal, to her core argument.

III. THE STUBBORNNESS OF BIGOTRY

Throughout *The Rooster's Egg*, Patricia Williams condemns the repeated attempts in American history to depict race and gender-based hierarchy as "natural," rather than socially constructed. She notes that "as women are still trying to overcome presumptions that they really *like* getting fondled in the back office, blacks are trying to overcome presumptions that they really *deserve* to be on the bottom of the heap."⁶⁵ One consequence of these deeply entrenched views is the repeated rebirth, albeit in a new guise, of the view that minorities and women are inherently inferior in ways which are relevant to law and politics. With respect to racial minorities, Williams discusses the latest incarnation of this phenomenon via attacks on the "black single welfare mother" and on the qualifications of black people in the workplace. Such attacks, she charges, have been purified into authoritative "scientific" propositions by charts, numbers, and economic modeling. Behaviors that are the product, at least in significant part, of rigid social stereotypes and role expectations, are sterilized via quantification and presented as static "preferences" whose proper theater of operation is the "free market." Williams points out that this purification process misses

the underpinnings of certain valuations that inform those life-paths purporting to be choices — valuations that I think are too often nothing more and nothing newer than medieval obsessions, a kind of obsessive eugenics. Perhaps it is only in their mysterious contradictory power over us that these valuations can be seen as the real irrationality in our lives — almost religious beliefs and even hatreds, rather than "simply economic" or "observably scientific" taxonomies.⁶⁶

65. *Id.* at 26.

66. *Id.* at 233.

From the feminist perspective, Williams's point receives strong and sobering support from the growing popularity in political and legal debate over the evolutionary perspective on gender difference. The success of Robert Wright's book *The Moral Animal*,⁶⁷ which deploys evolutionary theory to explain a broad range of human behavior, from male sexual aggressiveness to the development of morality, from homosexuality to status-consciousness, and from friendship to family organization, may have brought to general public consciousness the growing appeal of evolutionism in a wide variety of fields, including not only biology but also psychology, sociology, anthropology, and law.⁶⁸

Neo-Darwinists draw on evolutionary theory to argue the "naturalness" of male sexual aggression, of domestic violence against women, of women's role as nurturers, and of men's allegedly superior ability to perform in the public sphere.⁶⁹ For example, evolutionary analysis suggests that men are biologically wired to place primary emphasis on good looks and sexual "coyness" in women,⁷⁰ to pursue women aggressively for the purpose of sex,⁷¹ and to lie to women about their availability for

67. ROBERT WRIGHT, *THE MORAL ANIMAL: EVOLUTIONARY PSYCHOLOGY AND EVERYDAY LIFE* (1994).

68. See *id.* at 4 (discussing the growing importance of evolutionary psychology in variety of fields); Wright states:

Can a Darwinian understanding of human nature help people reach their goals in life? Indeed, can it help them choose their goals? Can it help distinguish between practical and impractical goals? More profoundly, can it help in deciding which goals are worthy? That is, does knowing how evolution has shaped our basic moral impulses help us decide which impulses we should consider legitimate?

The answers, in my opinion, are: yes, yes, yes, yes, and, finally, yes.

Id. at 10.

69. See generally DAVID M. BUSS, *THE EVOLUTION OF DESIRE: STRATEGIES OF HUMAN MATING* (1994) (describing the mating strategies of females and males); TIMOTHY GOLDSMITH, *THE BIOLOGICAL ROOTS OF HUMAN NATURE: FORGING LINKS BETWEEN EVOLUTION AND BEHAVIOR* (1991) (examining the lower parental investment of females in comparison to males); MELVIN KONNER, *THE TANGLED WING: BIOLOGICAL CONSTRAINTS ON THE HUMAN SPIRIT* (1982) (discussing males as the primary aggressor through out different cultures); WRIGHT, *supra* note 67 (examining males' heightened concern of sexual infidelity in comparison to females heightened concern of emotional fidelity); Robert Wright, *Feminists, Meet Mr. Darwin*, *THE NEW REPUBLIC*, Nov. 28, 1994, at 34 (arguing men are naturally more aggressive in regard to sexuality and power because of their biological, evolutionary nature).

