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# BIMONTHLY REVIEW OF LAW BOOKS

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## AN INTERVIEW WITH DUNCAN KENNEDY

*Duncan Kennedy, professor at Harvard Law School, was interviewed by Christine Kuta, a student at Suffolk University Law School, regarding his book *Sexy Dressing, Etc.* (Cambridge: Harvard University Press, 1993. 258p. ISBN 0-674-80294-2 \$24.95). The first part of the interview follows, and the second part will be included in the next issue of BRLB.*

Q. How do the themes of your essays in *Sexy Dressing, Etc.* fit in with the critical legal studies tradition?

A. That's a good question. The essays are on the edges of, or a framework for, the social theoretical analysis of legal doctrine, which was and is a central aspect of CLS. The essays try to put that effort in context by offering a picture of social life organized in terms of the category of cultural identity, which is obviously a major theme of modern life in the United States. They try to give a picture of the social world within which legal doctrine does its work and legal discourse does its work. For example, the picture of national identity in the first essay doesn't deal with law at all, but it does try to create the context in which one can understand what's happening in law. The affirmative action essay isn't about law either. It's about institutional policy, and it might be applied to medical schools or sociology departments in universities . . . or General Motors, for that matter. The goal is to present a picture of the way we handle race in our society.

Q. Race and gender?

A. The last essay is about gender. It's about the battle between the sexes and about gender ideologies, like traditionalism and liberalism and feminism. Law is a more important element of the "Sexy Dressing" essay than of the first two. Partly it is an attempt to put together the different aspects of sexual abuse law and offer a theory of the way the legal system is implicated in or complicit in the phenomenon of abuse. And I'm not sure that's been done before—I'm pushing the analysis a little further, I hope, by putting together areas that writers like MacKinnon and Dworkin have dealt with separately. That one essay is very critical legal studies—like in the legal part of it.

There's only one essay in the book that is mainly about law—that is the essay called "The Stakes of Law," which is about the way law affects the distribution of income between social classes. Even that one has some stuff about the cultural dimension of class. That essay tries to lay out in a very elementary form one of the central critical legal studies enterprises. Writing these articles over the years, I've found myself thinking that it was important to put the legal analysis into a broader national, racial, class, and gender context. That's what I've tried to do in this book.

Q. Is the chapter on "The Stakes of Law" a primer on the basic tenets of critical legal studies? I thought that chapter should have come either first or last.

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A. I guess you say that because it's the one that tries to show how everything in the book is related to the legal system or affected by law. That chapter presents in a straightforward way (I hope) the legal realist theory of the way law relates to the economy, along with the postmodern theory of the way law can be understood as constituting identities (that's the Foucault part). It's my version of one of the major themes of CLS writing, but it would be too much to claim that it sets out basic tenets.

Q. So, were you saying that this is CLS and then all the rest follows from this perspective?

A. I don't see the book as an introduction to CLS. I see it as a book about American culture and society. The CLS part is in there because I think it contributes to our picture of the social system as a whole. I don't really have a perspective that everything else follows.

Q. How did all of the essays come to be written?

A. They were written for different purposes at different times. I didn't write this set of essays thinking that they would make up a book. They were talks that I gave for different audiences that I later worked up and changed and modified to turn into articles. When the four articles were there, they looked, from my point of view, amazingly coherent. I'm not sure how obvious that will be to the reader who is looking for a law-professor type of book. As the author, you sort of lose track of what the book would look like if you were to pick it up and read it straight through from beginning to end, never having seen it before. The essays have the themes of cultural identity,

national identity, race identity, gender identity, and class identity worked through, and the way institutions affect the distribution of the good things of life between groups. For me, they fit together.

Q. In the essay "Sexy Dressing," who is exploiting whom, and what is your take on the relationship between femininity and power? Are you a feminist?

A. I wouldn't describe myself as a feminist, just as I wouldn't describe myself as a black nationalist. What's good about identity politics is that it's a way for people to work on the aspects of themselves that they see as culturally important and to organize around their common interests defined through their identity. So, I've always been uneasy with men who describe themselves as feminists. I see feminism as the desirable organization of women to resist men as a group. I would describe myself as very sympathetic to various types of feminism but not to all types, just as I'm sympathetic to some kinds of class-based radicalism but not to all kinds. As a leftist white male radical, I'm looking for alliances with various groups in order to pursue common projects. I would definitely see myself as in the same part of the political spectrum as feminists, particularly radical feminists, but I wouldn't take on the name.

