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GUEST NAME: PROFESSOR DEE SMYTHE - PROFESSOR OF PUBLIC LAW AND DEPUTY DEAN FOR RESEARCH IN THE LAW FACULTY AT THE UNIVERSITY OF CAPE TOWN

SPEAKER	TRANSCRIPTION
DR. MALKA	Hello, I'm Dr. Amaleya Goneos-Malka, welcome to 'Womanity – Women in Unity'. The show that celebrates prominent and ordinary African Women's milestone achievements in their struggles for liberation, self-emancipation, human rights, democracy, racism, socio-economic class division and gender based violence.
DR. MALKA	Joining us on the line today from Cape Town is Professor Dee Smythe who is a Professor of Public Law and Deputy Dean for Research in the Law Faculty at the University of Cape Town. From 2006 to 2012 she was Director of the Law Race and Gender Unit; from 2013 to 2015 the founding Director of the Centre for Law and Society. Prior to rejoining the Law Faculty in 2009 she was Principal Researcher at the Gender Health and Justice Research Unit at the University of Cape Town's Faculty of Health Sciences. Welcome to the show!
PROF SMYTHE	Thank you, thank you so much for inviting me onto your show.
DR. MALKA	Reflecting on your career, in 2004 you were a Fulbright Fellow at Stanford Law School where you received your master's and doctoral degrees. In 2011 the Law Race and Gender Research Unit's Rural Women's Action Research Project received the UCT Social Responsiveness Award. You have also convened the African Network of Constitutional Lawyers Focused Group on Women, Equality and Constitutionalism and served for several years as Deputy Chairperson of the Board of Rape Crises. Looking at these points that I've mentioned, responsible justice for women seems to be a significant theme throughout your career; what have been some of the key motivations to pursue this direction?
PROF SMYTHE	Well you know interestingly I've never seen myself as a women's rights activist but I had keen sense from quite young that we live in an unjust world and that it was a world where privilege and authority were often not earned and that understanding of the world was always at a very basic level, intersectional. What I was seeing you know around me and my experiences of the kind of privilege imposed on me were about ethnicity and about class and I was seeing what was happening around race, but it was always gendered. So I think from, you know, from early on understanding this raw embodied experience of gender was very, very central for me and so then once you understand how pernicious privilege is, you're always going to have authority issues, for one thing, and you're always going to question received knowledge and often what is presented to you as academic knowledge, knowledge about the world, this objective knowledge feels very masculine, it doesn't feel like something that relates back to you know one's own experience of being a woman and of being a woman in a kind of a social space. So you know, I think as I came into kind of university spaces people recognised that about me and people started talking about me as a feminist, which was a label that I was very happy to kind of take on and as a women's rights activist, but it's not something that I had kind of seen myself as.
DR. MALKA	So it's almost as though the actions that you've undertaken just purely in terms of observing, through as you mentioned, privilege and authority not being

	<p>earned, that the knowledge that we are consuming is masculine based and by having this conscious awareness of it yourself, it sort of diffused into the rest of your surroundings and environment.</p>
<p>PROF SMYTHE</p>	<p>Ja, absolutely. I think if you see..if you see knowledge as been subjective and if you see yourself always as being positioned and the knowledge that you produce is being positioned by who you are, what your experiences are, where you come from and that has been I think the, you know, my big learning, it's something that I continue to struggle with; on the one hand the kind of universalism of our women's experiences, their vulnerability to particular forms of violence for example, the ways in which they're defined and shaped by law and on the other hand the differences that are inherent in our experiences of femininity, of gender and so on.</p>
<p>DR. MALKA</p>	<p>Looking at that aspect of vulnerability to violence, I recently looked at the South African Police Services 2017 Crime Stats which showed that approximately 50,000 sexual assault cases had been reported; there's an estimation that 90% of those are committed against women, that 80% of those crimes are rape, which indicates that there's a 109 reported rapes per day. Figures are under-reported but still, these are alarming, and then furthermore according to the National Prosecuting Authority there is an estimated 8% conviction rate on rape, so not only are statistics incredibly alarming, but year-on-year this trend doesn't seem to change much; what's your perspective?</p>
<p>PROF SMYTHE</p>	<p>Ja well I mean you know we have amongst the highest rates of rapes in the world, the highest reported rates of rape in the world, so those are staggeringly high rates and they seem to just be really stuck there. The majority of the reported cases are not referred to the National Prosecuting Authority so they just kind of fizzle away at the investigation stage already and then pretty much the majority of cases that are referred to the prosecutors are not prosecuted so when you're looking at that 8% conviction rate, that's somewhere between probably 50 and 70% of the cases that were actually prosecuted and sometimes the Prosecution Authority will actually say well we have a conviction rate of you know something that sounds very good, about 50% say, but that's not of the reported cases, that was the cases that they decided they've got a good shot at winning and so you end up with a situation where there is really very little deterrents as far as the criminal justice systems goes, you know, we can keep ratcheting up the sentences and impose all of these minimum sentences for rape, but if we're not actually bringing people to trial and we're not getting the convictions, well you know, then those sentences are just sitting there on the paper.</p>