70. See, e.g., BUSS, *supra* note 69, at 49-58; WRIGHT, *supra* note 67, at 64-86.

71. See, e.g., WRIGHT, *supra* note 67, at 55-86; Barbara Smuts, *Male Aggression Against Women: An Evolutionary Perspective*, 3 *HUMAN NATURE* 1 (1992). Thornhill & Thornhill, *The Evolutionary Psychology of Men's Coercive Sexuality*, 15 *BEHAVIORAL & BRAIN SCIENCES* 363 (1992).

commitment to a relationship in order to get sex.⁷² In addition, men naturally feel possessive about women and are naturally inclined physically to assault them if they suspect sexual infidelity.⁷³ Evolutionists depict women, on the other hand, as "naturally" attracted to men of high social status, men with money or other forms of social power, and assert that this preference of women is what drives men to be competitive with each other in the marketplace and makes them more successful at such competition than women,⁷⁴ who they describe as biologically programmed to value home and family, and specifically the nurturing of children, more than competitive success in the public sphere.⁷⁵

Evolutionists acknowledge that they have no absolute proof of these allegedly "natural" inclinations — that there is no such thing, for example, as a "nurturance" gene or a "ladder-climbing" gene. They base their conclusions about gender difference (and many other patterns of human behavior) on the premises of natural selection theory.⁷⁶ In our "ancestral environment," which they uniformly assume to be some type of hunter-gatherer society, men and women responded to different environmental and social stimuli by evolving into creatures that differ psychologically.⁷⁷ For each individual human, the name of the evolutionary game is presumed to be passing one's genes on to future generations.⁷⁸ Men and women, posit evolutionists, are differently situated with respect to this goal; while men are physically capable of siring thousands of children, women are physically capable of bearing a substantially fewer number.⁷⁹

72. See, e.g., WRIGHT, *supra* note 67, at 55-86.

73. See, e.g., WRIGHT, *supra* note 67, at 42 (stating that "[t]he male tendency to 'possessively' guard mates against the advances of rivals may be more than mere metaphor. For men, 'the same mental algorithms are apparently activated in the marital and mercantile spheres'" (citation omitted). See generally Smuts, *supra* note 72 (analyzing several hypotheses which explain cross-cultural variation in the frequency of male aggression against females using a comparative, evolutionary perspective); Thornhill & Thornhill, *supra* note 72 (arguing sexual coercion by males could either arise from rape-specific psychological adaptation or from more general psychological adaptation not directly related to rape).

74. See, Wright, *supra* note 69 at 34, 45.

75. See, e.g., Kingsley R. Browne, *Sex and Temperament in Modern Society: A Darwinian View of the Glass Ceiling and the Gender Gap*, 37 ARIZ. L. REV. 971, 985-1016 (1995).

76. For a more fully detailed explanation of natural selection theory, see generally *supra* note 69.

77. See, e.g., Wright, *supra* note 69, at 42.

78. See *id.* at 34.

79. See *id.* at 35.

In contemporary evolutionist lingo, women's level of "parental investment" in their offspring, even if one counts only the period between conception and birth, is necessarily much larger than that of men.⁸⁰ This biological fact has purportedly resulted in the evolution of profound psychological differences between men and women, based on their necessarily varying approaches to achieving passage of their genes.⁸¹ Men are naturally inclined to seek out more sexual partners and to treat sex more casually, because for them the necessary level of investment in doing so is quite small, just the few minutes it takes to achieve conception.⁸² Women, on the other hand, became (relatively) reserved in sexual matters, because their necessarily higher level of investment in each child has given them a powerful incentive to ensure that each conceived child has the best available genes, and, if possible, that each sexual partner will be around to help protect and care for the child,⁸³ thereby assisting in the child's own survival and reproduction.

