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Beyond All Criticism

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INTRODUCTION

We knew, of course, that we were treading on dangerous ground in challenging radical multiculturalism. In writing *Beyond All Reason*[1] we argued that the radicals' postmodern theories conflict deeply with their own laudable goals of racial justice and progressive dialogue. In particular, we tried to show that these theories had anti-Semitic and anti-Asian implications, and that they undermined community and impeded dialogue.

In this way, we hoped to persuade the radicals to abandon these theories in favor of alternative methods of fighting for their goals. Of course, life is never that simple. Unfazed by our claims, the radicals have leveled a barrage of charges, both in this symposium and in a number of earlier reviews in other academic journals. The two most important charges are that we distorted the radicals' positions, and that we made illegitimate consequentialist arguments based on the very identity politics we decry. We deal with these charges in the next two sections of this essay. A third section shows that the responses to *Beyond All Reason* often illustrate the very dangers we originally wrote about, especially the risk of under-

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1. DANIEL A. FARBER AND SUZANNA SHERRY, BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW (1997).

mining dialogue and community. In general, the radicals' responses to *Beyond All Reason* resort to the self-sealing ideology we described in the book: radical multiculturalists seem to view their scholarship as beyond all criticism.

Before we turn to those topics, a few words are in order about two other reactions to the book. Some reviewers chided us for our choice of topics, wishing we had instead analyzed the philosophical underpinnings of radical multiculturalism.[2] Others read us as accusing the theorists themselves of anti-Semitism—as putting anti-Semitic words in their mouths—rather than simply pointing out the anti-Semitic implications of the theories.[3] As to the first, we certainly agree that a philo-

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2. *See* Francis J. Mootz III, *Between Truth and Provocation: Reclaiming Reason in American Legal Scholarship*, 10 YALE J.L. & HUMAN. 605, 613-20 (1998); Roderick M. Hills, Jr., *Truth or Consequences? The Inadequacy of Consequentialist Arguments Against Multicultural Relativism*, 15 CONST. COMM. 185, 186-87 (1998).

3. *See, e.g.*, Jerome McCristal Culp, Jr., *To the Bone: Race and White Privilege*, 83 MINN. L. REV. 1637, 1642 (1999) ("I do not think you can read what I or other critical race theorists have done as being an effort to represent the communities of color in conflict with the Jewish communities."); John O. Calmore, *Random Notes of an Integration Warrior—Part 2: A Critical Response to the Hegemonic "Truth" of Daniel Farber and Suzanna Sherry*, 83 MINN. L. REV. 1589, 1603 (1999) [hereinafter Calmore, *Random Notes—Part 2*] ("Farber and Sherry claim that critical race theory has reduced achievement by Jews to a function of illegitimate power only. Of course, critical race theory, as a body of scholarship, makes no such claim."); *id.* at 1605 ("Farber and Sherry make an incredible claim that critical race theorists . . . implicitly endorse racism."); Nancy Levit, *Critical of Race Theory: Race, Reason, Merit and Civility*, 87 GEO. L.J. 795, 807 (1999) ("Farber and Sherry do not cite to any critical race, feminist, or gay legal theories actually scapegoating Asians or Jews."); Richard Delgado, *Rodrigo's Book of Manners: How To Conduct a Conversation on Race—Standing, Imperial Scholarship, and Beyond*, 86 GEO. L.J. 1051, 1057 (1998) (anti-Semitism is "[a] curious charge, since I don't know anyone in the crit camp who would say those things . . . . Farber and Sherry put words in our mouths, then take us to task for what they think we must be saying"); *id.* at 1063 ("[T]o accuse us of harboring unspoken thoughts about Jews' ill-gotten gains is unfair."); *id.* at 1062 ("Farber and Sherry . . . accuse us of latent antisemitism . . . ."); Mootz, *supra* note 2, at 613 n.34 ("In some instances . . . they have been unfair to their targets, as when they suggest that the radicals would assert that a book denying the Holocaust is as good as a book that accurately reports the fact of the death camps."); John O. Calmore, *Random Notes of an Integration Warrior*, 81 MINN. L. REV. 1441, 1469 (1997) [hereinafter *Random Notes*] ("[M]y alleged anti-Semitism apparently boils down to linking Jews to white people . . . .").

Not all of our critics have missed our point in this way. *See* Daria Roithmayr, *Guerrillas in Our Midst: The Assault on Radicals in American Law*, 96 MICH. L. REV. 1658, 1675 (1998) ("[T]he authors do not argue that radical theorists are engaging in Holocaust denial or advocating totalitarianism" but only "claim that the radicals' denial of objective truth can be

sophical critique of radical multiculturalism is a worthwhile project, but it was not *our* project. Indeed, at least one reviewer has done a rather good job on that project himself, demonstrating that "the foundational premises of radical multiculturalism are deeply confused."[4]

As to the second critique—that we are accusing radical multiculturalists personally of being anti-Semites—we can only repeat what we said in the book: "We do not accuse radical multiculturalists of harboring even covert animosity toward Jews or Asians."[5] As we discuss in more detail in Part II, we find it odd that scholars who are adept at recognizing the unconscious racist implications of all sorts of social and legal structures have trouble distinguishing a critique of theoretical structures from an attack on individual theorists. Perhaps that, too, is a consequence of radical multiculturalism: the combination of identity politics and social constructionism makes it difficult to distinguish the scholar from the scholarship.

Finally, we note that although most of our reviewers have focused primarily on critical race theory, *Beyond All Reason* took both a broader and a narrower approach. Many critical race theorists are not radical multiculturalists, and many radical multiculturalists are not critical race theorists. Following the lead of our reviewers, however, we focus in this response primarily (but not exclusively) on the radical multiculturalist wing of critical race theory.

I. FIGHT OR FLIGHT

Humans, like many other animals, have two instinctive reactions to an attack: fight or flight. In this section, we suggest that most of our critics have responded with one of these reactions: either they attack us or they back off from some of their most radical statements, insisting that we misunderstood them. Unfortunately, as sometimes in nature, the "fight" here seems to be mostly bravado, and the "flight" just backs them deeper into a corner. Noticeably absent from most replies to our work is any solid defense of the position the radical multiculturalists originally staked out, or any cogent reply to the questions we posed.

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misused in nihilistic fashion.").

4. Hills, *supra* note 2, at 198.

5. FARBER & SHERRY, *supra* note 1, at 9.

A. FIGHT (OR: IF ALL ELSE FAILS, CALL THEM NAMES)

Rather than confronting our arguments on the merits, some substitute invective for analysis. They call us racists and lump us in with every other "enemy" they can imagine, from the most unthinkingly conservative politicians to the most thoughtful academics and judges.

The insults flow freely in the law reviews: We are "engagement" racists,[6] and our book is "an expression of cultural racism,"[7] "[w]ritten to appease the conservative thirst to smite the infidels who have gathered in the temples"[8]—and there is only "a thin line" between our modern racism and "the old-fashioned racism of naked white supremacy."[9] We have "practically [made] a career out of minority-bashing."[10] We are "simply among those who are fighting back on behalf of white supremacy, power, and privilege,"[11] and indeed we are both said to be "white male[s]."[12] We are also—by implication, although not specifically named—"[s]toryhaters" who "wouldn't know what [autobiography] was if somebody told it to [our] faces," because we were "[r]aised in an overly obsessive, objectively neutralized cultural style" by "upper class parents [with] money, a home in the burbs, and nice kids who were going to go on from their fancy grade schools and college preparatory gigs to Harvard/Stanford/Yale."[13] Our favorite,

6. Calmore, *Random Notes—Part 2*, *supra* note 3, at 1606.

7. *Id.* at 1609.

8. Culp, *supra* note 3, at 1655.

9. Calmore, *Random Notes—Part 2*, *supra* note 3, at 1613.

10. Delgado, *supra* note 3, at 1061. Having issued this charge of opportunism through the mouth of one of his fictional alter egos, Delgado then downplays it in the next sentence. One of the great advantages of storytelling is that it allows the author to avoid full responsibility for any of the views expressed in his own works.

11. Calmore, *Random Notes—Part 2*, *supra* note 3, at 1597.

12. *See* Jerome McCristal Culp, Jr., *Telling a Black Legal Story: Privilege, Authenticity, "Blunders," and Transformation in Outsider Narratives*, 82 VA. L. REV. 69, 90 & n.72 (1996) (describing a "white male" backlash against outsider scholarship, and citing *only* articles by Farber, Sherry, and our colleague Jim Chen—a Taiwanese native who moved to the United States at the age of 6).

