

TRUTH OR CONSEQUENCES? THE INADEQUACY OF CONSEQUENTIALIST ARGUMENTS AGAINST MULTICULTURAL RELATIVISM

**BEYOND ALL REASON: THE RADICAL ASSAULT
ON TRUTH IN AMERICAN LAW.** Daniel Farber¹ &
Suzanna Sherry.² New York, NY: Oxford University Press.
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Daniel Farber and Suzanna Sherry have written a fair-minded and heartfelt polemic against what they call “radical multiculturalism” in the legal academy. According to the authors, “radical multiculturalism” is the belief that all “objective” standards of factual accuracy, academic or professional merit, or legal coherence are merely “social constructions,” meaning that they are really nothing but “exercises of power by one group over another.” (p. 118) Rather than strive to conform to such standards, radical multiculturalism maintains that scholars should expose them for what they are—the efforts of white, heterosexual males to subordinate gay and lesbian persons, African-Americans and other racial minorities, or women.

Beyond All Reason attacks this radical multiculturalist strain in legal academia, not because the radical’s critique is untrue but because it has bad consequences. According to *Beyond All Reason*, “the radicals’ attachment to social constructionism and related doctrines” undermines attainment of “the radicals’ own progressive goals.” (p. 7) The book maintains that radical multiculturalism has dangerous (albeit unintended) anti-Semitic and anti-Asian implications, because it casts doubt on the basis

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of Jews' and Asian-Americans' intellectual achievements. The book also argues that radical multiculturalism leads its practitioners to engage in a paranoid style of argument, in which threats of excommunication are used to stifle free and open debate and one's "authenticity" as a representative of one's sexual or racial group counts for more than factual accuracy or logical consistency.

As an effort to describe and deplore a certain strain in the legal academy, *Beyond All Reason* has many virtues. It is scrupulously honest in its quotation of the radical multiculturalists that it attacks, its tone is never shrill, and the style is refreshingly unpretentious. Moreover, the book's evidence supports its conclusions: Farber and Sherry provide a depressingly long catalogue of egregiously silly posturing by radical multiculturalists, a list of quotes worthy of a character out of a Tom Wolfe novel. (My personal favorite is Richard Delgado's remark that "if you are black or Mexican, you should flee Enlightenment-based democracies like mad, assuming you have any choice," because "racism and enlightenment are the same thing." (p. 29))

Beyond All Reason, however, is ultimately unsatisfying, because it provides no serious evaluation of the *truth* of radical multiculturalism's foundational claims. For authors who claim to value truth, Farber and Sherry seem curiously indifferent to it: they exhibit a world-weary anti-intellectualism that is strikingly similar to the attitudes of the radical multiculturalists that they criticize. They concede that radical multiculturalism's claims about objectivity, truth, and merit are "astoundingly powerful," and they seem to believe that any effort to disprove the truth of such claims would be futile. Instead, they stake their entire attack on radical multiculturalism on the argument that its tenets are *dangerous*—that they will have bad consequences like anti-Semitism, shrill and unintelligible scholarship, and sloppiness about factual accuracy. As I shall suggest below in Part II of this review, this argument from consequences is not a successful strategy. Farber and Sherry seem far too defensive, too lacking in confidence about their notions of truth and value, to mount a convincing defense of Enlightenment and academic dialogue, both of which, after all, are predicated on the idea that the impartial pursuit of truth and justice is a sensible and worthwhile undertaking. In a larger sense, Farber and Sherry unintentionally expose a weakness of the version of conventional "Enlightenment liberalism" dominant in the legal academy—an inability to respond persuasively to radical challenges

because of an anemic conception of truth and value. In this sense, Farber and Sherry share in the *Trahison des Clercs* that they so effectively describe.

I

Before one criticizes the book, it is useful to give an overview of its major claims. *Beyond All Reason* consists of six chapters. The first two chapters summarize some tenets of radical multiculturalism, while chapters 3, 4, and 5 argue that these tenets lead to various unacceptable consequences, such as anti-Semitism, indifference to factual accuracy, and the breakdown of civil discourse. Finally, chapter 6 dissects radical multiculturalism to explain why such an ideology might appeal to legal academics despite these harmful consequences.

The first chapter provides a fair and concise summary of the ideology that the book later attacks. Farber and Sherry contend that the intellectual foundation of radical multiculturalism is the premise that “reality is socially constructed by the powerful in order to perpetuate their own hegemony.” (p. 23) Under this view, statements about social institutions are not “objective.” Rather, they are tools by which the persons currently dominant in society—the “white male establishment”—maintain their dominance. Statements about “justice”, “merit”, and “truth” in reality serve the interests of social elites. Even the concepts of knowledge and empirical proof are “constructed” by powerful elites in order to impose their view of the world on less powerful persons. (p. 27) Judgments about empirical proof or academic merit do not reflect any objective reality about the world. Rather, they reflect the “mindset” of the dominant social groups—their “bundles of presuppositions, received wisdoms, and shared understandings.” (p. 29) (citation omitted)

Radical multiculturalists, in spite of their skeptical attitude toward values like objectivity and scientific inquiry traditionally associated with the European Enlightenment, remain inexplicably loyal to the Enlightenment ideal of egalitarianism. They seek to promote a more egalitarian society and prevent white male heterosexual elites from dominating less powerful groups. Toward this end, radical multiculturalists urge scholars to reject putatively objective standards for assessing law, academic merit, or factual accuracy and instead provide narratives or stories that inspire subordinated communities to resist white male hegemony. (pp. 38-41) Scholarship, according to the radical multicult-

turalists, is really a species of rhetoric, to be evaluated by its effectiveness in creating an egalitarian society. Radical multiculturalists also maintain that one's membership in ethnic, sexual or gender groups crucially affects one's ability to provide or appreciate such rhetoric: white male scholars may be incapable of understanding or evaluating the narratives of women or people of color, while membership in an oppressed social group may constitute "virtually a presumption of expertise" in understanding such narratives. (pp. 30-31) (citation omitted)