<p>DR. MALKA</p>	<p>So looking at your experiences, what would you say are the key issues? Is it a fact that people are withdrawing cases? Are cases just not going through the value chain to get through to the prosecution level?</p>
<p>PROF SMYTHE</p>	<p>So I looked at some of this for the book that I published a couple of years ago, "Rape Unresolved" and what I was kind of interested in there was on the one hand when we speak to women's rights activists about why we have such high attrition rates and women's rights activists would say well the police culture is one of machismo, it's misogynist, there's a kind of built-in scepticism around particularly female victims and their approach is completely imbued with "rapeness" you know, they'll kind of be asking what was she wearing, was it a sex worker, was she drinking, you know, all of those kind of things. When you talk to the police, the police tell you well first of all women lie and second of all even when they don't lie they withdraw cases in kind of high numbers for various reasons and it is therefore a complete waste of time and so in fact we had, a number of years</p>

	<p>ago, interviewed police at one police station who said that they had a seven day rule and that was that if a woman came and reported that she'd been raped they could come back in seven days and if she did then they kind of would maybe continue with the case and if she didn't well then she obviously wasn't serious about it and this was a kind of a recurring theme with criminal justice people is you know the victims aren't serious enough about the case. So I was interested in testing out basically these two quite opposing views about why we were losing so many cases and I looked at cases that were unfounded and there were very, very few of them, so if women were lying they certainly weren't being reported in the official statistics as such, but there were a large number of cases that were withdrawn by the complainant. But what the police will tell you is you know some of those are withdrawn for family reasons, maybe the family comes to some kind of an arrangement, a settlement and the case is withdrawn or it's withdrawn because especially in the Western Cape where it's about gangs and violence, but more often than not, it's because the couple were in a relationship. That kind of intuitively makes sense. We all know that there are problems with acquaintance rapes, they're hard to prosecute, complainants are reluctant to kind of go forward with the cases, obviously where people are intimidated in that kind of a gang setting or there's a lot of violence, this could be an issue, you know, those all kind of makes sense.</p>
DR. MALKA	<p>And true when you talk about things also from a poverty point of view, if there is a co-dependency in a relationship that you are quite possibly not going to be letting your source of income be put away.</p>
PROF SMYTHE	<p>Ja, ja, absolutely, you know, and you see this coming through in a number of the cases that I've looked at across a variety of settings, but what's interesting though, is you don't see it as often as you're told that it's happening. What happens with the police is if they don't properly investigate a case, if a case is undetected, it counts against them, but if you as a complainant withdraw a case then it's counted as a successful investigation and so what you see actually is a number of cases where it's not entirely clear that..first of all that it's the complainant withdrawing the case but secondly that the complainant actually necessarily wants to withdraw the case. So you might find a withdrawal statement that says "I don't want to proceed with this case because I can't tell the police who is the man who raped me" and that would be counted as a case that is withdrawn by the complainant. So yes, we see these boyfriend cases, we've seen the cases of violence and intimidation; not that many of them, but I think most of those are not reported in the first place. We've seen some instances where families are involved and settlements are reached but we also see a very substantial number of cases where complainants have effectively been asked to investigate their own cases, you know, to go and find the person, to find the name of the person who raped them and to bring that to the police and if you don't do that, well then you weren't really serious about it.</p>
DR. MALKA	<p>I'm sitting here a little bit lost for words that you're expected, after being a victim, to go out and do the police work.</p>
PROF SMYTHE	<p>Ja, no there are numerous cases like that, in fact, Antony Alsbeck in his book writes about these pointing out notes, so the police would give you what is called a pointing out note and in terms of the Criminal Procedure Act, what that does, is it means that you can go to any police person and say I was a victim of a crime and I've been asked to point out this person and that is the person across the road please can you arrest them. I mean</p>

	<p>because obviously you can't do that ordinarily, you can't just walk up to a cop and say please arrest that person across the road. So it's...you know it's supposed to help in that situation but in fact as Alsbeck points out, for the most part that's where the case ends, you've given this pointing out note, oh ja if you find the person come and tell us and we'll arrest them and so the interesting thing about your 8% is that you would expect to see more stranger rates there, the way in which its...the story is told, particularly in international literature, is the cases that don't make it to trial are the ones that were committed against women of questionable virtue, who are known to the perpetrator, probably in her home or his home and where, you know, she's kind of engaged in risky behaviour. So the ones that should be prosecuted, the ones that should be successful are virtuous, in a public space, using a weapon and you know no kind of participating behaviour and that's not what you see in a South African situation. So what you see is the more serious, very violent stranger rapes not being prosecuted because those are the ones that require investigation.</p>
DR. MALKA	Thank you for sharing your insights on some of the causes and the reasons behind the low attrition rates.