13. Robert A. Williams, Jr., *Vampires Anonymous and Critical Race Practice*, 95 MICH. L. REV. 741, 741 (1997). Suffice it to say that neither of us fits this stereotype, and that if we were to characterize critical race theorists in such a blatantly stereotypical way the accusations of racism would at least treble in volume.

however, is that we are "secret agents of a very right-wing racial project."[14]

John Calmore, in particular, levels a barrage of epithets. He questions our good faith.[15] He says that we lack "basic principles of decency and of scholarly and journalistic integrity,"[16] and that we exhibit "a more general disrespect and contempt"[17] for blacks—all the while applauding himself for his own "high level of civility."[18] As we discuss in part III, this rhetoric simply confirms our original claim that radical multiculturalism impedes dialogue.

The radicals also seem unable to distinguish among the various people with whom they disagree. Jerome McCristal Culp claims that "there is very little difference on the race question between Newt Gingrich and Farber and Sherry."[19] He also explicitly groups us with Judge Richard Posner and then accuses Posner of "racist acts" and "unexamined racism."[20] Calmore places us "in the bad company" of "Stephen and Abigail Thernstrom, Dinesh D'Souza, and Jim Sleeper"[21]—a laundry list of people he disagrees with, including serious scholars and social commentators as well as a deliberate provocateur.

Both Culp and Calmore assume that since we disagree with them, we must side with everyone else who disagrees with them. Calmore, for example, assumes that we, like other "[m]odern racists" implicitly endorse four racist principles: that "[d]iscrimination is a thing of the past," that "[b]lacks are pushing too hard, too fast, and into places where they are not wanted," that "[t]hese tactics and demands are unfair," and that "recent gains are undeserved."[22] His only evidence of this is that we find the premises of critical race theory inconsistent with its own goals—goals which we quite explicitly endorse.[23]

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14. Calmore, *Random Notes—Part 2*, *supra* note 3, at 1605.
15. *See id.* at 1617.
16. *Id.* at 1592.
17. *Id.* at 1591.
18. Calmore, *Random Notes*, *supra* note 3, at 1457.
19. Culp, *supra* note 3, at 1642.
20. *Id.* at 1643 n.13, 1659-60.
21. Calmore, *Random Notes—Part 2*, *supra* note 3, at 1608.
22. *Id.* at 1607.
23. *See* FARBER AND SHERRY, *supra* note 1, at 7. Our effort to find common ground with critical race theory was duly noted and attacked by some conservative reviewers. *See* Heather MacDonald, *Storytellers*, COMMENTARY, Oct. 1997, at 65; Mark Miller, *Professor, Tell Us a Story*, NATIONAL REVIEW, Dec. 8, 1997, at 53.

Culp assumes that because we criticize radical multiculturalism, we must be in favor of the legal and social status quo: "In the world of Farber and Sherry our job as law professors is to celebrate the Supreme Court's greatness and criticize only at the margins," because "the heart of [their] practical reason is simply that the status quo is good."[24]

These accusations of racism and bad company ultimately stem from the identity politics that is at the core of radical multiculturalism. The radicals seem unable to separate critiques of their theories from attacks on themselves. Calmore says that he takes our critique "personally, not so much as a critical race theorist, but, rather, as a black person" because he sees it as "related to, not distinct from, a more general disrespect and contempt for the African-American community, scholarly and otherwise."[25] He expresses incredulity at our "subtle distinction" in accusing the theory, and not the theorists, of anti-Semitism.[26]

A good illustration of the radical blurring of the distinction between intellectual disagreement and personal racism is Calmore's attack on one of our other reviewers. That reviewer, Michael Skube, praised *Beyond All Reason* in the pages of the *Atlanta Journal-Constitution*. Calmore quotes Skube's critique of critical race theory at length, adding italics and a sarcastic parenthetical comment. As recast by Calmore, Skube's passage reads as follows:

> Farber and Sherry's book [is] "an overdue criticism of *intellectual imposters* who once were a *lunatic fringe* but now lay siege to the most basic tenets of the Western Enlightenment". . . . These scholars, in [Skube's] view, are "[c]ourted and attended to by the best universities, they retail absurdities that haven't the remotest connection to jurisprudence but get disproportionate play in law reviews" . . . . He concludes his review by stating: "When truth no longer matters, everything else falls by the wayside with it, and *barbarism* wins out." (I am not sure if it is progress for blacks to be characterized as "barbaric" rather than "savage." What do you think?) . . . Skube picks up their charge of anti-Semitism: "The Holocaust matters because it *did* happen, not because someone imagined it. Yet there are those who deny anything unusual was going on in those ovens. Would Patricia Williams say it isn't so important? You wonder."[27]

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24. Culp, *supra* note 3, at 1666, 1669.

25. Calmore, *Random Notes—Part 2*, *supra* note 3, at 1591.

26. Calmore, *Random Notes*, *supra* note 3, at 1461.

27. Calmore, *Random Notes—Part 2*, *supra* note 3, at 1611 (citations omitted, italics and parenthetical commentary supplied by Calmore).

Calmore claims that this is "libelous" and "anti-black, racist babble."[28] Intemperate, perhaps; colorful and provocative, certainly; but libelous and racist? It makes us wonder what he thinks of Matthew Finkin's careful analysis of the theoretical affinities between radical multiculturalism and Fascism.[29] Presumably Finkin, too, is a racist, as is Stephen Holmes, who has written more generally of the Fascist roots of anti-liberal philosophies.[30] Indeed, one must wonder whether any critique of radical multiculturalism could escape such accusations. Such responses do not bode well for dialogue.

B. FLIGHT (OR: "WE DIDN'T REALLY MEAN THAT")

Another common reaction to our book is to claim that we have distorted the radicals' views by using "abbreviated quotations,"[31] "snippets,"[32] and "punch lines only,"[33] "divorced from context."[34] Several authors thus try to explain what they (or others) *really* meant, often providing long quotations for added context.[35] In fact, these explanations fail on three different levels.

1. Adding Context Doesn't Reveal a Different Meaning

Some of the disclaimers are simply unconvincing as a matter of textual interpretation. For example, Culp tries to argue that Derrick Bell's *Space Traders* story did not mean to question Jewish commitment to racial justice, but only to suggest that "such concern by Jews and other supportive whites has not been enough to eliminate racism."[36] But Bell's story

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28. *Id.*

29. *See* Matthew W. Finkin, *QUATSCH!*, 83 MINN. L. REV. 1681, 1693-1703 (1999).

30. *See* STEPHEN HOLMES, THE ANATOMY OF ANTILIBERALISM (1993).

31. Kathryn Abrams, *How To Have a Culture War*, 65 U. CHI. L. REV. 1091, 1100 (1998).

32. Delgado, *supra* note 3, at 1069.

33. Roithmayr, *supra* note 3, at 1661.

34. Delgado, *supra* note 3, at 1054. Matthew Finkin, on the other hand, considers our description to be a "fully fledged account," suggesting that claims of distortion are equivalent to claims that "Wagner's music really *is* much better than it sounds." Finkin, *supra* note 29, at 1682; *see also* Hills, *supra* note 2, at 186 (the book is "scrupulously honest" in its quotations).

35. Of course, given space limitations, they can only focus on a few selected quotations, leaving most of our excerpts untouched. But even as to the alleged distortions, as we show in the text, their charges are unfounded.

36. Culp, *supra* note 3, at 1646.

specifically attributes to "many" Jews a "concern . . . not contained in their official condemnation of the Trade offer": "that, in the absence of blacks, Jews could become . . . scapegoats."[37] Bell's obvious point is not just that Jewish support won't stop the deal but that the purported Jewish commitment to racial justice is at least tempered by—if not largely motivated by—a covert desire to keep blacks as scapegoats. Culp's reading simply ignores Bell's language.

Similarly, Culp suggests that Bell's treatment of Louis Farrakhan is only meant to reject the position that all blacks must disavow Farrakhan[38]—certainly a fair argument, but not the one Bell seems to be making. In the same passage in which he discusses Farrakhan's anti-Semitic remarks, Bell says, among other things, that Farrakhan merely "forthrightly charges with evil those who do evil."[39] What makes Bell's view of Farrakhan noteworthy is the coupling of a fervent approval of Farrakhan's overall message with an insistence on dismissing any concerns about Farrakhan's anti-Semitism.

