

# When the First Quail Calls: Multiple Consciousness as Jurisprudential Method

A Talk Presented at the Yale Law School Conference on  
Women of Color and the Law, April 16, 1988

KEYNOTE SPEAKER MARI J. MATSUDA\*

In 1868, two white women, Angelina and Sarah Grimke, acknowledged publicly that a Black man, the son of their slave-owning brother, was their nephew. They commenced to bestow on that nephew the love and familiarity due a relative. In publicly embracing their blood tie to a Black man, these women were doing something unthinkable, inconceivable—something outside the consciousness of their time. What was it that projected the thinking of these two women ahead of the thinking of their peers? It was their consciousness of oppression, a consciousness developed in their feminist and abolitionist struggles.

The confluence of the feminist and abolitionist causes marks the most progressive moments in American history. Today, the Yale Law School Women of Color Collective is claiming that progressive heritage as their own. In their honor, let us consider women of color as a paradigm group for utilization of multiple consciousness as jurisprudential method. Let us imagine a student with women-of-color consciousness sitting in class in the first year of law school. The dialogue in class is designed to force students to pare away the extraneous, to adopt the lawyer's skill of narrowing

issues and delineating the scope of relevant evidence. The professor sees his job—and I use the male pronoun deliberately—as training the students out of the muddleheaded world where everything is relevant and into the lawyer's world where the few critical facts prevail.

The discussion in class today is of a *Miranda*-type case. Our student wonders whether the defendant was a person of color and whether the police officer was white. The student knows the city in which the case arose, and knows that the level of police violence is so high in that place that church groups hold candlelight vigils outside the main police station every Sunday. The crime charged is rape. The student wonders about the race of the victim, and wonders whether the zealous questioning by the police in the case was tied to the victim's race. The student thinks about rape—the rape of her roommate last year, and her own fears. She knows, given the prevalence of violence against women, that some of her classmates in this class of 100 students have been raped. She wonders how they are reacting to the case, what pain it resurrects for them.

In the consciousness of this student, many

---

\*Associate Professor of Law, University of Hawaii, William S. Richardson School of Law.

facts and emotions are relevant to the case that are extraneous to standard legal discourse. The student has decided to adopt standard legal discourse for the classroom, and to keep her women-of-color consciousness for herself and for her support group. This bifurcated thinking is not unusual to her. She's been doing it throughout her schooling—shifting back and forth between her consciousness as a Third World person and the white consciousness required for survival in elite educational institutions.

This student, as she has become older, has learned to peel away layers of consciousness like layers of an onion. In the one class where she has a woman professor—a white woman—she feels free to raise issues of violence against women, but she decides to keep to herself another level of consciousness: her nationalist anger at white privilege and her perception that the dominant white conception of violence excludes the daily violence of ghetto poverty.

This constant shifting of consciousness produces sometimes madness, sometimes genius, sometimes both. You can hear it in the music of Billie Holiday. You can read it in the writing of Professor Pat Williams—that shifting in and out, that tapping of a consciousness from beyond and bringing it back to the place where most people stand.

Let's give an ending to the student I described: she goes on to excel in law school, she becomes an international human rights activist, and she writes poems in her kitchen in her spare time while she waits for the pies to cool. She doesn't go mad because she continues to meet with her support group and they continue to tell her "No, you are not crazy, the world looks that way to us, too."

What does a consciousness of the experience of life under patriarchy and racial hierarchy bring to jurisprudence? The ideas emanating from feminist legal theorists and legal scholars of color have important points of intersection that assist in the fundamental inquiries of jurisprudence: what is justice and what does law have to do with it?

Outsider scholars have recognized that their specific experiences and histories are relevant to jurisprudential inquiry. They reject narrow evidentiary concepts of relevance and credibility. They reject artificial bifurcation of thought and feeling. Their anger, their pain, their daily lives, and the histories of their people are relevant to

the definition of justice. "The personal is the political," we hear from feminists, and "Everything is political," we hear from communities of color. Not much time is wasted in those communities arguing over definitions of justice. Justice means children will full bellies sleeping in warm beds under clean sheets. Justice means no lynchings, no rapes. Justice means access to a livelihood. It means control over one's own body. These kinds of concrete and substantive visions of justice flow naturally from the experience of oppression.

