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SEXISM, RACISM AND OPPRESSION. By Arthur Brittan¹ and Mary Maynard.² New York: Basil Blackwell. 1985. Pp. 236. Cloth, \$29.95; paper, \$10.95.

*Allan C. Hutchinson*³

If sexism and racism are the twin evils of contemporary American society, constitutional law must be judged by its ability to deal effectively with these persistent problems. To the accompaniment of much intellectual trumpeting and academic celebration, legal doctrine has developed various devices to combat racial and sexual oppression. Yet the efficacy of such doctrinal reforms remains at best questionable.⁴ For instance, although general standards of living have improved, the wage and employment inequality between blacks and whites has worsened over the last thirty years; at 25%, unemployment among black high school graduates is the same as that for white high school drop outs; almost 50% of black children live in poverty; and 27% of Americans still believe that interracial marriage should be illegal.

There are many complex reasons for the incapacity of the courts to deal effectively with sexism and racism. One of the contributing causes is a general theoretical ignorance or, more pertinently, a failure to unearth and critically reevaluate the flawed assumptions that tacitly underpin legal thinking about racism and sexism. There has been a marked tendency to take a crude, one-dimensional view of very complicated phenomena and to respond with correspondingly blunt legal proposals. As a partial antidote to this sociojurisprudential myopia, Arthur Brittan and Mary Maynard offer a thorough critical analysis of the many extant theories about racism and sexism. Although the authors are English sociologists and the main focus of the book is English society, there are sufficient arguments and general insights to warrant the book's recommendation to an American legal audience.

The basic thrust of the book is that the available theoretical accounts of racism and sexism are unconvincing. The authors es-

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4. Hutchinson, *Alien Thoughts: A Comment on Constitutional Scholarship*, 58 S. CAL. L. REV. 701 (1985).

chew the worth of grand theories or holistic frameworks of oppression which claim universal validity. Highlighting serious lacunae in the traditional accounts, they reject any form of “theoretical reductionism” and maintain that oppression cannot be compressed into any simple formula. For them, oppression can only be understood in its particular historical and local context, by appreciating the oppressive minutiae and routines of everyday life:

[The] terms of oppression are not only dictated by history, culture, and the sexual and social division of labour. They are also profoundly shaped at the site of oppression, and by the way in which oppressors and oppressed continuously have to renegotiate, reconstruct, and re-establish their relative positions in respect to benefits and power. In the final analysis ‘oppression is where you find it,’ and this is almost everywhere.⁵

The bulk of the book is devoted to criticizing the deterministic foundations of the major theoretical attempts to explain racial and sexual oppression. In the confined space of a book review, it is only possible to capture the briefest scent of the full and rich flavor of the authors’ critique. They identify four main theories and condemn them all for squeezing racism and sexism into one reductive causative relation. These theories are biological essentialism, cultural determinism, psychological reductionism, and Marxism.

Over the last two decades, sociobiology has gained in intellectual status and academic respectability. Like its cruder predecessor, Social Darwinism, it identifies certain supposedly “natural” and fundamental human traits which are considered to explain the inevitability of certain forms of behavior. For instance, male aggression and the urge to dominate can be traced to the hormonal constitution of men. Similarly, psychological reductionists attribute racism and sexism to the repressive and irrational operation of the human psyche; oppression and domination are seen as residual aspects of the interaction between instinct and repression. Brittan and Maynard concede that biological and psychological factors contribute to the shaping of human behavior, but they categorically reject the ahistorical and simplistic causal claims made for these factors. As they pointedly note, “Human bodies live in history. They make history, and history repays the compliment by ‘living’ in the human body.”⁶

Cultural determinism posits that cultural history and its attendant stereotypes are at the root of sexism and racism. The English are racist because of their colonial imperialist past and the Americans are racist because of their slave heritage. In short, West-

5. A. BRITTAN & M. MAYNARD, *supra*, at 7.

6. *Id.* at 15.

ern culture is inherently and inescapably oppressive; people are scripted and socialized into racist and sexist roles. Maynard and Brittan reject such theories as they fail to explain why the particular forms of racism (white over black) and sexism (man over woman) have arisen. At best, cultural determinism provides only a partial account of oppressive practices and does not explain the more general question of why Western culture is racist or sexist at all.

Finally, Brittan and Maynard argue that Marxism in all its various shapes and sizes is flawed; as an analytical tool, it creates more difficulties than it solves. It tends to characterize the racially and sexually oppressed as indirect victims of a capitalist system, ideologically shaped and marginalized by economic forces. But, for Brittan and Maynard, the history of racism and sexism is too varied and complex to fit blacks and women into the general pattern of working class oppression. Indeed, racism and sexism are often most prevalent among the working class. Also, it is by no means clear that racism and sexism are functional for capitalism; they may actually inhibit economic development.

Alternatively, some Marxist writers suggest that women and blacks constitute separate classes whose oppression is independent of economic divisions. For instance, in the case of women, the controlling forces derive from the reproductive role and the domestic mode of production. Again, Brittan and Maynard reject this view as too tidy and reductionist. "Class" implies a homogeneity of interests and experience, but oppression cuts across traditional categories as, for example, in the racist treatment of black women by white women and the abuse of white women by other white women. Accordingly, it is better to move beyond "class" to an analysis based on the possible interrelationship and divergence of racist, sexist, and economic forms of oppression.