Culp also claims that we misunderstood his own work when we took his description of "black men in white face" as a disparaging label. Culp argues that he is "ambivalen[t]" about assimilation, and that his use of the phrase is meant only to express that ambivalence.[40] This is an unlikely interpretation: the whole point of the metaphor seems to be that assimilated blacks are as inauthentic as whites wearing blackface, an image highly offensive to modern sensibilities. To support his more recent interpretation, Culp provides a long quote from one of his earlier articles:

> This requirement of black assimilation is akin to a requirement that black people put on white face and is ultimately unacceptable as a goal for a decolonized African American community. This desire for assimilation promotes the conclusion that it is permissible to create

37. DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM 186-87 (1992).

38. *See* Culp, *supra* note 3, at 1647. Interestingly, John Calmore demands that *we* disavow at least one of the reviewers of our book as racist, although that review does not begin to approach Farrakhan's direct attacks. *See* Calmore, *Random Notes—Part 2*, *supra* note 3, at 1611. Farrakhan has, among other things, called Judaism a gutter religion. Our reviewer simply raises serious questions about the validity of radical multicultural arguments. Calmore apparently takes the attack personally, which is part of the problem with radical multiculturalism. *See id.* at 1591.

39. BELL, *supra* note 37, at 125, *quoted in* FARBER & SHERRY, *supra* note 1, at 44.

40. Culp, *supra* note 3, at 1648.

> white culture but dangerous to have black culture on campuses or in the curriculum because it will politicize our universities.[41]

If this is ambivalence, not critique, just what would constitute an attack on assimilated blacks? Perhaps Bell's likening of the nomination of Justice Clarence Thomas to the Supreme Court to "the slave masters' practice of elevating to overseer . . . those slaves willing to mimic the masters' views"[42] (a comment which Culp also defends as merely a comment about Thomas's "modest credentials"[43]).

Kathryn Abrams also charges us with quoting her misleadingly and out of context. Like most of our other critics, she admits that she wrote the quoted language,[44] which was that "she 'would not be particularly disturbed' if a narrative purporting to be nonfiction turned out not to 'track the life experiences of [its] narrato[r] in all particulars.'"[45] But in context, she claims, this statement only applies to *some* supposedly nonfiction narratives—those that portray suffering from the perspective of "the 'expert' insights of an 'insider'" rather than "complete fabrication[s]" of "first-person agony narrative[s]."[46] But this is a feeble defense. When someone gives what purports to be an account of their own life, the distinction between insider report and "agony narrative" is unclear at best. How false does a story have to be before Abrams would consider it a "complete fabrication"? Consider the recent revelations that key parts of the autobiography of Nobel Prize winner and multicultural icon Rigoberta Menchu are untrue. Some in academia have defended Menchu's right to remain in the multicultural canon on the ground that her story is an insider account even if not strictly autobiographical, but this completely erases Abrams' distinction.[47] In any case,

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41. *Id.* at 1651.

42. Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 370 (1992), *quoted in* FARBER & SHERRY, *supra* note 1, at 128.

43. Culp, *supra* note 3, at 1649.

44. *See* Abrams, *supra* note 31, at 1107. Delgado admits that unlike some critics of radical multiculturalism, we "at least get the quotes right." Delgado, *supra* note 3, at 1054.

45. FARBER & SHERRY, *supra* note 1, at 98 (quoting Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971, 1025 (1991)).

46. Abrams, *supra* note 31, at 1106-07. In an earlier article, Abrams discusses Patricia Williams' story: she has "no reason to doubt that Williams's narrative . . . happened in approximately the way she relates," but ultimately it would make "little difference" if the story had been pure invention. Abrams, *supra* note 45, at 1026-27.

47. *See* Robin Wilson, *A Challenge to the Veracity of a Multicultural Icon*,

even granting Abrams' distinction, it remains true that by her own admission she thinks it is sometimes acceptable for scholars to make deliberate factual misstatements. We disagree.

Daria Roithmayr is another scholar who comes to the defense of the radical multiculturalists we quoted, arguing that we distorted the views of both Stanley Fish and Duncan Kennedy on merit. They are merely suggesting, she contends, that current merit standards are racially and ideologically biased. But whether or not Fish and Kennedy believe—as we argued and as their language suggests—that all merit standards are essentially power plays, Roithmayr herself apparently believes precisely that: she says that the true validity of merit standards is only "measured by whether selection criteria put people of color immediately into positions of power and responsibility,"[48] and that debates over merit standards should "become the locus of struggle at the collective level."[49]

Several critics have charged us with distorting or misunderstanding Patricia Williams' comments on Tawana Brawley.[50] Williams originally wrote of the black teenager who falsely claimed to have been abducted, raped, and tortured by several white men:

> Tawana Brawley has been the victim of some unspeakable crime. No matter how she got there. No matter who did it to her—and even if she did it to herself. Her condition was clearly the expression of some crime against her, some tremendous violence, some great violation that challenges comprehension.[51]

Williams herself has later elaborated that she meant only that we should "move beyond whether Brawley lied."[52] Frederick

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CHRON. HIGHER EDUC., Jan. 15, 1999, at A14. Wilson says that many academics plan to continue teaching Menchu's book "because they believe [her] story speaks to a greater truth about the oppression of poor people." Wilson quotes a faculty member at Wellesley as saying: "Whether her book is true or not, I don't care." *Id.*; *see also* Charles Lane, *Deceiving Is Believing*, NEW REPUBLIC, Mar. 8, 1999, at 36, 38 (Menchu's distorted version of events effectively silenced the Mayan victims of the struggle between a repressive regime and violent rebels).

48. Roithmayr, *supra* note 3, at 1680.

49. *Id.*

50. *See, e.g.*, Abrams, *supra* note 31, at 1105; Mootz, *supra* note 2, at 628-29. Other commentators read the passage precisely as we do. *See, e.g.*, Jeffrey Rosen, *The Bloods and the Crits*, NEW REPUBLIC, Dec. 9, 1996, at 32.

51. PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 169-70 (1991), *quoted in* FARBER & SHERRY, *supra* note 1, at 96.

52. Patricia J. Williams, *Through a Glass Darkly*, NATION, Jan. 12/19, 1998, at 10.

Mootz, defending Williams against our interpretation of her, reads this later statement as confirming that Williams sees the issue as "what 'truth' the law is willing to hear and is capable of confronting."[53] Kathryn Abrams notes that Williams "focuses on the fact that the outcome was a foregone conclusion once the mainstream media and (white) political leaders began offering their constructions of the case."[54] But neither Williams nor her defenders express even the slightest concern over the fact that it didn't happen the way Brawley said it did, and that her devastating accusations against other individuals were wholly false. Indeed, both Abrams and Mootz seem to hint that there is still some doubt about whether Brawley's charges were false, suggesting instead that it is only a question of what our legal system "wanted" to hear.

Abrams also argues that we missed Williams' point: Williams is not saying that we would learn *"the same thing* from Brawley's story whether it is true or not."[55] But even Abrams concedes that she is "reluctant to identify a determinate meaning in a quote that is more elliptical, and perhaps more ambiguous, than most in Williams' work."[56] If even this sympathetic reader can't be sure what Williams meant, it is hardly a "distortion" for us to read "no matter how she got there" as "it doesn't matter how she got there"—especially since subsequent writings by both Williams and others refuse to confront the fact that Brawley lied, instead preferring to elide the question.

Thus, although there are numerous attempts to disavow or explain away the obvious meanings of the quotations we use, these attempts are not very persuasive even when context is added. This should not be surprising: since one of our main critiques of the radical multiculturalists was that they are often indifferent to the accuracy of their statements, we would have to be either self-destructive or hopelessly inept to allow pervasive distortions to infect our own work.[57] Moreover, given

53. Mootz, *supra* note 2, at 629.

54. Abrams, *supra* note 31, at 1105 n.28. The gratuitous reference to the race of the "(white) political leaders" carries an implication that the rejection of Brawley's story was tainted in some way.

55. *Id.* at 1105.

56. *Id.* at 1105 n.27.

57. Culp, at least, seems to think we are inept, claiming that the book exhibits "little comprehension and no scholarly pretensions," but is merely a "poorly researched and written diatribe." Culp, *supra* note 3, at 1640.

the number of quotations and the range of scholars, all saying basically the same thing, it would be difficult to *avoid* accuracy. Rather than correcting our "distortions," the radicals are now trying instead to retroactively revamp their core messages.