Thus, men are sexually aggressive, while women are sexually coy. Men focus on looks (or, more particularly, on youth) in a woman, while women focus on status (or, more specifically, wealth and power that can be used to care for her and her offspring) in a man. Finally, women are "naturally" inclined to stay home with the kids, and are therefore destined, as a group, to be less successful than men in the public sphere. Could one imagine a more complete picture of the stereotypically "feminine"?

At least some neo-Darwinists believe that the evolutionary explanation of gender difference has important implications for law. For example, a recent article by law professor Kingsley Browne disputes, on evolutionary grounds, the feminist view that gender discrimination is the primary cause of the "glass ceiling," women's underrepresentation in upper management jobs and of the continuing gender gap in wages.⁸⁴ Professor Browne avers that the glass ceiling and the gender gap have resulted not only from male abuse of power, or "a superordination of male values concerning work-force commitment"⁸⁵ as feminists would charge, but also from women's "natural" preferences.⁸⁶ Straightforwardly

80. *Id.*

81. *See id.*

82. *See id.*

83. *See id.* at 35.

84. *See Browne, supra* note 75, at 971.

85. *Id.* at 978.

86. *See id.*

applying the evolutionist conception of gender difference, Browne argues that women as a group are less inclined than men to take risks, to seek status and power in the marketplace, and to be competitively aggressive, while they are more likely than men to value nurturing relationships with children and a family.⁸⁷ According to Browne's view, therefore, differences in achievement and pay between men and women are not necessarily evidence of employer misconduct, but are in significant part the "natural" result of different, but uncoerced, choices made by men and women.⁸⁸ Again, this gender gap in preferences is the product not only of socially enforced inequality, but also of "real," "true," and "fundamental" differences.⁸⁹ Furthermore, alleges Browne, all the feminist fuss over the gender gap in wages ignores the disadvantages of men's natural proclivities for example, the fact that men's disproportionate presence in the riskier jobs results in more male occupational deaths.⁹⁰ Browne asserts that current employment discrimination law, which in some circumstances allows evidence of women's statistical under representation in a particular job to create a rebuttable presumption of employer discrimination, should be revamped. Because the statistical underrepresentation of women in top jobs is the result not only of employer discrimination but also of "real," "true," and "fundamental" differences between men and women, employers should not be forced to bear the entire burden of equalizing the numbers of women in the workforce or the pay they receive, if indeed, that burden should be taken on at all. He concludes that statistical proof alone should never constitute dispositive evidence of employer discrimination.⁹¹

87. *Id.* at 1016-36.

88. *See id.* at 979.

89. *See id.*

90. *See id.* at 981.

91. Browne states:

Given the undeniable differences between men and women, the nature of sex-discrimination litigation must change. If the goal is to prevent employers from improperly discriminating against women, then proof of actual discrimination should be required. If the true goal is proportional representation of women at all levels of the work force irrespective of workforce commitment, then that goal should be candidly acknowledged and defended on its own terms.

Id. at 1101-02 (citations omitted); Further, Browne suggests that such a defense would be difficult at best:

Understanding of the origins of observed differences should also affect the way we evaluate arguments for social change, even if it does not alter our conclusions. The feminist argument that sex roles are something that society has imposed upon female victims is inadequate; if current workplace

As no plaintiff has ever won a gender discrimination case on the strength of statistical evidence alone,⁹² this particular proposal might well be much ado about nothing. However, as the evolutionary premises on which the proposal is based may resurface in the form of other, more immediately important legal discussions, feminists do well to take them seriously.

