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Abstract

This paper presents a critique of the political nature of law from a particular viewpoint. A viewpoint articulated by people of various cultural backgrounds against a monomaniac legal standard. This viewpoint has been categorised as the Race Theory Movement and it confirms the thesis that, indeed, law is political. Because, when a critique is categorised as a single issue movement, a dual process begins: the viewpoint is subtly trivialised as limited (eg. according to gender only, or minority only), therefore it is considered to be unimportant to the society at large. At the same time, the dominant legal culture is reinforced as the norm that is natural. A legal culture that embodies white Anglo-Saxon values. The assumption is that law is/should be defined by this dominant ethos. Any other contribution to the development of law in the society is considered to be a mere "sideline" issue. However, the seemingly harmless dominant ethos is, in truth, supportive of "the political reality of power structure [in our legal culture] which disempower[ed] many others in a society" (Barnes 1990: 1869).

No Longer Mute:

LAW/CULTURE/WHITE LIES

Set Lee Schmutz

INTRODUCTION

Protest: "Stop pushing us out from the line/queue!"

Retort: "It's not your line."

This paper presents a critique of the political nature of law from a particular viewpoint. A viewpoint articulated by people of various cultural backgrounds against a monomaniac legal standard. This viewpoint has been categorised as the Race Theory Movement and it confirms the thesis that, indeed, law is political. Because, when a critique is categorised as a single issue movement, a dual process begins: the viewpoint is subtly trivialised as limited (eg. according to gender only, or minority only), therefore it is considered to be unimportant to the society at large. At the same time, the dominant legal culture is reinforced as the norm that is natural. A legal culture that embodies white Anglo-Saxon values. The assumption is that law is/should be defined by this dominant ethos. Any other contribution to the development of law in the society is considered to be a mere "sideline" issue. However, the seemingly harmless dominant ethos is, in truth, supportive of "the political reality of power structure [in our legal culture] which disempower[ed] many others in a society" (Barnes 1990: 1869).

I. "AFTER YOU HAVE SLAPPED ME LEFT AND RIGHT, MAY I BORROW YOUR HAND TO SLAP YOUR FACE?"

The articulate, quick thinking representatives of the dominant legal culture will no doubt be swift to raise their objections to the above proposition and argue that it is not categorising. It is for the purpose of identification that

we have been assigned a name. The more thoughtful ones will go further and say that it is necessary for understanding. To understand our background - where we are coming from. Both naming and understanding are wonderful processes of life as a task of identifying an alternative position that the dominant legal culture has taken seriously. But my dear dominant ones, you are again telling me that law is political. May I borrow the word that you so loved to remind me of, what I need to do, have to do, must do as a citizen of this country: assimilate. Please enlighten me, why must I assimilate? So that I may be included marginally in this society? But you need only to identify and understand me through categorisation?

Maria Lugones (1987) recognises this as “the internalization of the propriety of abuse without identification.” From her experience, she speaks of how white/Anglo can “ignore us, ostracise us, render us invisible, stereotype us...[a]ll of this while we are in their midst.” This is not unlike “Aristotle [who] tells us nothing about the slave apart from the master. We know the slave only through the master. The slave is the tool of the master.” Again, I ask you. Why don’t you assimilate my identity and understanding? Because it is not for the benefits of the society at large? Say that again? You mean the ethos of the dominant culture must triumph in the field of legal theory, don’t you? Further, you know it is impossible to know another simply by calling them names, don’t you? Speak the truth, I challenge you with my arched left brow!

The insistence that others must assimilate denotes not just the existence of a dominant power but also the assertion of this dominant power over the others. Race Theory emerges with its broken-heart out of this domination, race theory pleas its course against the blind and cripple bullshit that: law is a-political.

II. “JESUS TURNED ABOUT IN THE CROWD AND SAID ‘WHO TOUCHED MY CLOTHES?’ “MARK 5:31

Law is crippled when its political nature is denied by ignoring the experience of others in the society. Its consequence is a haemorrhaging of human dignity that may never have the chance to grab Jesus’ cloak in hope of healing. What is the meaning of this act, you ask? Well, you are right to think that it perpetuates the idea of a Lord and the miserable ones. It is the pathetic act of grabbing attention! Pay attention to the reality of others whilst going about the proclamation of your a-political Kingdom. Do not ignore! Be disturbed!

