

Bending the Law

Are radical multiculturalists poisoning young legal minds?

BEYOND ALL REASON

The Radical Assault on Truth in American Law.
By Daniel A. Farber and Suzanna Sherry.
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By Alex Kozinski

IMAGINE, if you will, that space aliens land in the United States and offer "untold treasure" in exchange for surrendering all black citizens to them. What does white America do? It votes to accept the deal by overwhelming margins. So says the law professor Derrick Bell, who poses the question in an allegorical tale he calls "The Space Traders."

There is opposition, however. Jews condemn the trade as genocidal and organize the Anne Frank Committee to try to stop it. Empathy from another group that has suffered oppression? Not according to Bell. Instead, Jews worry that "in the absence of blacks, Jews could become the scapegoats."

Such parables pass for legal scholarship these days. Or rather, for a certain form of legal scholarship that Daniel A. Farber and Suzanna Sherry, both law professors at the University of Minnesota, identify as "radical multiculturalism," an amalgam of legal ideas including critical race theory, radical feminism and "gaylegal" theory. "Beyond All Reason" is the anguished cry of two traditional liberals who have been mugged, not by reality but by their radical colleagues in the ivory tower.

According to Farber and Sherry, the radical multiculturalists in the law schools have taken an ax to the foundations of traditional academic dialogue — things like objectivity, truth, merit, fairness and polite discourse. For the radical legal thinkers, all these are tools that straight white males use to oppress those who are not. According to the critical race theorist Richard Delgado, merit standards are "like white people's affirmative action . . . a way of keeping their own deficiencies neatly hidden while assuring only people like them get in." The feminist Catharine MacKinnon puts it more deftly: current standards reflect "what white men value about themselves."

Farber and Sherry patiently — sometimes too patiently — demonstrate how radical multiculturalism ultimately destroys the very values its proponents seek (or should seek) to promote. If truth does not exist, if merit is merely an expression of power, if there is no objective reality, then meaningful discourse is impossible and the hope of a just and equal society is a hoax. How, for example, can one respond to Prof. Patricia Williams's assertion that it doesn't matter whether Tawana Brawley was telling the truth or lying when she claimed she was kidnapped, raped, tortured and smeared with dog feces by white men? Either way, Williams says, Brawley was "the victim of some unspeakable crime."

The radical multiculturalists' views raise insuperable barriers to mutual understanding. Consider the "Space Traders" story. How does one have a meaningful dialogue with Derrick Bell? Because his thesis is utterly untestable, one quickly reaches a dead end after either accepting or rejecting his assertion that white Americans would cheerfully sell all blacks to the aliens. The story is also a poke in the eye of American Jews,

particularly those who risked life and limb by actively participating in the civil rights protests of the 1960's. Bell clearly implies that this was done out of tawdry self-interest. Perhaps most galling is Bell's insensitivity in making the symbol of Jewish hypocrisy the little girl who perished in the Holocaust — as close to a saint as Jews have. A Jewish professor who invoked the name of Rosa Parks so derisively would be bitterly condemned — and rightly so.

While the radical multiculturalists still make up only a minority in the law schools, they are loud and militant. They wage open warfare over appointments and tenure, the selection of deans, the scope of affirmative action and the imposition of speech codes. They brand those who oppose them as sexist, racist or worse. Farber and Sherry relate the experience of Randall Kennedy, a black Harvard law professor who wrote an article critical of radical legal scholarship. When efforts to dissuade him from publishing it failed, he was denounced for selling out his race.

Can all this be shrugged off as schoolyard fun and games? Hardly. What students are taught during their time at law school profoundly affects the way they will do their jobs. When I was a law student a quarter of a century ago, we were taught that cases usually turned not on what the law is, not on what the Constitution says, but on the predilections of the judge making the decision. That view was on the fringe then but is now widely held. In Washington, particularly, everyone believes it: liberals and conservatives, Democrats and Republicans, those in the White House and those on Capitol Hill. Consequently, the name of the game in judicial appointments is picking judges who will enshrine the right policy into the Constitution while blocking those with the wrong views.

TODAY'S relentless attack on objective reality can similarly transform the legal profession. Lawyers have always had a hard time reconciling their responsibilities to their clients with their duty of candor to the court; after all, both sides are not equally served by the truth. But at least there has always been a shared assumption that such a thing as truth exists. Law students are now being taught — at least by some of their professors — that truth does not exist or, in any event, does not matter. What does matter is whose side you're on. There are strong indications that this message is being carried from the classroom into the courtroom in cases like the O. J. Simpson criminal trial. It may be only a matter of time before lawyers learn to tell juries quite routinely that they must choose not between guilt and innocence, truth and lies, lawfulness and unlawfulness, but between the defendant and the state.

Farber and Sherry are not alone in worrying about this. Traditional liberals in law schools all over the country are shaking their heads, wondering what hit them. Whereas 10 years ago one might have had a fruitful discussion with faculty members and students about justice, equality, freedom, responsibility and merit, such Enlightenment concepts are now considered a bit quaint and a bit dated — like stale granola. While traditional liberals still dominate the law schools in terms of numbers, they are mostly a cowardly lot, unwilling to risk their peaceful careers to tell the alarming truth to the world outside. In writing this book, Farber and Sherry have taken a personal risk. If those of us outside the academy fail to take heed, we will not be able to say we were not warned. □

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