2. Responses That Confirm Our Earlier Interpretations

A second problem with the charge of distortion is that some of the recent responses seem to confirm our interpretations of the original texts. For example, although John Calmore attempts to disavow the potential anti-Semitic implications of the radical critique of merit, his own later language betrays him by unwittingly underlining those logical implications. In an article in the *Minnesota Law Review* in 1997, Calmore commented on one of the articles that served as a precursor to *Beyond All Reason*. Apparently admitting that Jews have achieved more success than other whites, he suggested that he "[does] not argue that this access is *simply* a function of unjust power-holding."[58] (The italics are his.) Can we conclude that he believes that at least *some* Jewish success is the result of "unjust power-holding"? In this symposium, he also suggests that we unfairly "discount benign reasons for Jewish success," noting that "[c]omplicit involvement in oppression is different from active support of oppression."[59] Difference there may be, but Calmore accusing Jews collectively of "complicit involvement in oppression" does not exactly undermine our charge that radical explanations for Jewish success are bound to have anti-Semitic implications.

Similarly, Kathryn Abrams, as noted earlier, says that we distorted her views on the importance of truthfulness in narratives. Later in her review, however, she defends one of the tactics that we condemned as illustrative of "the radicals' casual attitude toward truth."[60] We began by noting that there was nothing wrong with making a statement of the sort "If you, a male observer, had been there, you probably would not have seen anything that looked like violence, but I felt exactly as if

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Roithmayr similarly suggests that perhaps we "are just not quite able to grasp the analysis behind the radical argument." Roithmayr, *supra* note 3, at 1662. This dismissive attitude is no substitute for a serious analysis of our arguments.

58. Calmore, *Random Notes*, *supra* note 3, at 1468.

59. Calmore, *Random Notes—Part 2*, *supra* note 3, at 1603 n.51.

60. FARBER & SHERRY, *supra* note 1, at 97.

he had slapped me." We argued, however, that authors should not consider such a statement equivalent to the simple declarative "He slapped me"—at least not without warning readers that the latter sentence does not mean what they think it does. Abrams argues in her review that using such statements interchangeably and without warning is warranted: "Sometimes, however, the decision not to identify the conception of truth that is operating is part of the methodological challenge; the narrative is intended, by its ambiguity, to challenge readers to see that there are more conceptions of truth than they are accustomed to thinking."[61] Thus, in the terms in which *Beyond All Reason* defined truth, Abrams confirms that she is "not particularly disturbed" by untruthfulness—untruthfulness meaning the deliberate use of factually inaccurate statements with no indication that a metaphorical or fictional sense was intended.

Anne Coughlin's contribution to this symposium further bolsters our diagnosis of the flaws of radical multiculturalism in a different—and more amusing—way. In *Beyond All Reason*, we discussed the pitfalls of storytelling and illustrated them with a story of our own. As Coughlin points out, our illustration is even better than we intended, since to some extent we fall unwittingly into one of the very traps we identify.

We presented two personal narratives of the same historical events, the second designed to show how the first could be misleading even if factually accurate. Coughlin shows us that even though we were making a concerted effort to keep our subjective views out of the second, "deconstructed version" of the story, those views inevitably crept back in.[62] Imagine how much more the writer's subjective views must dominate in

61. Abrams, *supra* note 31, at 1122. On this basis, would it be acceptable for an author to say she was locked out of a shop because of her race, when she really means only that she felt as unwelcome as if she had been excluded entirely? If so, what language would a writer have to use to communicate that she really *was* locked out?

62. *See* Anne M. Coughlin, *C'est Moi*, 83 MINN. L. REV. 1619, 1630-36 (1999). Coughlin's critique is not wholly warranted. While she fairly attacks the interpretation we place on the historical facts, the main point of the two stories was to illustrate how personal narratives can mislead the reader as to the historical facts themselves by omitting critical aspects of the context. Moreover, Coughlin may be wrong to equate the narrator's *refusal* to "name herself a victim" when she might arguably be one, with other narrators' attempts to *portray* themselves as victims even if they were not. *Id.* at 1635. Victimhood may be a status one can decline, even if one cannot unilaterally bestow it on oneself.

a personal narrative that is constructed deliberately to influence emotion rather than reason, and that is told by someone who believes that there is no objective version of historical facts. Coughlin's criticisms of our own use of narrative were fair and accurate, but end up supporting rather than undermining our basic critique of personal narratives in legal scholarship. Coughlin's essay itself, moreover, is a wonderful example of how traditional forms of responsive scholarship, which carefully dissect arguments to show their flaws, can foster a dialogue that leads to better understandings all around.

3. The New Meanings Are Meaningless

On a third level, sometimes our critics do restate multiculturalist claims in ways that make them less racist and anti-Semitic, but also considerably less radical, if not banal. Culp's attempt to back away from his disparagement of assimilated blacks—if it were more successful—would constitute an example of this. Another example is Roithmayr's objection to our discussion of Duncan Kennedy's views on merit; she suggests that his position "appears less zany . . . in the full context of the supporting analysis and explanation."[63] We quoted Kennedy (accurately) as saying that "[j]udgments of merit . . . are inevitably culturally and ideologically contingent."[64] What Kennedy really meant, says Roithmayr, is that standards of merit "are a product of the social conventions that a particular group or institution finds useful."[65] But without a claim that those social conventions are either illegitimate or inherently biased—an assertion we still believe is implicit in Kennedy's full argument—Roithmayr's version of Kennedy makes a trivial and ultimately inconsequential point. As John Searle points out, *everything* about society is socially constructed in the sense that it could be otherwise, but that by itself does not call into question the validity of those social constructs.[66] What adds punch to the radical view of merit is the additional argument that all current merit standards are infected by racial or gender bias.

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63. Roithmayr, *supra* note 3, at 1663 (quoting Duncan Kennedy, *A Cultural Pluralist Case for Affirmative Action in Legal Academia*, 1990 DUKE L.J. 705, 733.

64. FARBER & SHERRY, *supra* note 1, at 31.

65. Roithmayr, *supra* note 3, at 1664.

66. *See* JOHN R. SEARLE, THE CONSTRUCTION OF SOCIAL REALITY (1995).

Indeed, Roithmayr herself apparently holds that view, as she concludes a few pages later that "it becomes difficult if not impossible to distinguish merit criteria from bias."[67] And in an earlier article, she was even more explicit:

> [B]ecause merit depends on and defers to what is in effect a social bias, merit actually reinscribes the qualities and characteristics of bias. Indeed, merit can be redescribed as a socially acceptable bias for particular qualities and characteristics and values. Certainly, the radical critique of merit builds on this assumption to condemn certain merit standards as favoring the groups that constructed them.[68]

If this were intended only to mean, say, that medical school admissions standards exhibit a "bias" towards selecting the applicants who will be most effective in saving lives, the radical implications would vanish. It is only the reference to "favoring the groups that constructed them" that gives this theory any bite.[69]

4. Concluding Thoughts on "Distortion"

Thus, in attempting to flee from their own and others' intemperate statements, radical multiculturalists tend more to confirm than to deny both the representativeness of our quotations and the implications of their positions. Moreover, the whole project of trying to accuse us of distortion on the basis of admittedly accurate quotations smacks of—Heaven forbid!—modernism. We thought that for the radicals and other postmodernists, texts—like actions, which both Calmore and Culp think can be unintentionally racist—mean what readers interpret them to mean, and not simply what the author intended. Do their own texts have an "objectively true" meaning, which we have distorted?[70]

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67. Roithmayr, *supra* note 3, at 1667.

68. Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 85 CAL. L. REV. 1449, 1492-93 (1997).

69. Roithmayr contends, for example, that law school admissions standards such as the LSAT were originally designed to exclude women and minorities. *See id.* at 1486-91. But as many a first-year student has learned to his or her detriment, reading comprehension and logical thinking—which make up a substantial portion of the aptitudes tested by the LSAT—are vitally necessary to legal analysis. (We have recently found that our own students confront this most sharply when they turn to such tasks as parsing the supplemental jurisdiction statute, 28 U.S.C. § 1367, or understanding the Rule Against Perpetuities.) Thus, whatever the provenance of the LSAT, it does seem to identify some skills that are especially useful in law school.