The assertion that law is neutral is betrayed by to the continuous accumulation of power to the established status quo. The status quo is exclusive and attainable only through the adherence to the norms of its social codes. Thus the society is defined according to the boundaries of this status quo. It is these boundaries that create the marginalised. Yet, this society lives on untouched by its outer circle whilst the outer circle schizophrenically performs a two-step tap dancing in its survival chronicle. Matsuda (1988) points out that: "This process ignores a basic fact of human psychology: human beings learn and grow through interaction with difference, not by reproducing what we already know." The conscience of such a selfish society zombies with its motion, living in the belief that nothing is really political. Law is non-political. For to contemplate the political nature of law is to expose its filthy heart - to acknowledge that someone in the circle is responsible for the mess. So, let's play dumb, blind and draw a circle that others cannot step inside and change the rule of the game. It is time that we own up to the reality of the political nature of law.

In the American context, Delgado (1988) says:

... those constitutive ideals, principles, and narratives that form our founding story. That story, our story of origin, holds that our nation was founded on mutuality and equal personhood. All men are created equal and endowed with fundamental human rights. What is more those truths are not just contingently, but self-evidently so. (Referring to America's Declaration of Independence U.S. 1776). They are in the nature of things... the founding story is reinforced by narratives emanating from dominant codes and the Judeo-Christian tradition. In this tradition, all persons are equal in the sight of God...[y]et alongside that story is set a much somber one, a story of nonwhite people...we can adjust current reality in the direction of the original promises, or, we can decide in favour of present reality and forfeit our ideal.

Whilst Charles R. Lawrence III (1995) expresses similarly for his country that:

"I fear that a day will come when a South African court will declare that race-based remedies violate the rights of white men because "[o]ur Constitution is color-blind." Because there is no proof of past discrimination, because societal discrimination is too "amorphous," because such remedies violate the "vested rights" of whites... I fear that this day will come well before the

wrongs of apartheid are righted... [m]ost of all, I fear that when these lies are told they will be believed... because somehow in a free market, merit based competitive system they [the minorities] have fallen to the bottom. We are not certain why, but it must not be racism, given our "colourblind" society.

III. TO STEP OUT OF ALL THIS, AND TO STAND NAKED ON THE PRECIPICE INVULNERABLE,

free : in the Light, with the Light, of the light. Whole, real in the whole.

Out of myself as a stumbling block, into myself as fulfillment.
- Dag Hammarskjold

Race Theory is a voice in the wilderness, proclaiming the message of liberation and departing from the premise that law is non-political. Its merit, surmised as follows: it voices the suffering of racism as real, cruel, and painful. There is "... [a] need to incorporate the concrete, practical realities of oppressed people into agendas for [law] reform." (Barnes 1990: 1867) It questions the neutrality of law in the face of racism. It demythologises the objective nature of law (Delgado 1992: 814). It highlights the biases of the legal profession and our legal education (LawrenceIII 1995: 844). Last but not least, it brings home truth to the not so trivial matter of speaking with an accent (Matsuda 1991: 1329).

Accent ? Big deal! You say?-You are right. It is a bigger issue than you think it is. No matter how articulate we are, how clear is our diction, we are disadvantaged by our accent in this society. I read with great interest the articles by Matsuda and others on the issue of accent. I have always wondered when will my real Australian friends realise that they have an accent too! Matsuda (1991) says:

[e]very person who reads this article has an accent. Your accent carries the story of who you are - who first held you and talked to you when you were a child, where you have lived, the schools you attended, the languages you know, your ethnicity, whom you admire, your loyalties, your profession, your class position: traces of your life and identity are woven into your pronunciation, your phrasing, your choice of words. Your self is inseparable from your accent. Someone who tells you they don't like the way

you speak is quite likely telling you that they don't like you.

Further, Matsuda (1991) questions:

What kind of people demand uniformity of accent? The demand for speech uniformity suggests preference for conformity, distrust of difference, and attachment to a large, looming notion of "we". The demand for speech uniformity is scary, in the scary sense of statism, nationalism, territorial acquisitiveness, and purist conception of race.

Race Theory recognises that there is:

"a structural feature which dwarfs almost everything else, is simply stated white people rarely see acts of blatant or subtle racism, while minority people experience them all the time...minorities, by contrast, live in a world dominated by race. We experience racial treatment everyday of our lives. We are bathed in it. A high percentage of our social interaction is tinged by it." (Delgado 1992: 407).

Further, this structural feature "colours legal and political theorising" (Delgado 1992: 408). According to Race Theory: "race and racial categories are not natural. They are social. They are created by culture, politics and ideology. They are what poststructuralists call a social construction" (Lawrence III 1995: 835). There is a truism : racism is "the injury to the collective, as suffered by us all" (Lawrence III 1995: 825). Racism hurts. If you could not see it from my scarred-heart, you should see it from the face of my Swiss husband. He hurts just as deeply, if not more. Because he carries the blood of guilt in his body, as his flesh of flesh, bone of bone is being continuously pushed aside as an "other". I face racism in western society like an encounter with carbon dioxide in the atmosphere.