	AD BREAK
DR.MALKA	Today we're talking to Professor Dee Smythe who is a Professor of Public Law and Deputy Dean for Research in the Law Faculty at the University of Cape Town. We would love to receive your comments on Twitter: @WomanityTalk.
DR. MALKA	Our programme, 'Womanity – Women in Unity' is about gender equality which is becoming more and more a global focus and part of the attributes within this is about female leadership and being important for both the future of women in Africa as well as across the world; in your role as a professor of public law and also Deputy Dean for Research in the Law Faculty at UCT do you think that attaining a 50/50% representation across the board is achievable?
PROF SMYTHE	<p>I think don't worry about 50/50 as a concept. There are steps that need to be taken in order to ensure genuine diversity of representation in leadership. So I worry that when we talk about 50/50 we're falling into a gender binary trap and that there are people who are excluded from that kind of, you know, idea that there should be 50% men and 50% women. I also know that very often with 50/50 a good number of the 50 women who make it in are there because they are acceptable to the 50 men and so although I think it is useful to...it's a useful organising tool, it's useful to think and to talk about it, it's useful to aim for much more representation for one and as you know notorious RBG Ruth Bader Ginsburg said it all ,why can't the entire US Supreme Court be made up of women? It was perfectly acceptable for all those years for it to be made up of men....</p>
DR. MALKA	...yes....
PROF SMYTHE	<p>...I'm sure...you know I don't think that 50/50 is where we should stop either, but I don't think that it's an end in itself and I think we constantly need to be questioning who the women are that are ascending, what their politics is, what they're doing to improve the lives of women and to bring other women along with them.</p>
DR. MALKA	I think that's a very interesting perspective, looking forwards to the head and the future of development. What do you think we need to do to benefit women in the future?
PROF SMYTHE	<p>Well I mean I think to move women along in leadership positions, one of the key things for me and this comes back to the issue of privilege, is about building networks, you know, it's about genuine access to mentoring, genuine access to support and actually part of networking I've come to realise is about actually letting other women in on the secrets that we've</p>

	<p>kind of learnt along the way. I think how privilege operates is that there are some things that people just know, right, and they just know because they grew up with it and you know so maybe in an academic setting, they know it because their daddies were professors and/or in the law school setting because they come from a long line of lawyers; there's just things that they know and all of that is hard for people who don't come from that environment, you know, in most places in my experience, there is so much knowledge that it's taken for granted and for me therein lies a lot of the privilege and so I think providing opportunities for sharing that knowledge, the kind of opportunities that mean that women don't have to go through the same kinds of learning curves that the women who've preceded them have; I think that's kind of key to mentoring.</p>
DR. MALKA	<p>Do you think that part of the solution is establishing more formalised mentorship structures so that there's sort of a tacit information is spread across into more networks?</p>
PROF SMYTHE	<p>Ja, absolutely. I think it's really essential and I think it's the one thing that we as senior women can be doing is to involve ourselves in those kinds of projects. I do this with a number of young academics across the continent, just working on access to peer reviews and just basic advice about how to navigate the kind of academic setting because it's not only within your own institution, academia as we know is international and knowing how to position yourself I think is often quite challenging.</p>
DR. MALKA	<p>The positive things within the academic space and its global reach is that when you are producing articles that it is peer reviewed and it's done under anonymity so people don't know the gender.</p>
