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The Theory and Practice of Being Trina: A Remembrance of Trina Grillo

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The first thing I noticed about Trina was the depth of her empiricism. Her speech was not littered with platitudes, stereotypes, and received opinions. Although well versed in standard forms of academic debate, she was not overly dependent on this part of her intellectual repertoire. She just didn't think that way. She had a manner of speaking that made even complicated thoughts easily comprehensible. She spoke softly and slowly; she never postured or gave reasons "for the sake of argument." Instead, she shared her observations, posed some thoughtful questions, and quietly offered her own insights and analysis. Knowing Trina was having the company of an active mind and a loving heart. I miss her.

This is an essay about Trina's work but, at the same time, it is a remembrance of Trina. Her work claims a modest place in contemporary legal theory. She has written about the techniques and dangers of mediation; about critical race theory and the challenge of multiculturalism; about identity and its relation to law. Her work is accessible and helpful—I would have read whatever she wrote even if she had not been my friend. But, being her friend, I know that her work has a larger meaning because it is connected to her life. Trina walked her talk—she worked by theorizing from her own experience and lived by using her theories as a guide to daily life. Thus, the subject of this Essay is Trina's work and its connection to the theory and practice of being Trina.

* Professor of Law, Boston College Law School. This Essay has been inspired by my relationship with Trina Grillo, who taught me much about the practice of pragmatism even though she did not call it that. I am also grateful to those who brought me close to Trina and shared with me the pain of her death: Stephanie Wildman, Jeff and Luisa Grillo-Chope, Erica Mitchell, Catherine Grillo, Chiqui Grillo, Alison Fitzgerald, JoAnne Manfred, Cherie McCoy, and most especially Madeline Grillo and Layla Wells. Thanks are also due to Bob Smith for his helpful comments on the mediation section.

When I think about Trina's work, three of her most personal attributes come to mind—her sense of the close connection between theory and practice, her sensitivity, and her commitment to something she called "trusting your body." I will begin by discussing how each of these is manifested in her scholarship. I will end with some thoughts about how these characteristics shaped the process of her death.

THEORY AND PRACTICE

Part of the depth of Trina's empiricism lay in her almost constant practice of discarding preconceptions in favor of her own careful observations. Her powerful intellect was displayed not in fancy words but in the constant activity of her mind. She watched attentively, probed carefully, and wondered restlessly. A good example of how she thought can be found in her article, *The Mediation Alternative: Process Dangers for Women*.¹

She begins the article with a deft bit of deconstruction. She notes the familiar contrast between two of the more common methods for resolving domestic disputes. Litigation, on the one hand, is frequently criticized for its rigid adherence to external norms: "[L]aw is based on a patriarchal paradigm characterized by hierarchy, linear reasoning, the resolution of disputes through the application of abstract principles, and the ideal of the reasonable person."² Mediation, on the other hand, is frequently endorsed as the fairer, friendlier alternative. Trina emphasizes this contrast in her summary of the arguments for mediation:

First, [mediation] rejects an objectivist approach. . . . Second, the mediation process is, at least in theory, cooperative and voluntary, not coercive. The mediator does not make a decision; rather, each party speaks for himself. Together they reach an agreement that meets the parties' mutual needs. In this manner, the process is said to enable the parties to exercise self determination and eliminate the hierarchy of dominance that characterizes the judge/litigant and lawyer/client relationships. Third, since in mediation there are no rules of evidence or legalistic notions of relevancy, decisions supposedly may be informed by context rather than by abstract principle. Finally, in theory at least, emotions are recognized and incorporated into the mediation process.³

By emphasizing these contrasts, Trina highlights the reciprocal relationship between the perceived defects of law and

1. 100 YALE L.J. 1545 (1991).

2. *Id.* at 1547.

3. *Id.* at 1548.

the perceived virtues of mediation. Because mediation is understood as the preferred alternative to patriarchal, hierarchical law, the defects of mediation—especially those that relate to hierarchy and domination—are not taken seriously as an inevitable part of the mediation process.

This is not to say that those who mediate are blind to the problems that mediation can create in settling domestic disputes. To the contrary, they often recognize that the process did not “work” for the parties. But, in diagnosing this failure, the fault is too often attributed to the intransigence of the parties rather than to the limitations of the process itself. One reason for this is the mistaken belief that, when mediation is done well, it minimizes the problems of domination, coercion, and hierarchy that are built into the litigation process even when—or especially when—it (the litigation process) is done well. Thus, our comparative enthusiasm for mediation may undermine the effort to understand it experientially and to correctly diagnose its failures and successes.