70. Interestingly, the radicals' rather casual view of linguistic precision might extend to our writing as well as theirs. At least one critic believes that

Finally, no one suggests that we have actually misquoted any of the radical multiculturalists. If these accurate quotations do not in fact mean what they appear to mean, the authors must have had a remarkably tin ear for language. If so, this itself has adverse implications for important parts of their program. Radical multiculturalists are exceptionally willing to impose discipline on students or faculty based on their own understanding of language that may be ambiguous or unfamiliar. If the term "white men in black face" is not *really* pejorative, then what about the "hate speech" charges brought against a student for using the translated Hebrew term "water buffalo"?[71] Who decides what is "really" pejorative? Are these the people we want creating and implementing campus speech codes?

II. DANCING AROUND THE "JEWISH QUESTION"

A. RADICAL MULTICULTURALISM'S JEWISH DILEMMA

One of the most controversial aspects of *Beyond All Reason* has been the topic of anti-Semitism. Unfortunately, even some readers who are otherwise sympathetic with our project have misunderstood our purpose in this instance. One reviewer suggests that we were "a little overeager to claim the coveted status of victim,"[72] while another accused us of engaging in

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we can't possibly mean what we say. Roithmayr writes:

> Farber and Sherry cannot really mean that nothing of knowledge value is contributed when Patricia Williams points out, in a voice that betrays her personal anger and frustration, that as of 1991 Harvard had yet to hire permanently a woman of color for a tenure-track position.

Roithmayr, *supra* note 3, at 1672.

Well, actually, we do mean that. We knew before Williams wrote that that the Harvard Law School had no women of color on its faculty. Have we learned anything useful when we are told that this fact frustrates a prominent black female academic—at the time teaching at the University of Wisconsin Law School—who might herself have ambitions to greater things? We've learned about as much when Culp charges that Richard Posner ignores "important" scholarship by people of color—and then includes his own work in the list of slighted important scholarship. Culp, *supra* note 3, at 1659, 1661, 1670.

71. For a description of an incident involving the latter term, see Finkin, *supra* note 29, at 1702-03 & n.85.

72. Marc M. Arkin, *Radical Moderation*, NEW CRITERION, May 1998, at 65, 67. The same reviewer, incidentally, says that the most serious flaw in the book is that it is "too moderate, that it makes too much of an effort to meet its subject more than halfway." *Id.* at 690.

"identity politics."[73] Judge Posner, too, suggests that we should not have "played the Jewish victim card."[74] Other reviewers interpret the argument as consequentialist—that is, as a prediction that radical multiculturalism will foster hostility toward Jews. For example, Mootz says there would be "a sufficient starting point" for our argument "[i]f there will in fact be a tendency to paint Jews and Asians as social manipulators once the objectivity of the criteria of merit are undermined."[75] Still, he says, we do not provide "even one convincing example" of this risk materializing.[76]

In retrospect, these misunderstandings may have been inevitable. At points, we clearly did raise consequentialist concerns in the book. In assessing the significance of the anti-Semitism argument, we suggested that, though the anti-Semitic implications "are unintended and don't pose any immediate risk of harm, the long history of anti-Semitism makes it difficult to be completely sanguine about the lack of any danger."[77] We also noted the problem that the critique of merit poses for women and minorities who succeed in today's society: "If merit is a white male construct, then a black who succeeds can only have done so at the cost of some sacrifice of her authentic culture in favor of the oppressor's."[78]

But despite these consequentialist observations, our primary purpose was not to address these potential practical effects of radical multiculturalism. Instead, as we explained at the beginning of the chapter in question, our purpose was to demonstrate that radical multiculturalism cannot "provide a

73. Abrams, *supra* note 31, at 1111, 1113 n.38; *see also* Levit, *supra* note 3, at 807-08 (describing the "structure of [our] argument" as perspectivist because it asks "Is this theory good for the Jews?"); Deborah C. Malamud, *The Jew Taboo: Jewish Difference and the Affirmative Action Debate*, 59 OHIO ST. L.J. 915, 917 (1998) (accusing us of speaking "as Jews" and "claiming a privileged Jewish perspective").

74. Richard A. Posner, *The Skin Trade*, NEW REPUBLIC, Oct. 13, 1997, at 40, 43.

75. Mootz, *supra* note 2, at 629; *see also* Abrams, *supra* note 31, at 1099 ("Farber and Sherry propose to assess multicultural scholarship in a purely consequentialist manner—according to the world it is likely to create."); Steven G. Gey, *Why Rubbish Matters: The Neoconservative Underpinnings of Social Constructionist Theory*, 83 MINN. L. REV. 1707, 1708 (1999) (describing ours as a "consequentialist approach" although not criticizing it).

76. Mootz, *supra* note 2, at 629 n.95.

77. FARBER & SHERRY, *supra* note 1, at 139.

78. *Id.* at 140.

viable conception of equality."[79] In short, in using the Jewish example, we were hoping to expose deep conceptual flaws in radical multiculturalism, rather than heading off worrisome practical impacts on a particular group. As we emphasized, much the same argument applies to some groups of Asian-Americans—which many of our critics conveniently forget when they accuse us of playing identity politics.

Given these various misunderstandings of the thrust of our argument, it may be useful to restate our argument briefly. The radical critique of merit is designed to show that merit is socially constructed. Rather than serving in any way as an objective measure of value, "merit" is simply a societal norm that favors certain powerful groups and keeps others down. Thus, the relative position of groups or individuals cannot be defended even in part by arguing that some groups have behaviors or cultural attitudes that are genuinely more functional. The writings of radical multiculturalists such as Richard Delgado, Duncan Kennedy, Catharine MacKinnon, and Patricia Williams are replete with statements to this effect.[80] But if this position is correct, the success of groups such as Jews and Asians relative to the majority poses an intractable puzzle: "If Asians and Jews are more successful than white Gentiles, and if standards of merit are socially constructed to maintain the positions of the powerful and successful, then . . . ." (Well, you can fill in the rest.) We then explored some possible escapes from this logic. Some are substantively plausible, for example, that Jews and Asians benefit from cultural attitudes that put an unusual stress on the importance of education, which is a valuable trait in a post-industrial society. But accepting such a benign explanation would destroy the rhetorical force of the radical critique of merit by admitting that at least some aspects of group success or failure may be due to the group's own cultural attributes, which may be genuinely functional or dysfunctional in today's post-industrial society.

Our thesis, in short, was that the Jewish situation presents an unresolvable dilemma for radical multiculturalists. Jewish success violates the simplistic picture in which success is merely a function of social power, fairness consists of

79. *Id.* at 52.

80. We collect many of these statements in FARBER & SHERRY, *supra* note 1, at 31-32. We discuss the charge of distortion more fully in Part I, *supra*.

proportionate results, and norms such as merit or racial equality are merely fronts for group self-interest.

Our critics react to this charge in three distinct ways. First, some claim that radical multiculturalism should not be expected to explain Jewish success. Others try to explain away some of the discomfort that arises from the radicals' treatment of the Jewish question by changing the rules of engagement. Finally, a few commentators have attempted to find other benign explanations for Jewish success that are nevertheless compatible with radical multiculturalism. In the next section, we discuss each of these responses.

B. DODGING THE DILEMMA

1. "No Explanation Is Necessary"

The simplest way to avoid an intractable intellectual dilemma is simply to refuse to think about it. Several of our critics have advocated this defense. Richard Delgado, for example, thinks it is "odd" to expect radical multiculturalists to "have at the ready a complete explanation for the wholly commendable success some Jews have enjoyed in education and the professions."[81] Similarly, Kathryn Abrams chides us for raising the question: "Why those who propose to change a particular social arrangement should be required to explain—with or without recourse to stereotypes—the prominent position of any one group within that arrangement is a question Farber and Sherry never answer."[82] Of course, both comments would be well-taken if the radical multiculturalists were simply ordinary reformers, proposing specific social changes. But radical multiculturalists are claiming to be scholars, not just politicians; rather than offering incremental reform, they purport to have a general social critique. An intellectually serious critique of society cannot simply refuse to confront inconvenient but highly visible counterexamples.