PROF SMYTHE	<p>No, no they don't. I mean I think there there's something else that...that is operating and it's been something that's been very taxing for me for the last few years is about the representation of Africans generally in the international journals in my field, so you know, if you look at kind of one of the or the absolutely leading journal in my field of just over 1200 articles that were published from 1966 to last year, only 40 of them dealt with Africa at all and only 8 of those were written by scholars in Africa. So you know one of the things that I think is happening and I've been working with both at UCT and then also with Ambreena Manji who is at Cardiff on writing workshops and one of the things is happening is that kind of women in particular self-select out, I mean they just don't put their work forward in the first place and so part of what I'm trying to do is to ensure that there is a network of mentors who can support, moving from having a really promising paper and I mean I've seen so many just really excellent papers coming out of particularly scholarship on women and law in Africa and from moving it from there to actually being ready for peer review.</p>
DR. MALKA	<p>I think that's a wonderful initiative, both on the upliftment point of view, on the developing the talent, on helping them partner up with mentors in their respective fields and then collectively, as you take that knowledge, it also positions African scholars within the world space.</p>
PROF SMYTHE	<p>I t also tells a different story about Africa. So the story that's told about Africa in the Law and Society journals generally is a story of kind of pestilence, disease and sex, so it's...oh and war. It's about violence, it's about I mean the stories...the family law kind of articles are about things like leverate marriages and polygamy, so the kind of the ordinariness of African life is not reflected and I think you know the more that we tell the ordinary stories of our lives and those stories of our ordinary encounters with law, you know, the more we take responsibility for how Africa is positioned in the world of scholarship.</p>

DR. MALKA	But if you said that only 8 African's contributed to the journal since 1966, it means that African's aren't telling their own story; it means our stories...
PROF SMYTHEno...
DR. MALKAare being told by non-Africans.
PROF SMYTHE	Ja, ja and so you know some of those and there are also long gaps. There are long periods of time; 7-8 years in which there are no articles on Africa at all, Africa just doesn't exist in the scholarship but quite a lot of the work that is being done I think sort of feeds the exotification is Africa, the PhD side, the people coming to Africa to write about trafficking, organ trade, witchcraft, you know, and then bring back to their northern universities and writing up their dissertations and then turning that into an article.
DR. MALKA	Except there does seem to be a bit of a sensationalist element to it as well.
PROF SMYTHE	Ja, ja, no absolutely.
DR. MALKA	You are listening to 'Womanity – Women in Unity' on Channel Africa, the African Perspective, on frequency 9625 KHz on the 31 meter band; also available on DSTV, Channel 802. Today we're talking to Professor Dee Smythe who is a professor of Public Law and Deputy Dean for Research in the Law Faculty at the University of Cape Town. We would love to receive your comments on Twitter:@WomanityTalk.
DR. MALKA	Prof Smythe, we're coming towards the latter part of the show and in this section I tend to ask my guests who've made tremendous achievements in their respective fields of expertise about the factors of success that they consider have contributed to their development. Some people speak about perseverance; others talk about hard work; in your opinion what have been some of the factors that you consider to have contributed to your success?
PROF SMYTHE	I...I think my, I think a genuine quest to understand the world around me and that results in a few things, so the one is, you know, it kind of ties back into what I was saying earlier, so you know, always thinking that there has to be more; there has to be more to the story, there has to be more to understand, a kind of an openness to a variety of views and to kind of you know, learning of them but also I think that the thing that has ultimately driven my success has been the delight that I take in the brilliance of others, that I strongly believe that you...if you're the smartest person in the room, you're in the wrong room and I have been very successful at surrounding myself with...and very lucky I suppose, in surrounding myself with very brilliant people and those brilliant people inevitably are challenging and force you to think and to think but also loving and patient.
DR. MALKA	Can you tell us who have been some of the strong women in your life?