And what of procedure, of law? Here outsiders respond with characteristic duality. On the one hand, they respond as legal realists, aware of the historical abuse of law to sustain existing conditions of domination. Unlike the post-modern critics of the left, however, outsiders, including feminists and people of color, have embraced legalism as a tool of necessity, making legal consciousness their own in order to attack injustice. Thus to the feminist lawyer faced with pregnant teenagers seeking abortions it would be absurd to reject the use of an elitist legal system, or the use of the concept of rights, when such use is necessary to meet the immediate needs of her client. There are times to stand outside the courtroom door and say "this procedure is a farce, the legal system is corrupt, justice will never prevail in this land as long as privilege rules in the courtroom." There are times to stand inside the courtroom and say "this is a nation of laws, laws recognizing fundamental values of rights, equality and personhood." Sometimes, as Angela Davis did, there is a need to make both speeches in one day. Is that crazy? Inconsistent? Not to Professor Davis, a Black woman on trial for her life in racist America. It made perfect sense to her, and to the twelve jurors good and true who heard her when she said "your government lies, but *your* law is above such lies."

Professor Davis's decision to use a dualist approach to a repressive legal system may very well have saved her life. Not only did she tap her history and consciousness as a Black, a woman, and a communist, she did so with intent and awareness. Her multiple consciousness was not a mystery to her, but a well-defined and acknowledged tool of analysis, one that she was able to share with the jury.

A professor once remarked that the mediocre law students are the ones who are still trying to

make it all make sense. That is, the students who are trying to understand law as necessary, logical, and co-extensive with reality. The students who excel in law schools—and the best lawyers—are the ones who are able to detach law and to see it as a system that makes sense only from a particular viewpoint. Those lawyers can operate within that view, and then shift out of it for purposes of critique, analysis, and strategy. The shifting of consciousness I have thus far ascribed to women of color is a tool used—in a more limited way—by skilled lawyers of many ideological bents. A good corporate lawyer can argue within the language and policy of anti-trust law, modify that argument to suit a Reagan-era judge, and then advise a client that the outcome may well turn on some event in Geneva wholly irrelevant to the legal doctrine. Multiple consciousness as jurisprudential method, however, encompasses more than consciousness-shifting as skilled advocacy. It encompasses as well the search for the pathway to a just world.

The multiple consciousness I urge lawyers to attain is not a random ability to see all points of view, but a deliberate choice to see the world from the standpoint of the oppressed. That world is accessible to all of us. We should know it in its concrete particulars. We should know of our sister carrying buckets of water up five flights of stairs in a welfare hotel, our sister trembling at 3 a.m. in a shelter for battered women, our sisters holding bloodied children in their arms in Cape Town, on the West Bank, and in Nicaragua. The jurisprudence of outsiders teaches that these details and the emotions they evoke are relevant and important as we set out on the road to justice. These details are accessible to all of us, of all genders and colors. We can choose to know the lives of others by reading, studying, listening, and venturing into different places. For lawyers, our pro bono work may be the most effective means of acquiring a broader consciousness of oppression.

Abstraction and detachment are ways out of the discomfort of direct confrontation with the ugliness of oppression. Abstraction, criticized by both feminists and scholars of color, is the method that allows theorists to discuss liberty, property, and rights in the aspirational mode of liberalism with no connection to what those con-

cepts mean in real people's lives. Much in our mainstream intellectual training values abstraction and denigrates nitty-gritty detail. Holding on to a multiple consciousness will allow us to operate both within the abstractions of standard jurisprudential discourse, *and* within the details of our own special knowledge.