This problem is not just a matter of rigor being subverted by enthusiasm; it also stems from more epistemological considerations. Mediation theory is partly based upon mediation practice and partly based upon practical context. Thus, in the beginning, the development of mediation theory was shaped by the need to make legislatures and judges understand the benefits of mediating, rather than litigating, certain cases. The need was real but the theory that had been shaped by this need was not entirely realistic—the mediator’s sense of what was happening in a particular mediation could be distorted by an understanding of what the theory said should happen. Even good faith attempts at empirical investigation could be compromised by the fact that there are so many ways to overlook discrepancies between theory and practice. A researcher may fail to fully understand what (s)he sees or hears; (s)he might tend to blame “external” factors for results that seem anomalous; or (s)he may marginalize unwanted results by classifying them as deviant or exceptional. Thus, the more accepted a theory becomes, the more likely it is to interfere with accurate perceptions—too much theory too soon is an obstacle rather than an aid to human understanding.

The specific problem with mediation theory is that our understanding of the process is deeply entrenched in the overstated contrast between mediation and litigation. When we allow the defects of litigation to define the virtues of mediation,

we load the dice in favor of a certain conception of the mediation process. This yields a distorted framework for interpreting experience and practice. If, for example, a client complains of feeling coerced, we either blame the mediator for poor technique or blame the client for being too rigid in pursuing selfish or punitive goals. Blame is necessary because our conceptual scheme tells us that the process itself is not coercive and that therefore perceived problems are human error: someone, either the mediator or the parties, has violated the norms of the process.

It is possible, of course, to analyze such failures without the presupposition that mediation is noncoercive. We could begin, as Trina does, with the recognition that mediation practice is shaped by the practical need to get the job done. With few explicit rules and generally no power to impose a solution, mediators are expected to forge agreements between two highly inflamed and disappointed parties. It is therefore not surprising that mediation sometimes feels coercive to one or both of the parties. In fact, it would be surprising if mediation could work in a wide variety of cases without developing its own, perhaps more subtle, forms of coercion. Mediators may not decree a solution but they can make it very uncomfortable for a participant to resist a "solution" that is not really satisfactory. Trina's article focuses on how the mediation process creates expectations that are particularly coercive for women. To understand this kind of coercion, Trina attempts to look behind the framework that arises from the overstated contrast between mediation and litigation. This approach leads her to examine the process with a genuine openness to the painful stories of those who have suffered from its defects.

Trina's article was widely understood as being critical of mediators and the mediation process. By suggesting that we look at mediation as a microsocial setting with its own set of prescribed behaviors, by insisting that we recognize that mediators exert many forms of pressure, and by wondering whether the process reinforces forms of disadvantage and privilege that exist in the wider society, Trina challenged the process with a whole new set of questions. Is it true, for example, that female participants are given less permission to express their anger than male participants? Is it true that the informal procedures of mediation do little to counteract the intimidation of an abusive spouse? Is it possible that the refusal to discuss past offenses results in unfairness to those who have been truly harmed by these offenses? These are hard—some

might say “hostile”—questions. But the point of asking hard questions was not so much to “trash” mediation as it was to support the high ideals that inspire its use. She writes: “[M]ediation is the work I most like to do. Few professional experiences can compare to the moment when the world of possibilities seems to expand for a couple, and hope and optimism coexist, at least temporarily, with pain and anger.”⁴ For Trina, the reason to pose hard questions was to improve the process. How, she wonders, can we genuinely feed participants’ hope and optimism and, at the same time, respect their anger and pain? To answer, she had to mount an inquiry driven by experience and practice⁵ rather than by the dictates of abstract considerations.

SENSITIVITY

When it came to work, sensitivity was one of Trina’s greatest assets. Her devotion to students, clients, and others was not merely professional; it came from real life. For her, sensitivity was not just a matter of expressing concern about other people’s troubles. It was a commitment to respecting others, to understanding their strengths as well as their troubles, and to recognizing that the pain they feel is real whatever its source. Her sensitivity came from the depth of her character. She learned it from life; she learned it from the frustration and pain that *she* felt when others treated her poorly.

Trina grew up in Oakland, California, where her father, Evillio Grillo, was an active and successful member of the Black community. She described her background this way: “My father was born in Tampa, Florida of Cuban Black parents. Much of his life was spent firmly claiming his place among American Blacks. My mother was the daughter of Italian immigrants. I was born in 1948 and soon thereafter moved to the San Francisco Bay Area.”⁶

As an interracial child in the 1950s, she found her life somewhat strange.