Contemporary evolutionists are careful not to conclude that because psychological gender difference is biologically-based the difference must necessarily be celebrated. These theorists are well aware of the "naturalistic fallacy," which holds that because something is "natural" it is therefore automatically good, and they⁹³ generally give lip service to the view that the mere existence of biologically-based gender differences does not necessarily imply any moral, political, or legal conclusions.⁹⁴

Indeed the evolutionists argue they are not drawing such conclusions — that they are not saying "men and women are naturally different, and so we should reinforce those differences in law." Instead, they make only the empirical assertion that the facts about men's and women's differences do not dictate social policy, but nevertheless constrain it.⁹⁵ Perhaps morality is not completely dependent on biological facts, they seem to say; but neither can it be completely independent of those facts. After all, our morality is a function of the kinds of creatures that we are; that we are human, and not apes, or fish, or Martians, must shape our morality and law at some level, must suggest its possible dimensions, as well as alert us to its limits.⁹⁶ Evolutionist Robert Wright asks, "Can a Darwinian understanding of human nature . . . help in deciding which goals are worthy? That is, does knowing how evolution has shaped our basic moral impulses help us decide which impulses we should consider

arrangements are the products of choices made by men and women predisposed to make choices in a particular way, arguments that society must remedy the injustice that it has visited on women are based upon an erroneous premise of societal culpability.

Id. at 1102.

92. See, e.g., KATHARINE BARTLETT, *GENDER AND LAW* 134 (1993) (stating that "sex discrimination claims based on statistics alone have not succeeded").

93. See, e.g., Wright, *supra* note 69, at 44.

94. See, e.g., Browne, *supra* note 75, at 976 (pointing out that "the existence of [biological gender] differences does not in itself tell us what to do about them."); WRIGHT, *supra* note 67 (discussing the naturalistic fallacy).

95. See GOLDSMITH, *supra* note 69.

96. See, e.g., JEFFRIE MURPHY, *EVOLUTION, MORALITY, AND THE MEANING OF LIFE* 96 (1982) ("I find it inconceivable that there could be no important connections between morality and the kind of creatures we are."); *id.* at 61-68.

legitimate? The answers, in my opinion, are yes, yes, yes, yes, and, finally, yes."⁹⁷ And Kingsley Browne writes:

Our fundamental nature places restrictions on the kinds of social institutions we are likely to develop and behavior patterns we are likely to adopt. Matt Ridley has observed that "[w]e stick to the same monotonously human pattern of organizing our affairs If we were more adventurous . . . [t]here would be societies in which women killed each other more often than men, in which old people were considered more beautiful than twenty-year-olds, in which wealth did not purchase power over others, in which people did not discriminate in favor of their own friends and against strangers, in which parents did not love their own children." We do not see these patterns in large part for the same reason that pigs do not fly, ants do not play cribbage, and hyenas are not warm and loving — such behaviors are simply not characteristic of the species.⁹⁸

As the philosopher Elisabeth Lloyd has pointed out,⁹⁹ this line of thinking does not commit the naturalistic fallacy:

Rather than deriving "ought" from "is" — rather than insisting on a particular social structure or set of values because *they must be good for us* since they evolved through evolution by natural selection — these authors see our evolution as defining the shape and limits of *possible* social structures and sets of values. The claim about social structures hence becomes cleanly "scientific" — factual and empirical — rather than normative. On this approach, sociobiologists are simply reporting to us, the voting public, what the facts are about which choices are *biologically possible* (long term) for us as a society.¹⁰⁰

In theory this line of thinking not only rescues evolutionary theory from the naturalistic fallacy, but also insulates it from the ideological struggle which social policy prescriptions must normally engage. In Professor Lloyd's words, this "scientific" evolutionism "places the speakers in a privileged position. They are not offering opinions about what would be good as 'ordinary

97. WRIGHT, *supra* note 67, at 10.

98. Browne, *supra* note 75, at 1102-03 (citations omitted).

99. See Elisabeth A. Lloyd, *Sociobiology and Sex Roles* (1996) (unpublished manuscript, on file with the *Journal of Women and the Law*).