Q. What is your point of view? It seems to me that you get a point of view and then you lose it. You start off with a question that sexy dressing is a result of abuse, and then you explore some ways that women take sexy dressing and use it. . . .

A. The essay does present the ambiguity of a practice like sexy dressing as something we don't want to resolve by deciding that it is one thing or the other. The idea is to understand how this same practice can

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be the product of exploitation, but it also can be a way in which the exploited person can exercise power or even find a way to overcome exploitation. I don't have a point of view that would attribute a single meaning to a practice like female sexy dressing, [that it is] either the product of abuse or the cause of abuse.

The way I see it, individual people—men and women, blacks and whites, gay people and straight people—find themselves, when they get to be more or less grownups, in a million different situations where there's a lot of power imbalance. Exploitation of one type or another is almost always going on, and some form of dominance is almost always being exerted. But, at least in our society right now, there is usually some complex balance within the unequal power situation. So it's unequal but it's not completely unilateral domination of one side by the other. How far the dominators can go is determined to a degree by the way in which the dominated resist and use the very practices and institutions of society that are part of the domination. They use them to turn the tables, so to speak, and prevent themselves from being swamped or obliterated or completely controlled.

So the way I see sexy dressing is like this: It's a practice that can reflect a woman's being dominated and controlled and exploited but that, in another context, could be, can be, and is used as a basis for power. This resembles an older form of the sexual liberation argument. Sexual liberation in the sixties sense would see sexy dressing as a way for women and men to eroticize female autonomy rather than eroticize domination. It could be that; it could be the other. But I think it's a mistake for us social critics to take practices and as a general matter want them either to be all good or all bad. Now, abuse is an exception. Abuse is a category that I'm dealing with as something that is really terrible, unqualifiedly bad (though I wouldn't say that everything that happens in an abusive situation is necessarily unqualifiedly bad). As I see it, the problem is to distinguish practices that we can very sharply identify as really rotten from practices that have much more ambiguous meanings, which people can with regularity turn to their own liberatory purposes.

**Q.** Would you say that your ideas begin in concrete terms but then careen into fancy theoretical abstractions?

**A.** I'm trying to operate somewhere in between. For example, in the first essay, I'm arguing that American culture is different from European national

cultures because of the social distance between the immigrant populations of the late nineteenth and the twentieth century, as they arrived, and the established American national elite. In most European societies the political, economic, and intellectual elite is bound together by a single national identity with workers, the poor, the peasants, and so forth. The peasant groups immigrating to the United States were from Europe, Asia, Latin America, or Africa. They came as masses separated from their own leaders. On the one hand, that separation put them in the situation where they could be unequivocally dominated. The American working class and lower middle class and American underclass can be seen as having achieved a lot of economic advantage vis-à-vis the cultures that they departed from. But, on the other hand, as people with national identities, they didn't have elites to protect their national identities. So, they assimilated, to the extent that they did, into the general American culture and experienced themselves as culturally powerless.

That situation of disadvantage, in which, say, the Italian immigrant group as a whole was overwhelmingly composed of people who came from either agrarian rural backgrounds in Italy or from the Italian industrial working class, also allowed the production of autonomous cultural forms. Immigrant groups were able to maintain their autonomy from the intellectuals, the people who create the culture. American popular culture is a weird phenomenon precisely because it's the product of all this buying power of previously subordinated ethnic populations who don't just buy into what the national elite dictates. The basic contrast is that European culture is what American culture would be if our country were culturally dominated by National Public Radio and Harvard University.

The United States has always been a place where the relatively less wealthy and less educated people have had a great influence on the content of mass culture. That's an example in which the situation of the immigrant sub-groups is one of intense disadvantage which, at the same time, produces modes of power. It's a situation of disadvantage, but it turns out in the long run to provide a larger degree of power than the equivalent group has in the home country. The Italian standard of living for people in the bottom half of the income distribution is much much closer to the U.S. standard than ever before, but the difference in cultural power between top and bottom is still much greater there than here.

*Editor's note: To find out how Duncan Kennedy extends this analysis to power relations between the sexes, see the next issue of BRLB.*