There were four children in my family. At times it seemed to me that we were half the biracial population of the Bay Area. We were stared

4. *Id.* at 1550-51.

5. Trina writes, “It is from my experiences mediating and listening to the stories of those who have been participants in the mediation process . . . that this Article has been written.” *Id.* at 1551.

6. Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master’s House*, 10 BERKELEY WOMEN’S L.J. 16, 22 (1995).

at wherever we went, although it took me awhile, probably until I was five, to realize that the stares were not always ones of admiration. . . . Still, our skin color and our parents' interracial marriage were always causes for comment.⁷

And the feeling of strangeness about this aspect of her life never left her: "My race and my skin color have been issues that have preoccupied me for a good part of my life, and I see little prospect of this changing anytime soon."⁸

Indeed, so long as Trina lived, this "sensitivity" to skin color did not leave her. How could it? During her years at Oakland Technical High School, Radcliffe College, Berkeley, and the University of Minnesota, she was an exceptional student. As pleasant as it was to do well, though, she did not find it easy to be widely regarded as an "exception" to the condescending expectations imposed on "minority students." The same was true as she continued her career by teaching and practicing law. The community life at most law schools—and certainly the two at which she taught were no exception—is deeply influenced by the profession's history of excluding people like Trina: Black, Latina and female.

Trina knew a lot about racism and sexism. She knew that they were bigger than she was; she knew that they stemmed from the ignorance and arrogance of the dominant societal culture. Nevertheless, she suffered from them; they made her feel hurt, angry, and betrayed. And it was not enough just to feel these things—she experienced them, acknowledged them, named them, thought about them, and dealt with their consequences. This was hard work, but it brought her knowledge that she shared with other people.

I will not try to speak for Trina on these subjects. I will, however, say what I think I learned from her. One thing I learned was that I should not overlook the racist and sexist incidents in my own life.⁹ Like many white women, I had been taught that overlooking these things was good—that it was forgiving, generous, and kind. But, from Trina (and others), I began to see the high cost of denial. She taught me how to acknowledge the feelings of hurt and outrage, how to give myself

7. *Id.*

8. *Id.*; see also *id.* at 24 (noting her hesitancy to discuss multiraciality).

9. It is certainly true that I, as a white person, do not experience racist comments as a person of color might experience them. Nevertheless, such comments really do hurt and offend me and many other white people.

time to explore them and, over time, how to develop some degree of detachment from them.

Trina also showed me that detachment made it possible to think about these problems in serious and constructive ways: What precisely had been said and done? Why did it matter? Who was responsible? How would that person see the incident? How would (s)he justify it? What could I do to reassert my own personhood? What were the risks to me and to those I cared about? This approach to human relations may seem tiresome and overly judgmental but its effect was just the opposite. With this approach, I began to learn about my own lapses of sensitivity. I learned to look for them, to acknowledge them, and to make a sincere attempt at more respectful communication. But, even more, the process has grounded me in my own perspective. I no longer think about whether I *should* be offended. Instead, I am able to know that I *am* offended. The result is a feeling of wholeness that has made me less angry but more determined. In fact, it has strengthened my resolve to be understanding and compassionate to others.

Trina was able to teach these things because of her own painful yet patient struggle with the reality of difference.

TRUSTING YOUR BODY

The advice that Trina gave most often, both to herself and to her friends, was, "Trust your body." For example, "Lesson One" in Trina's essay on multiracialism is this: "When things are being described in ways contrary to our sensory experiences, we must pay particular attention. We must look at the evidence of our bodies, and we must believe what our bodies tell us."¹⁰

This advice was partly Trina's way of urging her audience to be empirical in the face of inadequate and erroneous theories. So much of what we experience is, if we thought about it, incompatible with what we have been told. Society and culture teach us many things that are only partly true; they give us shortcuts; they teach that we can sometimes grasp a larger reality from a very small portion of the available evidence. These shortcuts can be useful. For example, we hear a siren and know that we must move to the side of the road. But they can also lead us into tragic error. This is especially true when it comes to questions about race. We see—or think we see—

10. Grillo, *supra* note 6, at 22.

signs of someone's racial background and then we know—or think we know—more about this person than we really do. Such forms of racial judgment are incompatible with “trusting your body.” If we truly trusted our bodies, then we would learn about racial differences from our bodily experiences rather than from the informal generalizations of thoughtless theories of racial difference.