100. *Id.* at 20.

citizens,' as just another vote among many; they are speaking as *scientific* experts about what should be allowed on the ballot at *all*."¹⁰¹

As Professor Lloyd points out, however, this evolutionist line of argument "disregards the fundamental scientific point that evidence for genetic contribution is not evidence for limits."¹⁰² Lloyd notes that scientists who make the claim that biologically wired sex differences affect the possibilities of societal structure must not only present solid evidence of the sex differences, but must also present evidence for the limitations they believe exist.¹⁰³ The two kinds of evidence usually presented by these theorists, evidence of the universality of sex differences and evidence of brain differences and hormonal differences, are not evidence of the limits themselves and therefore do not alone support the point evolutionists seek to make.¹⁰⁴

Lloyd gives the following illustration to draw the distinction between evidence of an existing difference and evidence of the limits that difference inherently places on possible societal structures:

Imagine that we living in thirteenth century Europe, and nearly everyone is unable to read. Furthermore, in all of human history, nearly everyone has been unable to read. What conclusion are we justified in drawing from this, biologically? To conclude that nearly everyone is biologically unable to read, or even to read easily, would be a mistake. What would be wrong with such reasoning? We didn't consider what these same people would have been capable of, if they had experienced a different environment — one in which all six-year-olds are routinely taught to read, for example. In the right environment, nearly everyone is able to read.¹⁰⁵

Similarly, Lloyd notes, if we were to study women and men the world over, we would find that women, on the average, are shorter than men.¹⁰⁶ But this is quite different, as Lloyd explains, from the claim that women are inherently shorter than men. Evidence for the first claim, that men are on the average

101. *Id.* at 21.

102. *Id.* at 2.

103. *See id.* at 12.

104. *See id.*

105. *Id.* at 14.

106. *See id.* at 13.

taller than women, does not, by itself, prove the second claim. In order to do so, one must know not only what height differences currently exist or have existed in the past, but what the intrinsic limits to height are, including such limits under environmental conditions we have never experienced.¹⁰⁷ In fact, notes Lloyd, "[a]lthough it is widely known that the average overall height of people has increased in advanced industrial societies over the last two centuries, it is much less widely advertised that the average male-female height difference was substantially greater a century ago than it is today."¹⁰⁸

Evolutionists cannot escape the force of these objections by pointing out that sex-based traits and sex roles are fundamentally different from reading because "sex roles are not simply socially learned skills, but are rather the natural expression of underlying psychological dispositions which are not very plastic."¹⁰⁹ Professor Lloyd asserts:

[T]his is precisely the question at stake. The pressing question is not whether genetic factors play a role in sex role behavior-of course they do, just as they are a vital factor in the ability of six-year-olds to learn to read and enjoy it. The question is rather whether the expression of genetic endowment in a more egalitarian environment will lead to a modified expression of traits.¹¹⁰

Furthermore, explains Elisabeth Lloyd, even if it were possible to describe a universal set of essential traits possessed by men and women this does not necessarily mean that these traits are genetic because adaptive behavior can arise without genetic involvement.¹¹¹ And even assuming the existence of a human genetic biogram, it is speculation to assume biogram is adaptive. Our genetic programming may have arisen under conditions that had nothing to do with evolutionary theory and natural selection, a possibility that is the focus of an ongoing debate among scientists.¹¹²

Thus, Lloyd concludes:

107. *See id.*

108. *Id.* at 13-14 (citations omitted).

109. *Id.* at 14.

110. *Id.* at 14 (citations omitted).

111. *See id.* at 15.