An analogy may be helpful. Consider a novel economic theory that posits a radically different set of assumptions than conventional economics. It turns out, however, that this theory is completely unable to account for the Great Depression. This is clearly a flaw, and one that ought to be addressed by the

81. Delgado, *supra* note 3, at 1062.
82. Abrams, *supra* note 31, at 1113 n.39.

theorists. If we think that severe economic depressions (or, in our case, anti-Semitism) are wholly a thing of the past, the need to address the problem may not seem urgent for theorists. But of course, we cannot be wholly confident of such predictions. In addition, although the Great Depression is an extreme case, a theory that is wholly unable to address that extreme case is also likely to run into problems with ordinary recessions. Similarly, the inability of the radical multiculturalists to account for Jewish success dramatizes their inability to make sense of ongoing phenomena such as the growing success of Asian groups and that of individual women, blacks, and Hispanics. Thus, while it is understandable that the anti-Semitism issue might not seem highly salient to radical multiculturalists, it does reveal important intellectual gaps in their theory, just as the Great Depression does for our hypothetical economic theory. Having a social theory that explains minority failure but not minority success is like having an economic theory that can explain inflation but not recessions.

2. "What Anti-Semitism?"

In practice, radical multiculturalists often avoid confronting the problem of their inability to explain Jewish success. But it's not surprising that, from time to time, a perceptive radical multiculturalist might touch on the problem before moving away in discomfort. If, as we think, the situation of American Jews and Asians is incompatible with the simplistic worldview of radical multiculturalism, we should not be surprised to find signs of the resulting intellectual anxieties in multiculturalist writings. We provided several such examples from the writings of Derrick Bell. Bell has insightfully realized that Jews are an anomaly from the point of view of his theories, and he repeatedly goes out of his way to raise the issue:

Space Traders. Illustrating Bell's view that only white self-interest, rather than any concern for justice, matters in race law, he tells a story about an alien encounter in which space traders offer Americans untold riches in return for custody of the black population. Jews form an "Anne Frank" committee[83] to resist—an action that, like historic Jewish

83. As Judge Kozinski points out, it seems particularly insensitive for Bell to make "the symbol of Jewish hypocrisy the little girl who perished in

support for civil rights, poses a threat to Bell's thesis of pure white self-interest. But the problem is only superficial, it turns out, since many of the Jews care nothing about racial justice and are merely trying to keep blacks around as a buffer between themselves and the white Christian majority.[84]

Faculty Hiring. In discussing hiring standards at Harvard, Bell argues that merit standards have little relationship to teaching or scholarship. He observes that these standards "now favor" Jewish faculty members, who are disproportionately represented, but this does not make them "any less discriminatory to others" who are disadvantaged by the standards, including not only racial minorities but other white ethnic groups.[85]

Anti-Semitism. Unlike racism, which Bell defines broadly, he considers anti-Semitism to be a very narrow concept: "[N]ot every negative comment about Jews—even if it is wrong—is anti-Semitic." (Note, by the way, the "even if" clause, which hints that some disparagement of Jews is accurate.) Although anti-Semitism is wrong, Bell says, figures like Farrakhan deserve support: The travails of the black underclass "place[ ] them beyond . . . even the civilities of racial and religious tolerance."[86]

Bell's comments were obviously not intentionally anti-Semitic, but we suggested that they were symptomatic of the deeper conflicts hidden beneath the surface of radical multiculturalism. The real problem is not that Bell is personally insensitive to Jewish concerns. Bell is simply more perceptive than some of his colleagues in seeing that Jews pose a serious problem for radical multiculturalist theory, and that perception finds an outlet in these rather jarring stories. Several radicals try to avoid recognizing Bell's stories as symptomatic by adamantly denying that they have even the faintest anti-Semitic overtones. But in doing so, they change their own rules of social and linguistic analysis.

For example, in his contribution to this symposium, Jerome McCristal Culp stresses that Bell's *Space Traders* story only says that "many," not "all," Jews are motivated by self-

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the Holocaust." Alex Kozinski, *Bending the Law*, N.Y. TIMES, Nov. 2, 1997, § 7, at 2.

84. *See* FARBER & SHERRY, *supra* note 1, at 4.

85. *Id.* at 58.

86. *Id.* at 44.

interest in their purportedly altruistic actions. The moral of the story, he says, is that Jews are right to think they will be the next victims.[87] Similarly, Kathryn Abrams admits that the *Space Traders* story "is not a flattering picture of Jews," but she points out that they are also portrayed as victims in the story. She does seem troubled by the story, however: "One can question why Jews, via this subplot, were held up for particular criticism at all."[88] Still, she says, "[w]hile the picture of Jews it presents is not pretty, Jews do not fare conspicuously less well than any other group in this nightmarish account," so the story does not "provide a basis for charging Bell with anti-Semitism."[89]

Both Culp and Abrams also defend Bell's comments about Farrakhan. Although Culp disagrees with Bell's approval of Farrakhan, he says that Bell explains his position "in terms that are clearly not anti-Semitic"—namely, that some of Farrakhan's statements have been taken out of context, and that whites do not have the right to make explicit condemnation of Farrakhan a precondition for political respectability.[90] Abrams says that "[w]hile some of Bell's discussion may be jarring to some Jewish sensibilities"—including, she says, her own—to call the discussion anti-Semitic "seems incorrect and inflammatory" since Bell's overall discussion of Farrakhan is "complicated."[91]

Notably, the arguments made in defending Bell are completely outside the normal framework of radical multiculturalism; suddenly, Bell's defenders switch to the same entirely conventional analysis that the ACLU would use if it were defending Bell against the charge that his stories violated a campus speech code. In discussing Bell, Abrams and Culp

87. *See* Culp, *supra* note 3, at 1646.

88. Abrams, *supra* note 31, at 1109-10 n.36.

89. *Id.*

90. Culp, *supra* note 3, at 1647.

91. Abrams, *supra* note 31, at 1109 n.36. These are all fair points. Indeed, if we had called Bell anti-Semitic, these would be convincing rebuttals. But in fact, we did not make this charge. What we actually did say was the following:

> It would be convenient if we could simply condemn Bell's lapses as symptoms of an insensitivity to anti-Semitism. Unfortunately, we believe the problem is deeper. Bell's difficulty with the Jewish question is no aberration. Instead, it is a corollary of his widely shared theory that standards of merit are socially constructed to favor the powerful.

FARBER & SHERRY, *supra* note 1, at 4.

abandon all of the standard conceptual apparatus of radical multiculturalism. There is no talk here of deep social structures, ingrained cultural attitudes, mindsets, or unconscious biases. Ironically, Bell's defenders here combine a narrowly literalistic textualism with a view of discrimination as limited to conscious malignant intent—both hallmarks of the conservative jurisprudence of Justice Scalia. Consider, in contrast, Abrams' expansive view of racism and sexism: "multiculturalism has sought to evoke racism and sexism as varied, socially constructed phenomena that are far more difficult to avoid than intentional discrimination."[92] She says she is troubled by the fact that critiques of narrative, including our own, may unintentionally mirror traditional methods of marginalizing or discrediting women and people of color: "I do not contend that critics of narrative act on the basis of these assumptions. The problem is not their intent but the result."[93] All of this subtle social theory goes out the window, however, when remarks are targeted at Jews rather than at blacks or women.

To highlight the significance of this drastic change in methodology, consider the response if the speaker had been Richard Posner rather than Derrick Bell. Although Culp goes to great lengths to exculpate Bell, he finds it easy to pass judgment on Posner simply for committing the "racist act" of ignoring the good scholarship of critical race theorists.[94] Suppose, in addition, that Posner had given an elaborate hypothetical in which blacks formed a Martin Luther King society for purportedly altruistic (but actually selfish) reasons; that he had enthusiastically defended David Duke as a spokesman for lower class Southern whites while at the same

92. Abrams, *supra* note 31, at 1126. In a footnote, Abrams suggests that various "isms" might be defined differently, "depending on their virulence, history, and the social position of their targets in a particular society." *Id.* at 1126 n.66. The suggestion seems to be that anti-Semitism is simply not very serious in American society, as compared with racism, so it should be defined narrowly. But this is utterly circular. Until we define something, how can we assess its seriousness as a social problem? Moreover, the implications seem odd: under Abrams' approach, Bell's book might be wholly commendable in the United States but blatantly anti-Semitic if reprinted in a country—such as Russia—with a more pervasive and longstanding problem with anti-Semitism and few blacks.

93. *Id.* at 1125.

94. Culp, *supra* note 3, at 1659. Calmore also calls Posner's negative assessment of critical race theory "goofy." Calmore, *Random Notes—Part 2*, *supra* note 3, at 1612.

time explicitly refusing to denounce Duke's racism; and that he had argued that ill-conceived standards had allowed blacks to attain disproportionate success in certain walks of life. Now imagine that a defender of Posner's had made arguments akin to those that Culp and Abrams make in favor of Bell: that the (hypothetical) Posner statements are offensive to many blacks but not really racist; that he merely said that most blacks rather than all blacks were self-serving; that Posner thinks everyone is self-serving anyway so that his mention of blacks does not prove bias; and so forth. Would Culp, or Bell, or any other multiculturalist, find these plausible excuses?