For Trina, however, “trusting your body” meant something more than just trusting the evidence of your senses. It also meant something about resisting confusion, maintaining integrity, and dealing with fear. In her essay, she continues:

[Our bodies] teach us to check for the deep, internal discomfort we feel when something is being stated as gospel but does not match our truth. Then they teach us how to spin that feeling out, to analyze it, to accept that it is true but to be able to show why that is so. They also teach us to be brave.¹¹

I am not sure I know all of what this means. What I do know is that trusting your body is one way to cope with a certain kind of perceived invisibility. When people look at you but do not see you, or people are listening but do not hear you, it may feel like you have ceased to exist. This feeling of nonexistence is disorienting—like death, it turns you into a ghost. When you “trust your body,” however, you reembody yourself. You seek out and find your breath, the position of your head, the feeling of your feet in your shoes. This restores function. When you “trust your body,” you reclaim your bodily existence and empower yourself to take actions that are necessary to restoring your soul.

DYING

I have watched many people struggling with serious illness, and I have seen many people die. No one did it quite like Trina. First of all, she did it intelligently. She studied up on her disease and became extremely knowledgeable about the advantages and disadvantages of particular forms of treatment. She learned about “alternative” and “nontraditional” forms of healing and took advantage of them whenever she could. More importantly, however, she was alive to her own death. She was not one to deny the physical and emotional pain of the process. She noted the quiet progress of her disease and recognized the steady pace of her detachment from the

11. *Id.*

contours of daily life. She studied her experience, analyzed it, and slowly formed conclusions about what was happening to her. Thus, even as she prepared to die, she interleaved theory and practice in order to better understand the depth of the process.

At Trina's suggestion, I read a number of books about people dying of cancer. I also visited her support group. I was learning how hard it was to suffer the insensitivities of people who did not understand. Whether it was Trina's ex-husband complaining that he was sick of her sickness or a doctor who responded to her physical frailty by suggesting more exercise, each day brought new incidents of inappropriate and unthoughtful behavior. The medical community—at least what we saw of it—was oddly unhelpful. Although those who work with cancer face death every day, many of them have never really come to terms with it or with the pain and stress of the treatments they administer. Thus, the doctors would frequently tell Trina that she did not have the aches and pains she thought she had. This created an intense pressure for her to disconnect from her body and pretend that the doctors were right. But, trusting her body, she resisted this pressure and was fully present—body and soul—to the end of her life.

CONCLUSION

To be a philosopher is not merely to have subtle thoughts, nor even to found a school, but so to love wisdom as to live accordingly to its dictates, a life of simplicity, independence, magnanimity, and trust.

—Henry David Thoreau¹²

As it happened, I was reading Emerson and Thoreau during the long months of Trina's death. It was a strange time for me—oddly suspended from real life, living instead in the ethereal, hostile world of the Stanford Medical Center. In this world, the transcendentalists of nineteenth century New England seemed an odd contrast to Trina who was American but also Cuban, African, and Italian, who was indeed transcendental but emphatically post-modern, and who was dying but still living in the great state of California. Surprisingly, however, Trina and Emerson had quite a bit in common: each of them was in frequent contact with a great rush of spiritual energy; each of them, while resisting the more banal forms of human interaction, was welcoming to the spontaneous contact of hu-

12. WALDEN 57 (Penguin Books 1983) (1854).

man souls; and each of them was generous and loving to their friends. I mentioned this to Trina while she lay ill and exhausted in her hospital room. It was late in the afternoon and a few of her friends had stopped by after work. It was an awkward moment—I was going but hadn't really left. Her other friends had arrived but were not quite settled. So I started telling Trina about the book I was reading.¹³ I said that I had been surprised at how much I liked Emerson as a person. "I had not realized," I said, "that Emerson had been such a kind man. He was incredibly generous to his friends: he supported their work, gave them wise and gentle counsel, and was always the first to offer practical help and support." And, as I looked around the room full of people and remembered all the devotion I had seen among her many friends, it struck me: "Emerson was a lot like you, Trina, he was a powerful source of encouragement and inspiration for the people who loved him." As I turned to go, Trina looked pleased, but her pleasure was not about vanity. What flashed in her eyes was the joy she had taken in sharing her life with her friends.

13. CARLOS BAKER, EMERSON AMONG THE ECCENTRICS 1 (1996).