IV. " TRICKSTER TIPTOED UP TO REAL BEAUTIFUL'S BED.

He tied invisible puppeteer's strings to her shadow from that day to this, Trickster has been pulling these invisible strings with glee! This Shadow Dancer thinks she is a real person and therefore free to come and go and live as she pleases. Yet almost every thought, word, feeling and action is a mechanical reaction to peo-

ple and situations outside herself.” The Shadow Dancer .

Therefore, I sniff at the rottenness of neutral principles. As Matsuda (1992: 299) says “legal theorists puzzle over the conflicting desire for finite and certain principles of law, free from the whims of the despot... [and] the law itself becomes the despot.’ Locally in Adelaide, our neutral concept of rights ends up protecting racist right-wing groups like the National Action Party.

On the whole, Australia assumes a view that: citizens’ identities as members of ethnic, cultural or religious groups do not publicly matter. Therefore, we have an image of collective identity that is politically relevant. That is, a collective identity that suppresses the reality of multiculturalism in Australia. For example, why do I say I am Malaysian-Chinese even though I am an Australian Citizen? Because I keep hearing voices that say I cannot be an Australian, because I am not white and I speak with an accent. Politically, Australia presents a white image to the world whilst beating its gong and cymbal of multiculturalism.

Multiculturalism, what is it ? It is the devilish lie: that Asians take away our jobs tricks us all. (At this point, the golden principle of a free market suffers from temporary amnesia.) Asians are expected to live forever as those who do not belong here in the midst of multiculturalism. Whilst the dominant group enjoys multiculturalism as the rightful dictation of their culture. The dominant culture’s Trickster wakes us up to delude us further. Multiculturalism becomes culinary treats: Italian food, Greek cuisine, Chinese take-away, Thai gourmet, Vietnamese dishes, Lebanese meals & etc. To those who say they are sick of ‘politically-correct multiculturalism’- I say, well, sometimes I am sick of three veges and fat chops too! (And I have had enough of fish and chips lately!)

Australia embraces multiculturalism with its open mouth, through to its stomach, then out from its bowel as shit. Then, there is this “MABO” shit which is frequently dug out to show the world how protected the native of this land is! No one seems to want to admit that “MABO” has saved the arse of the legal system of this country which has been, for so long, impotent in the face of centuries of exploitation of our indigenous people. Please, stop smearing shit on our own mostly white faces to display the glory of our law! A law that is, at best, helpless, but, also the Pontius Pilate that washes his hand of guilt to the brutalising and dehumanising history suffered by the natives of this land. Let’s face it, the reality of Australia’s living is multicultural, but not the politics of its law.

Unless we are willing to address the inherent weakness of the legal ideologies in Australia, there will never be a substantive approach to rectify the lie. Unless "White Australia" is understood as the dominant politics of the law in this country, there will not be any substantive approach to move to a more just legal system. When I speak of the substantive approach, I mean:

the substantive approach [that] sees the disestablishment of ideologies and systems of racial [and any other forms of] subordination as indispensable and prerequisite to individual human dignity and equality. (Lawrence III 1995: 24).

V. WOE TO YOU, HYPOCRITES!

"For which is greater, the gift or the altar that makes the gift
sacred?

Woe to you, hypocrites!

First clean the inside of the cup that the outside may also be clean

Woe to you, hypocrites!

For you are like whitewashed tombs, which on the outside look
beautiful,

But inside they are full of the bones of the dead and of all kind of
filth...

Woe to you, hypocrites!"

(Excerpts from Matthew 23 : 16-28)

The long established ideologies of the dominant legal culture will no doubt, at this juncture, pull out its most powerful weapon: that the law has been objectively established. It will not be watered down to the mere subjectivity of new migrants to this country. This, of course, assumes that the law, presents itself as unstained by any subjective elements. "Underlying these stylized debates about subjective versus objective standards is a well-hidden issue of cultural power..." (Delgado 1992: 817). Just as in contract law, we must assume that only logical, intelligent, articulate, assertive persons enter into contractual relationships. So in the politics of law, all are assumed to meet a dominant "white " standard. Just as in criminal law, where we have enough famous dictum* concerning rape. (*No mistake in spelling. Dictum means statement made to save dick. Lots of it.) And if we cry foul, the outrage will be assigned to a limited group of people - women and/or the feminists only. So what is our case in legal and political theorising, when we shout " look at us ! "? Our call will be labelled as

“ the ethnic issue” and why? No prizes for answering the correct answer: so that the dominant culture prevails in law. It is perhaps time to say out loud: to hold law as objective is to believe Rudolph sneezes every other second in the snow. (Oh! Poor old red nose.)