The anxiety to avoid confronting Bell's statements is due to more, we think, than an understandably protective impulse toward a respected senior colleague. Bell's comments highlight the underlying conflict between radical multiculturalism and Jewish success in America. Rather than confronting the problem, Culp and Abrams prefer to switch methodologies, avoid the structural implications of Bell's position (and theirs), and instead focus on questions of personal intent. It is always a bad sign for a theory when adverse evidence is dealt with by jettisoning the basic methods of the theory.

3. Benign Explanations of Jewish Success

Other critics have responded to the anti-Semitism issue by trying to account for the position held by Jews in society on some acceptable terms. These attempts have been remarkably unsuccessful, if not backhanded. Consider Calmore's comments, which we briefly mentioned earlier. Calmore suggests that "Jews in America have sought and largely attained white-skin Privilege, a Privilege that advantageously sets the stage for their continued success and achievement as individuals."[95] He elaborates on this theme in his symposium contribution, suggesting that this constitutes a benign reason for Jewish success: "A beneficiary of white Privilege is not necessarily evil. Complicit involvement in oppression is different from active support of oppression."[96] So now we have the "benign" answer to the problem of Jewish success, it would seem: Jews are just better than other whites in the "advantageous" enterprise of being complicitly involved in oppression.

95. Calmore, *Random Notes*, *supra* note 3, at 1467.

96. Calmore, *Random Notes—Part 2*, *supra* note 3, at 1603 n.51.

Other efforts to avoid our argument seem equally unavailing. Deborah Malamud, rejecting the idea that any aspects of Jewish culture might have contributed to success in American society,[97] is forced to concoct an implausibly reductionist historical theory. The story she tells is this: Jews arrived in America primed with urban survival skills and occupational abilities such as tailoring, which stood them in good stead in industry and paved their way to move into small business. As a result, they were better able to keep their children in school rather than sending them to work, which proved fortunate when the G.I. Bill came along and allowed these high school graduates to pursue higher education, just in time to move into the professions in the post-war era.[98] As Malamud concedes, the best social science work in the field indicates that her theory is only a partial explanation of Jewish success.[99] On its face, moreover, it fails to account for some of the most dramatic evidence. For instance, by 1970, Jews made up almost forty percent of the faculty at "elite" law schools.[100] Is the explanation supposed to be that twenty years earlier they also made up forty percent of those who went to college on the G.I. bill? When a scholar as astute as Malamud finds it necessary to resort to such strained reductionist explanations, something is obviously amiss.[101]

As in the book itself, our purpose here is not to explain the relative success of Jews in American society, let alone to explain the lack of success of other groups. We do not claim to be sociologists any more than we claim to be professional philosophers. We do think it clear, however, that the kinds of social theories propounded by radical multiculturalists are grossly inadequate to explain the current positions of Jews and Asian-Americans. At heart, we believe, the radical multiculturalists and their supporters know exactly the same thing. But, as their responses to *Beyond All Reason* make clear, they are not quite yet at the point of acknowledging the flaws in their reductionist social theories. Faced with a compelling counterexample, radical multiculturalists are reduced to the

97. *See* Malamud, *supra* note 73, at 923-38.

98. *See id.* at 967-68.

99. *See id.* at 968.

100. *See* FARBER & SHERRY, *supra* note 1, at 58.

101. Another effort to explain the problem is made in Roithmayr, *supra* note 3, at 1669. As Matthew Finkin explains, however, this explanation is equally unavailing. *See* Finkin, *supra* note 29, at 1690-91 & n.31.

usual last efforts to save a failed paradigm by ignoring adverse evidence or rationalizing it away. To the extent that these defense mechanisms indicate a growing discomfort with the underlying theories, however, we believe that they are a hopeful sign of a potential breakthrough.

III. THE REGRESSIVE SIDE OF A "PROGRESSIVE" MOVEMENT

The difficulty of extracting any workable conception of social equality from radical multiculturalism is a sign of a larger set of problems. We argued in *Beyond All Reason* that radical multiculturalism is inherently destructive of dialogue and community. Among the problems are its tendency to reduce argument to the exchange and criticism of personal stories; its inability to separate disagreement with a speaker's message from attacks on the speaker as a person; and its divisive entanglement in identity politics. Because radical multiculturalism replaces a belief in objective truth with a focus on power relations, it faces the temptation to slide away from democratic interchange toward nihilism or authoritarianism. Anne Coughlin summarizes (and partially endorses) our argument in the following passage:

> Throughout the book, Farber and Sherry repeatedly fault the radicals for politicizing scholarship, for confusing politics with truth, and for rejecting universal values in favor of an intellectual totalitarianism that privileges the subjective preferences of whoever happens to be in power. Indeed, as Farber and Sherry notice, some of the more extreme statements by the radical multiculturalists amount to an endorsement of the ugliest kind of fascism . . . . These criticisms are obvious, devastating, and, from the perspective of traditional liberal scholars, largely unanswerable.[102]

In their contributions to this symposium, Matthew Finkin and Steven Gey expand upon the potentially antidemocratic implications of radical multiculturalism. Finkin draws a detailed and rather worrisome comparison between radical multiculturalism and the jurisprudential principles accepted in certain European fascist regimes. Indeed, he goes farther. He offers the hypothesis "[t]hat radical multiculturalism has more than an 'affinity' with Fascism; that it is Fascist to the bone."[103] Gey argues that radical multiculturalism leads to an essentially conservative politics: "since the social construction-

102. Coughlin, *supra* note 62, at 1621.
103. Finkin, *supra* note 29, at 1700.

ists refuse to recognize the legitimacy of liberal institutional limits on political power, they implicitly give every group that obtains ultimate power the authority to impose that group's 'truth' on everyone else."[104] In various ways, and sometimes in language much more pointed than our own, Finkin, Gey, and Coughlin all raise the question of whether the hard-won virtues of a liberal society are compatible with a serious adherence to radical multiculturalism.

As Coughlin points out, much of the attention of the radical multiculturalists is focused on the academic world in which they live and work. We might begin, then, by asking whether their viewpoint is consistent with the values of intellectual and academic freedom that are central to the classical liberal vision of the university. The traditional arguments for academic freedom are based on the notion of searching for truth, a concept that is made problematic by post-modernism.[105]

Some criticisms of *Beyond All Reason* also suggest an intolerance for academic debate. The most obvious concern is raised by the intemperate response of radicals such as Calmore and Culp to any criticism of their school of thought. Such views, if held either by individuals with influence within universities or by administrators of speech codes, would pose a direct threat to free debate. Charges of racism, when issuing from those who advocate legal penalties against racist speakers, are not just empty rhetoric.

In addition to the openly vituperative replies, some of the responses illustrate the attitude we criticized in Derrick Bell as a "knowing and dismissive sneer."[106] Calmore, for example,

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104. Gey, *supra* note 75, at 1729-30.

105. *See* David M. Rabban, *Can Academic Freedom Survive Postmodernism?*, 86 CAL. L. REV. 1377, 1378 (1998).

106. FARBER & SHERRY, *supra* note 1, at 88 (quoting DAPHNE PATAI & NORETTA KOERTGE, PROFESSING FEMINISM: CAUTIONARY TALES FROM THE STRANGE WORLD OF WOMEN'S STUDIES 118 (1994)). Frederick Mootz, although he is critical of our work on other grounds, agrees with us here:

> [A]ny tendency by the radicals to be dismissive toward traditional scholars who lack access to the unique voice available only to minority radicals certainly would be disappointing.... Dismissive refusals to engage others in dialogue by remaining silent or launching attacks, especially when issued from the loftiest heights in academia, represent the worst forms of pseudo-objectivism that the radicals profess to eradicate.

Mootz, *supra* note 2, at 634.

suggests that our book "should really be buried"[107] rather than discussed. Culp says that "[t]he philosophical ideas expressed in this book . . . are to philosophy what lite is to beer."[108] Continuing Bell's reference to Louis Armstrong—if you don't know jazz, "don't mess with it"[109]—Calmore engages in an extended discussion of jazz and his ambivalence about its appeal to a broad audience, concluding that "[i]t really is okay that Farber and Sherry are not happily within [the] audience" for radical multiculturalism.[110] These shrugs of disdain do not exactly invite dialogue.