112. *See id.*

even if a trait were universal, it is *not legitimate to infer*, on that basis alone, that it is genetically based. And, even if it is genetically based, it is *not legitimate to infer*, on that basis alone, that it was actively selected and is an adaptation to any particular environment, past or present. And finally, even if the trait is genetically based and was actively selected, it is *not legitimate to infer*, on that basis alone, that a different form of the trait could not appear under different environmental conditions.¹¹³

In sum, the evolutionary argument for the "naturalness" of gender differences consists of assertions that such differences exist, backed up by inferences that are insufficient to prove the relevance of those differences to social and legal policy. Notice that to prove their case, evolutionists must not only produce direct evidence of a biological basis for the gender differences they observe in humans; they must also, and crucially, demonstrate that these biologically programmed differences exert a non-trivial influence on human behavior. They must show, not only the existence of difference, but also its relative importance, for if such differences have only a minor or very indirect impact on the preferences of men and women, those concerned about forming social policy may safely ignore them. Beyond conclusory assertions that biology exerts a substantial influence on the different behaviors of men and women as groups, evolutionists have offered nothing persuasive on this issue.¹¹⁴

On the other hand, at least some evolutionists themselves do not doubt that socially generated sex discrimination does continue to significantly influence the work environment of women. Professor Browne, for example, acknowledges this view:

It is not my position that biology is the exclusive cause of the glass ceiling or the gender gap. Indeed, such a claim would be specious, since all behavior involves the organism's interaction with its environment. But even beyond this truism, I do not doubt that some portion of these two phenomena are produced by social attitudes, some of them arbitrary, as well as by outright sex discrimination that may

113. *Id.* at 15-16.

114. See, e.g., Browne, *supra* note 75, at 1101 (Noting that sex "differences are produced in substantial measure by underlying biological differences that were adaptive in our evolutionary history").

be based upon false assumptions about the relative capacities of the sexes.¹¹⁵

In support of the claim that invidious discrimination exerts a large influence on women's job aspirations, recent feminist scholarship has shown that the goals and performance of female employees are dramatically affected by the attitudes toward women these employees encounter in the workplace.¹¹⁶ In her analysis of Title VII cases raising the "lack of interest" defense to claims of discrimination, Vicki Schultz invokes a rich body of sociological research demonstrating that women's career goals, and the importance women assign to their work, are directly and positively related to the employers' affirmative efforts to make opportunities available to them.¹¹⁷ Indeed, writes Schultz, "women's work preferences are formed, created, and recreated in response to changing work conditions."¹¹⁸ Schultz draws on studies showing that "contrary to the conventional wisdom, sex segregation does not persist because women's commitment to the family leads them to 'choose' to consign themselves to lower-paid, female-dominated occupations."¹¹⁹ Instead, women (and men) tailor their commitment to work to the internal environment of the workplace. Women who worked in traditionally "female" jobs with little opportunity for advancement tended to behave in stereotypically "feminine" ways and to possess stereotypical attitudes toward the importance of work.¹²⁰ Schultz points out that "[w]ithin firms, jobs are highly segregated by sex. Female-dominated jobs tend to be on distinct promotional ladders that offer far less opportunity for advancement than do those for male-dominated jobs."¹²¹

Schultz cites Rosabeth Moss Kanter's study of secretaries in a major industrial corporation as a dramatic illustration of this point:

With little opportunity for advancement at all, and no chance to move to the managerial track, [t]he corporation's

115. Browne, *supra* note 75, at 984.

116. See, e.g., Vicki Schultz, *Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, 103 HARV. L. REV. 1749 (1990).

117. *Id.* at 1825.

118. *Id.* at 1815.

119. *Id.* at 1820.

120. *Id.* at 1827-28 (citations omitted).