Whisperings at Yale and elsewhere about how deconstructionist heroes were closet fascists remind me of how important it is to stay close to oppressed communities. High talk about language, meaning, sign, process, and law can mask racist and sexist ugliness if we never stop to ask: "Exactly what are you talking about and what is the implication of what you are saying for my sister who is carrying buckets of water up five flights of stairs in a welfare hotel? What do you propose to do for her *today*, not in some abstract future you are creating in your mind?" If you have been made to feel, as I have, that such inquiry is theoretically unsophisticated, and quaintly naive, resist! Read what Professor Williams, Professor Scales-Trent, and other feminists and people of color are writing.<sup>1</sup> The reality and detail of oppression are a starting point for these writers as they enter into mainstream debates about law and theory.

For example, the ongoing dilemma of neutral principles is challenged by outsiders' reality. Legal theorists puzzle over the conflicting desire for finite and certain principles of law, free from the whims of the despot. The trouble is, then, that the law itself becomes the despot—neutral concepts of rights end up protecting corporate polluters and Ku Klux Klan hate mongers. Standard liberal thought sees no way out of this dilemma, arguing for neutrality as a first principle, and the inviolability of fixed rules of law as the anchor that keeps us from drifting in a sea of varied personal preferences.

From communities of outsiders struggling around their immediate needs—for jobs, for education, for personal safety—we see new legal concepts emerging to challenge the citadel of neutrality. Proposals for non-neutral laws that will promote the human spirit include: affirmative action; proposals for desegregation; proposals for curtailment of hate groups and elimination of propaganda advocating violence against women;

1. Pat Williams is a visiting professor at Stanford Law School. Judy Scales-Trent is a professor at State University of

New York, Buffalo Law School. They were both speakers at the first annual Women of Color and the Law Conference.

and proposals for reparations to Native Americans for loss of their lands. All of these are controversial proposals, and debates continue about their worth. The very controversy reveals how deeply they cut into the unresolved dilemma of neutrality that lies at the heart of American law. These proposals add up to a new jurisprudence—one founded not on an ideal of neutrality, but on the reality of oppression. These proposals recognize that this has always been a nation of dominant and dominated, and that changing that pattern will require affirmative, non-neutral measures designed to make the least the most, and to bring peace, at last, to this land.

In arguing for multiple consciousness as jurisprudential method, I don't mean to swoop up and thereby diminish the power of many different outsider traditions. Our various experiences are not co-extensive. I cannot pretend that I, as a Japanese American, truly know the pain of, say, my Native American sister. But I can pledge to educate myself so that I do not receive her pain in ignorance. And I can say as an American, I am choosing as my heritage the 200 years of struggle by poor and working people, by Native Americans, by women, by people of color, for dignified lives in this nation. I can claim as my own the Constitution my father fought for at Anzio, the Constitution that I swore to uphold and defend when I was admitted to the bar. It was not written for me, but I can make it my own, using my chosen consciousness as a woman and person of color to give substance to those tantalizing words "equality" and "liberty."

These remarks are entitled "When the First Quail Calls," in reference to a signal used on the underground railroad to mark the time of departure to freedom. I imagine the fear and the courage of slaves who dared to leave the South, and the fear of free blacks and whites who chose to help them. They were all ahead of their time, in thinking they could run a freedom train in the darkest hour of slavery.

Timing is an element of jurisprudential inquiry; how much can we hope to attain at this moment. When is it time to assert a new principle of law? When is it time to openly defy law? When is it time to sit and wait? Again we can look to the histories of oppressed groups to inform this inquiry. We can know that often it is time to set out on the freedom trail when the darkness is still upon us. You who are in law school now are stereotyped as the children of the Reagan era, concerned with economic success and uninvolved in political struggle. It's not the time, the commentators decree, for activism. And yet you set your own time. Students across the country are organizing conferences like this one, battling for affirmative action and divestment, confronting racism and patriarchy, listening in the night for the quail's call. I thank you for the honor of speaking to you, and look forward to all we can learn from one another. We are the children of our pasts and the parents of our future. Like the Grimke sisters we cannot listen to those who say, "it's not yet time." We know it's time, our time, and we will make it so.