VI. HOW LONG, YOU PEOPLE, SHALL MY HONOUR SUFFER SHAME?

How long will you love vain words, and seek after lies? Se'lah.
(Psalm 4:2)

Race Theory Scholars must see beyond the myth of the minority. Essentially, it is not just a numbers game. Minorities are often created because of the process of domination. Auschwitz points to the fact that more than six million people could still be the minority. I am not disputing the fact that there is such a thing as the numerical majority and the numerical minority. Rather, the difference between the majority and the minority is often a game of power, not necessarily a numerical game. These two words have been used as a disguise to advance the dominant politic. We need to have a majority and a minority so that it can be reasoned: the wishes of the majority override the interests of the minority who are in need of protection - according to the fancy of those in power. This is what I call law as the double-faced judge. It has to be recognised for its political nature. The majority are those who possess more power. The minority are the beggars at its gate.

There is a sickening disease in the myth of “the minority” as beggars, and it causes many to internalise the inferiority forced-fed to us. Thus, an analogy from the bible (Luke 16:19ff.) seems appropriate in its depiction of the chasm between the rich man and Lazarus, awaiting radical reversal as justice. But we are not beggars. Therefore, we must have the gumption to visualise a world of equality, harmony, and mutuality as in Isaiah 11:6-9, when the cow and the bear, lion and calf, wolf and lamb with their young shall lay together on the green pasture.

VII. "AFTER A WHILE YOU LEARN THE SUBTLE DIFFERENCE BETWEEN HOLDING A HAND AND CHAINING A SOUL."

And you learn to accept your defeats with your head high and
 your eyes open,
 with the grace of a student, not the tantrums of a child.
 And you learn that in the darkness of struggle,
 you are impregnant with new life.
 So you plant your own garden and water your own soul,
 Instead of waiting for someone to bring you flowers.
 And you really are strong. And you really do have worth..."

(Author unknown)

Therefore, Race Theory will not advocate the destruction of the dominant legal culture. To do so is to re-enact the actions of its oppressors. Instead it speaks a language of intersectionality (Kimberle Crenshaw), multiple consciousness (Mari Matsuda), cultural visibility (Renato Rosaldo), cultural meaning (Lawrence), prophetic vision (Anthony E. Cook) within the complex and liberating understanding of culture, politics and the law. With its heightened consciousness, Race Theory intersects with others whose voices speak against the oppression of the minority; in terms of gender, race, class and the like. It refutes the myth of the minority as inferior and moves together with others, with open hearts, to face the stone-hearted dominant culture. This is multiple consciousness as jurisprudential method, as Matsuda (1992: 298) says:

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..."The personal is the political," we hear from feminists, and "everything is political," we hear from communities of color...

Derrick Bell's thesis is that "the law is not aimed at improving life for the minorities except on the rare occasions when doing so coincides with white's self interest" (Delgado 1987: 923). I charge you! The time has come when these interests will merge. "[W]e cannot listen to those who say, 'it's not yet time.' We know it's time, our time, and we will make it so." (Matsuda 1992: 10). This is not optimism. Quite simply, we refuse to

play the game of inferiority and superiority. We can envisage a few last kicks from the hearts of stone that yell “you speak with an accent” or “you are a bloody feminist” or “your daddy is a drunk”; but we will be patient as we persist on. We will insist that our fellow human race grow up and face us as responsible adults. This is the great way of living: to be defiantly purposeful in adverse situations and to be full of hope when it feels so damn hopeless. This “hope is...not the conviction that something will turn out well, but the certainty that something makes sense, regardless of how it turns out” (Havel 1993: 68).

Law is political. Therefore, those of us who have the consciousness must work through its struggles and spiral of tears, mingled with accent, blood, sweat and even insanity. Pat Williams (1989) in “Response to Matsuda-1988 Women of color and the law conference at Yale University” says:

When I was younger, I used to associate...with fears that I was schizophrenic. Now that I am older (and postmodern) I think that there is much sanity in the world-view. If we indeed are mirrors of each other in this society, if I have a sense of self-concept that is in any way whatsoever dependent upon the regard of others, upon the looks that I sometimes get in other people’s eyes as judgment of me - if these others indeed supply some part of my sense of myself, then it makes a certain amount of social sense to be in touch with, rather than unconscious of, that doubleness of myself, that me that stares back in the eyes of others.

Is this our story?

A fairytale that begins with the oppressor asking:

“Mirror, mirror on the wall, who is the fairest of all?”

The lying mirror answers:

“Snow White, you are the fairest of all.”

When the oppressed comes forth to the mirror with the same question, the mirror answers:

“Snow White is the fairest of all.”

The oppressed goes away—crying. In her brokenness, she pleads her case to

the rainbow.

I dare you: what is the colour of law in this land of the rainbow?

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