121. *Id.* at 1827.

secretaries tended to display work attitudes and behaviors that are commonly perceived to be attributes of "femininity." Many were narrowly devoted to their individual bosses, timid and self-effacing, dependent on praise, and given to emotionality and gossip. But it was their position within the organization and the structure of incentives attached to their jobs that led them to develop these orientations. To be good secretaries, they were required to display the "feminine" behaviors that are commonly viewed as an extension of women's intrinsic personalities.¹²²

Professor Schultz reports that "[l]ike the blue-collar men studied by an earlier generation of sociologists, Kanter's secretaries adjusted to their realistically nonexistent possibility of advancement by rating the desirability of promotion relatively low."¹²³

By contrast, women who began their working lives in traditionally "female" jobs but who crossed the sex line to work in traditionally male jobs demonstrated quite different attitudes toward work and promotion. Schultz writes:

Once they began doing nontraditional [blue-collar] jobs, these women became highly motivated workers who defined work as a central life interest and who valued the intrinsic aspects of their work. Although many of the women had originally moved into nontraditional work because they needed the money, the job quickly became more than a paycheck. The women in Walshok's study valued four things most highly about their work: (1) productivity, or "a feeling of having done something constructive, of having accomplished something with one's time;" (2) challenge, or "a new or unusual experience, that requires a woman to stretch herself, to reach, to grow;" (3) autonomy, or the opportunity to work independently and to exercise discretion about how to control the timing and sequencing of one's work; and (4) relatedness, or "feeling as if one's 'in the swim of things', in the 'mainstream' of life."¹²⁴

122. *Id.* at 1828.

123. *Id.* at 1827-28 (reporting that "[w]omen in low-mobility . . . situations develop attitudes and orientations that are sometimes said to be characteristic of those people as individuals or 'women as a group,' but that can more profitably be viewed as universal human responses to blocked opportunities") (citing ROSABETH MOSS KANTER, *MEN AND WOMEN OF THE CORPORATION* 159 (1977)); see also *id.* at 1829.

124. *Id.* at 1830.

Many such women first moved into traditionally male jobs only after employers sent out clear signals that they were looking to hire women in these areas.¹²⁵ For these women, the employer's newly welcoming attitude caused a change in their own perceptions of what was possible, leading directly to their move out of traditional female jobs and toward a greater commitment to public-sphere work.

Evolutionists might argue that, whatever the impact of a greater opportunity on women's attitudes toward work and their job performance, women as a group will always lag behind men as long as competitiveness, risk-taking, and desire for resource acquisition remain major determinants of workplace success. This bare assertion, however, can draw no support from the current gap in men's and women's performance. In Elizabeth Lloyd's terms, this is an argument about limits, specifically the limits that biologically programmed preferences place on women's drive for public-sphere success. In light of the demonstrated power that workplace environment has on women's goals, as well as the continued presence of employer sex discrimination against women (a factor that is admitted by at least some evolutionists), the burden of proof correctly remains on those who would assert "natural difference" to demonstrate scientifically those limits. In the absence of such a demonstration, theories of "natural" gender difference appear to be rooted not in hard scientific fact but ideological — and therefore politically contestable — conviction.

IV. CONCLUSION: THE IMPORTANCE OF DIALOGUE

It is surely no coincidence that the neoevolutionary account of women's difference lends support to the most traditionally conservative views of women's proper "place." Patricia Williams's point is that, until we can change our need to construct hierarchies based on group differences, theories of "natural" difference — however deeply we suppress them — will continue to discover new routes to the surface of political debate. Anti-racist and anti-sexist laws that result from a real change of heart might work; laws intended as substitutes for such a change will not. Although *The Rooster's Egg* is not primarily a "law" book, its relative lack of emphasis on legal reforms reflects the author's belief that we cannot rely only on formal changes in the law, but must instead inaugurate a national discussion about race, gender,

125. *Id.* at 1829-30.

and class which will involve face-to-face communication about difference and its implications. Williams relies enormously on the power of empathy, on the ability of all citizens not only to present their own views but also to listen with open hearts to the very different views of others whom they may have been taught to hate or mistrust. I must admit to being skeptical about the transformative power of communitarian dialogue. In insisting on its value, however, Professor Williams effectively conveys both her frustration at the failure of legal reform to end group-based bigotry and her fundamental optimism about the power of communication, when empathically offered and received, to help us to work together despite profound, enduring, and perhaps even permanent differences.