But the more significant point is not the defensive tone of the radicals, but their distorted picture of intellectual discourse. For instance, Abrams calls for a "truce" in which traditional scholars and radical multiculturalists will learn to live side by side.[111] This turns out to be a rather one-sided truce, however. Traditional scholars, according to Abrams, should not "challenge" multiculturalists by asking about the truth or normative implications of their narratives,[112] but radical multiculturalists are free to accuse traditionalists of racism and sexism whenever they think it appropriate.[113] For Delgado, scholarship is equivalent to a lawsuit (or political warfare), where each side is trying to win: thus it is unfair to write a favorable review of a scholar in the "same camp" or on your "side" unless you disclose your common affiliation.[114] This is a somewhat peculiar vision of academic discussion.

More generally, at least some radical multiculturalists feel alienated from the democratic process. For instance, Culp criticizes what he calls the "majority rules hypothesis," which he says that most other critical race theorists also reject. He argues that radical social change will be extremely difficult if those who seek change must first persuade the majority that the status quo is unjust. Hence, he rejects the hypothesis that "to be reasonable you must always speak to persuade the

107. Calmore, *Random Notes—Part 2*, *supra* note 3, at 1591.

108. Culp, *supra* note 3, at 1640.

109. Derrick A. Bell, *Who's Afraid of Critical Race Theory?*, 1995 U. ILL. L. REV. 893, 910, *quoted in* FARBER & SHERRY, *supra* note 1, at 88.

110. Calmore, *Random Notes—Part 2*, *supra* note 3, at 1616.

111. Abrams, *supra* note 31, at 1118.

112. *Id.* at 1120-21.

113. *See id.* at 1125-26.

114. *See* Delgado, *supra* note 3, at 1065.

majority."[115] He thus echoes Bell's observation, in connection with a discussion of the *Space Traders* story, that when they sought a national referendum to ratify the expulsion of the black population, national leaders were "aware as well of the likely outcome when the civil rights of a minority group are submitted to a popular vote."[116] The assumption, of course, is that the "likely outcome" of majority rule is the destruction of minority rights.[117] Naturally, democratic institutions have little intrinsic value from this perspective.

This estrangement from democratic ideals is illustrated in Roithmayr's review of *Beyond All Reason*. As we noted earlier, she considers fundamental questions about standards of merit to be beyond rational decision, and instead grounded only in "contingent political commitments, affiliations or worldviews," which are themselves "the locus of struggle at the collective level."[118] What does this collective struggle entail? Roithmayr rejects what she views as Richard Rorty's undesirable reliance on "free and open encounters" as a means of changing viewpoints. She contrasts Rorty unfavorably with "radical theorists like Ernesto Laclau [who] point out that consensus will only form when one group is able to exercise power over other groups."[119] Her view, she says, does not depend either on "Farber and Sherry's universal reason or Rorty's undistorted, empathetic conversation to promote the interests of the disenfranchised." Instead, her version of "[r]adical pragmatist method takes its direction more from Laclau's vision of the exercise of political power."[120] Of course, she goes on to add, the struggle can take several forms, including the use of conventional legal arguments, depending on circumstances.

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115. Culp, *supra* note 3, at 1668.

116. Derrick A. Bell, Jr., *California's Proposition 209: A Temporary Diversion on the Road to Racial Disaster*, 30 LOY. L.A. L. REV. 1447, 1448 (1997). The moral of the story, Bell says, is "both simple and irrefutable: This society is always willing to sacrifice the rights of black people to protect or further important economic or political interests." Indeed, he adds, racial injustices are only remedied when "such remedies further interests of importance to whites, or some of them." *Id.* at 1449.

117. We do not claim that majority rule is a sufficient safeguard to minority rights. But the idea that majorities are universally hostile to minority rights is equally unsupportable. Consider, for example, the bevy of civil rights statutes passed since 1964.

118. Roithmayr, *supra* note 3, at 1680.

119. *Id.* at 1681.

120. *Id.* at 1682.

But it all depends on circumstances: "Radical scholars should decide whether, in a particular local context, political commitments towards including outsiders might be better advanced through revolutionary social rupture—when it might be useful to dispense wholesale with conventional ways of thinking—or whether a more progressive or conservative approach might better serve radical aims."[121] In this analysis, the goal of both politics and scholarship is to advance the interests of particular groups, by any means necessary; efforts at reasonable persuasion are only one tool among many. This augurs poorly for both scholarship and democracy.

The radicals' discomfort with democracy is linked to their skepticism about the Enlightenment principles that underlie modern liberal democracy.[122] Indeed, one defender of radical multiculturalism takes us to task for relying unquestioningly on "the cornerstones of the Enlightenment tradition of liberal political thought," which he describes as "equal treatment of all citizens, robust public dialogue leading to increasingly deeper understanding, and evolutionary improvements fostered by the development of accurate historical understanding."[123] But, he says, the whole project of radical multiculturalism is to challenge these principles.[124] Is there a future, one wonders, for a movement that rejects the norms of equal citizenship, robust public dialogue, and historical truth? Is it a future that we—or even the radical multiculturalists themselves—would really want to live in?

Thus, the further writings of radical multiculturalists since the publication of *Beyond All Reason* lend credence to the concerns voiced by Gey and Finkin. There are indeed strains of radical multiculturalism that are at odds with free debate, critical thought, majority rule, and other aspects of liberal democracy. But it may be a mistake to read too much into radical multiculturalist discussions of these issues. Although there may be unhealthy authoritarian tinges in radical multiculturalism, the radical multiculturalists are far from having articulated or endorsed a clear-cut rejection of liberal democracy. We have not given up hope that critical race

121. *Id.* at 1683.

122. For expressions of such skepticism since publication of *Beyond All Reason*, see, for example, Calmore, *Random Notes—Part 2*, *supra* note 3, at 1595-96, and Delgado, *supra* note 3, at 1069.

123. Mootz, *supra* note 2, at 616.

124. *See id.*

theorists, radical feminists, and critical legal scholars generally will turn away from this destructive path. Around the world, people have fought too hard for liberal democratic institutions. The notion that we are better off to celebrate "collective struggle" rather than democratic dialogue is an anachronism that cannot survive forever even in the rarefied atmosphere of the faculty lounge.

Besides being undemocratic, the picture of social change provided by radical multiculturalists is highly unrealistic. If all that counts is the ability to tell persuasive stories, to manipulate mindsets and emotions, and to exercise social power, the Left doesn't have a chance. It is the Establishment, after all, that controls the schools, the media, the prisons, the police, the army, and the economy. If the Left doesn't have reason on its side, it has nothing.

CONCLUSION

What of the future of radical multiculturalism? Those radical multiculturalists who have discussed the book in print seem largely unwilling, at least so far, to engage our ideas seriously on the merits. But it may be a mistake to attach too much importance to this initial defensive reaction. Radical multiculturalists have until now had little experience with outside criticism, and perhaps it is not surprising that the first reaction should be anger rather than deliberation. Over time, perhaps radical multiculturalists will come to realize, as Judge Posner puts it, that "[c]riticism is the oxygen of a scholarly movement."[125]

In any event, this may be a propitious time for the radical multiculturalists to rethink their views. Richard Delgado and Jean Stefancic have recently observed that critical race theory is in a state of some disarray, with much energy wasted on fighting against liberalism at a time when the truly powerful political forces threatening minorities are themselves anti-liberal.[126] Perhaps a growing awareness of political and social realities will permeate the movement, leading to a more rigorous conceptual framework. That, at least, is our hope.[127]

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125. Posner, *supra* note 74, at 43.

126. *See* Richard Delgado & Jean Stefancic, *Critical Race Theory: Past, Present, and Future*, 51 CURRENT LEGAL PROBLEMS 467, 490-91 (M.D.A. Freeman ed., 1998).

127. Admittedly, as Arthur Austin suggests, this forecast may be too.

As a counterweight to the forces on the Right, what we need from the Left is something more than the tired slogans of fading French philosophers, nostalgia for the glories of the sixties, or fragments of autobiographical anecdotes.

optimistic. *See* ARTHUR AUSTIN, THE EMPIRE STRIKES BACK: OUTSIDERS AND THE STRUGGLE OVER LEGAL EDUCATION 199-200 (1998).