PROF SMYTHE	That's a really interesting question. I have thought a lot in the last year, for various reasons, about group-think and how it is that people come to be so certain that they're right about things and I realised that one of the reasons that...well one of the things that protected me I think from falling into that trap, perhaps not always, but hopefully most of the time, was the prevalence of strong women in my life and exactly this, the fact that they...that they were patient and loving but also so hard on me and you know really kind of questioned me and forced me to justify myself and articulate my position and you know so and those are not, those are not people who are in positions are high you know standing or whether they are people who work with me, people who I was at Stanford with,my colleague Diane Justice at UCT,who's an Argentinean scholar who convinced me that teaching university students is the highest form of activism, Nomboniso Gasa who, you know, won't let

	you get away with much and ja, so it's a circle of support, a circle that is very challenging.
DR. MALKA	That's exactly what I was going to say, it seems to be both support but also challenging, challenging you as an individual to not fall into the trap of group think, to really understand why you believe in your ideologies or why you follow a particular philosophy.
PROF SMYTHE	It's an immense privilege and that's why we all need to think about I think, but the fact that somebody thinks that you're worth investing in, worth investing their time, their patience, their energy, to me is quite amazing and something that I think one has to work to deserve and reciprocate.
DR. MALKA	That goes to also a bit of privilege but also honouring that they've invested that time into you as an individual. Could you share with us some of the pivotal moments in your life growing up; what influenced you?
PROF SMYTHE	Well I grew up in a very small town in South Africa and I went to a school which was 5 to 1 Afrikaans to English. The only English speaking teacher that I had was my English teacher so although I was notionally taught in English I was in fact always taught by Afrikaans teachers, with some of them better than others, but it was a space in which English children were kind of (quote unquote) considered to be the scum of the earth and referred to as the Damned English – Die Donderse Engelse - so when I talk about kind of always having a sense of position as the other of privilege operating, some of it comes from that space and so it was also a space in which some of the banal nationalism were always at hand, you know, you had to sing the national anthem in morning and the flag song and it was a really very kind of epitomy of Christian Nationalist education and I, you know, as I said before, I sort of had a good sense of there's something really really wrong with all of this, so when I went off to university I went to Wits and that was a place that really concretised things for me, it helped me to kind of understand this injustice, this indignity that I'd been feeling in more intellectual terms but it was also a very, very unsettling experience, just coming out of a small town, just being so confronted with what was happening in the late 80's in South Africa and I tried to get involved with student activism, I was briefly arrested really only long enough for my parents to be informed and for my father to say there's no way that I'm sending you back to that place and so I actually dropped out of university, out of WITS in the late 80's and did a lot of other activist work in the run up to the 1994 elections and then once we had freedom in South Africa, for me the next thing was to travel in Africa, so my partner and I you know sold up everything and for the next - this was 1994 - for the next more than a year and a half we just travelled north using public transport and eventually ended up Cairo and then I got back to South Africa where I went back to UCT and so you know that experience of growing up in a space which is very much about knowing your place and then being exposed to the world of Africanism at first and then being able to experience one facet of a small sliver of Africa as a young woman has all been very informative for me.
DR. MALKA	It seems as though you've lived the full spectrum, from being in a very conformist environment, being the minority, being the "Damned English" in inverted commas and then democracy coming through for South Africa, the freedom and then having the opportunity to explore the continent.
PROF SMYTHE	Ja, ja, absolutely and you know I think it..coming back to gender issues in particular, sitting on a bus from Lusaka to Lilongwe for however many hours that took in 1994 or being in Eritrea just after the border was opened with Ethiopia and the experience of being with women, you know, was a

	very strong influence on me so that I've always felt like although absolutely one cannot and should not speak for all women, that I know from my own experience that there are those moments of commonality.
DR. MALKA	And on that note, as we close the show, could you share a few words of inspiration that you'd like to pass on to young women and girls in the continent who are listening to us today?
PROF SMYTHE	I think it will be that in my work on the continent, in my work with young African scholars, the talent that I have seen is incredible and partly it's because we come from these interesting, weird, crazy backgrounds, very often, but there is such great work coming out of Africa; the world is yours right now. There is, you know I talk about the journals that are not reflecting African scholarships; they're desperate for African scholars, you know, everybody understands I think that "diversity" (quote, unquote) is an important value that they should be aspiring to, whether that's at the university, around the world, whether that's the journals and to ride that wave and to take advantage of the opportunity to kind of be out there in the world and to share your perspectives of the world.
DR. MALKA	I think that's a wonderful point to close on - "the world is yours." Thank you very much for joining us.
PROF SMYTHE	It's a pleasure, thank you very much for the conversation.
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