Having found wanting the intellectual cogency of grand theories of oppression, Brittan and Maynard begin their own constructive task by exploring the nature and techniques of oppression that arise in the family and the educational process. For them, both of these are the sites for learning sexist and racist attitudes, experiencing the effects of oppressive relationships, and reproducing sexism and racism. An understanding of the familial and educational institutions provides ample evidence of the extent of oppression. For Brittan and Maynard, such racist and sexist practices can only be fully grasped by appreciating their localized and particularized operation. For them, the search for a macrotheory of oppression must give way to the development of microstudies of racism and sexism:

[A]ll forms of oppression must be understood in social and historical terms. All

oppression is constructed for and by human beings. . . . The multi-dimensionality of oppression is, therefore, not a function of a supreme organizing principle, but is based on a similarity of oppressive practice and method.⁷

Their microstudy of these oppressive routines of everyday life reveals to them that oppression always involves a degree of objectification. Relying on the powerful insights of Catherine MacKinnon,⁸ they conclude that the construction of "natural" categories still dominates much modern thinking:

[W]hat men understand as a natural relationship between themselves and women disguises the actuality of their power. Objectification allows them to define themselves as a powerful and natural force operating on a world of things, as some kind of transcendental subjectivity moulding intractable nature into a desired form. The notion of masculinity as mastery over nature, as a heroic force struggling against the otherness of nature enables us to glean the essential component of the objectification process. It also enables us to understand how the practice of domination over things is related to domination over people.⁹

Nevertheless, Brittan and Maynard are at pains to suggest that this objectification process is neither total nor irresistible. They refuse to succumb to determinism. They maintain that "the power of human intentionality" must be acknowledged. The oppressed are purposive and subjective agents whose experience and status must be taken into account: "All racist and sexist practice involves a power relationship in which the subjectivity of personal experience is intertwined with the objectivity of collective and political relationships."¹⁰ Unfortunately, they are cryptic about the precise extent of human intentionality and, especially, on how we might bring about conditions in which it might fully exercise itself. Moreover, their guardedly optimistic conclusion reveals certain deep problems with their own theoretical assumptions about the operation of power and the possibility of a non-oppressive social structure.¹¹

In their account of oppression, Brittan and Maynard identify power as the medium through which some oppress others. Oppression is equated with the exercise of power and is synonymous with exploitation. Along with many theorists, therefore, they view power as a type of negotiable currency that can be grafted onto existing relationships. Consequently, they imagine that power can be eliminated or at least neutralized. Yet, like so many "radical" theo-

7. *Id.* at 215-16.

8. *Feminism, Marxism, Method and The State: An Agenda For Theory*, 7 SIGNS 515 (1982).

9. A. BRITTAN & M. MAYNARD, *supra*, at 181.

10. *Id.* at 213.

11. For a fuller discussion of "power," see Hutchinson, *Part of An Essay On Power and Interpretation*, 60 N.Y.U. L. REV. (forthcoming).

rists,¹² they fail to recognize that power is also fundamentally productive. Indeed, society consists of a network of power relations. The whole notion of people as individuals and as intentional agents is itself a product of the modern historical era. People long thought of themselves as putty in the hands of historical fate.¹³ Accordingly, outside of a historically situated scheme of social relations, individual intentionality is not cognizable as such.

What contribution can all of this admittedly abstract theorizing make to the development of constitutional doctrine? What do Brittan and Maynard have to say to the constitutional lawyer as opposed to the theorist? Part of the answer is that nothing is so practical as a good theory, especially when that theory recommends very practical and concrete study. Yet, more specifically, there is a very positive contribution that can be made to the critique and reworking of constitutional doctrine. Many judicial decisions, like *Michael M. v. Superior Court*,¹⁴ *Dothard v. Rawlinson*,¹⁵ and *Harris v. McRae*,¹⁶ rely on very dubious categories of "the natural" to give their reasoning any semblance of coherence or accountability. As Tribe has pointed out, the courts view the law as being a mirror of nature. Although less overt than it used to be, "by automatically translating biology into social destiny"¹⁷ the courts deny women and blacks full control over their own bodies and equal command over their own futures.

Lawyers must be assiduous in rooting out the oppressive attribution of certain characteristics to particular groups of individuals as "natural." People differ in all kinds of different ways other than their skin color and sexual organs: there are tall and short, fat and thin, blue-eyed and green-eyed, blonde-haired and brown-haired, and curly-haired and straight-haired people, to mention but a few distinctions. None of these traits should be unthinkingly assumed to have any intrinsic significance. The ambition must be not to achieve a racially and sexually integrated and mixed society, but to strive for a society that abandons entirely "race" or "gender" as socially significant—a truly raceless and genderless society. Blacks and whites, women and men are not created, but constructed.

12. See, e.g., S. LUKES, *POWER—A RADICAL VIEW* (1974).

13. See M. FOUCAULT, *THE ARCHAEOLOGY OF KNOWLEDGE* (1972) and L. TRILING, *SINCERITY AND AUTHENTICITY* (1972).

14. 450 U.S. 464 (1981).

15. 433 U.S. 321 (1977).

16. 448 U.S. 297 (1980).

17. L. TRIBE, *CONSTITUTIONAL CHOICES* 243 (1985).