What practical consequences does such a theory have for the study of the law? Farber and Sherry argue in chapter 2 that radical multiculturalist legal theory has four notable features, two of which are highly general and two of which concern more specific legal doctrines. First, radical multiculturalist theory charges that traditional legal reasoning is really rooted in the protection of white and male self-interest: the mindset of mostly white and male judges leads them to use the law to protect the interests of other white male persons. (pp. 36-38) Second, radical multiculturalists prefer emotionally stirring narratives to blander, more dispassionate accounts of how the law operates. (pp. 38-40) Third, radical multiculturalists recommend that traditional First Amendment doctrine be modified to permit suppression of speech that may be thought to contribute to the stigmatization of oppressed social groups. For example pornography or racial hate speech should be more easily restricted or banned. (pp. 40-45) Fourth and finally, because the white, male, heterosexual mindsets are often unconscious, courts should hold that laws can deprive persons of equal protection even when such laws are not enacted with any intentional hostility toward some ethnic group, women, or homosexuals. (pp. 45-47)

Farber and Sherry assert without explanation that this ideology of radical multiculturalism is "astoundingly powerful," (p. 23) but, as noted above, they never attempt to evaluate its intellectual merits. Instead, they makes three different arguments in the third, fourth, and fifth chapters respectively that radical multiculturalism undermines radical multiculturalists' own commitment to egalitarianism.

The first (and, as I suggest below, the weakest) of these arguments is Farber's and Sherry's claim, set forth in chapter 3, that radical multiculturalism's attack on the ideal of objective merit is anti-Semitic and anti-Asian. The foundation for this argument is the fact that Jews and Asian-Americans are over-

represented in academic, intellectual, professional, and economic life relative to their share of the United States population. According to Farber and Sherry, given the radical multiculturalists' premise that academic standards are the result of an illegitimate exercise of power, "[t]he radical multiculturalists cannot account for this success without attributing it to the exercise of power by Jews and Asian Americans." (p. 58) In short, if objective standards of merit are the result of a conspiracy, then they are necessarily the result of a Jewish-Asian conspiracy, for Jews and Asians are the beneficiaries of such standards—and, of course, the Jewish conspiracy is the *leitmotif* of anti-Semitism.

In chapter 4, Farber and Sherry provide a second attack on radical multiculturalism, by arguing against radical multiculturalists' view that scholarship should be concerned with personal stories rather than objective truth. According to Farber and Sherry, this concern with narratives "discourages fruitful debate in several ways while at the same time making it easier for these [radical multicultural] scholars comfortably to reaffirm their preconceptions." (p. 73) The authors note that personalized stories about individuals' experience with racism or sexism may not accurately reflect what typically occurs in the real world as revealed by more systematic statistical studies. The radical multiculturalists' concern with narratives is especially dangerous, according to Farber and Sherry, because radical multiculturalist scholarship tend to be obsessed with whether such narratives "authentically" reflects the distinctive experience or his or her ethnic or sexual group. Such an obsession, in turn, results in a sort of shrill, denunciatory style of argument in which opponents are excommunicated rather than refuted—accused of being traitors to their race or gender (if they are minorities or women) or of being blinded by the false consciousness of the prevailing white and male "mindset" (if they are white or male). (pp. 78-84) Farber and Sherry also note that personalized narratives can often be unintelligible, and they complain that radical multiculturalism's theory of knowledge—that knowledge is ultimately based on personal emotional reaction—makes it impossible for readers who do not belong to radical multiculturalist's racial or sexual group to evaluate or even respond to the radical multiculturalist narratives. (pp. 87-90)

Farber's and Sherry's final attack on radical multiculturalism contained in chapter 5 maintains that radical multiculturalists' denial of the notion of objective truth leads them to take a

casual attitude toward the distinction between fact and fiction in their scholarship. This is not to say that radical multiculturalists deliberately spread lies. Rather, Farber and Sherry maintain that radical multiculturalists simply do not care enough about insuring that their scholarship draws a sharp distinction between false and true statements: radical multiculturalists, according to Farber and Sherry tend to be *sloppy* about the truth. As evidence of this tendency, Farber and Sherry cite Patricia Williams' statement that "Tawana Brawley has been the victim of some unspeakable crime," regardless of whether she was really raped by six white men. Farber and Sherry note that, even if there is deep sense in which Tawana Brawley was the victim of a crime, it is critically important to evaluate whether her rape accusation is true—not least in order to vindicate the reputations of six innocent men who have been defamed if, as a grand jury believed, the accusations were false. (pp. 95-98)

According to Farber and Sherry, Williams' apparent indifference to this distinction between truth and falsity is not simply a singular case of rhetorical excess: it is, rather, symptomatic of radical multiculturalism's principle that objective truth is a white, male, and heterosexual social construction. To support this claim, Farber and Sherry cite four historical inaccuracies contained in radical multiculturalist scholarship, as well as the more general tendency of radical multiculturalist authors to discount or ignore the value of statistical evidence that contradicts their positions on, for instance, law school hiring practices or the effects of single-parent families on children's well-being. (pp. 100-102) Farber and Sherry conclude the chapter by arguing that truth-seeking is useful to a democracy. For instance, they argue that, if one abandons the distinction between truth and falsehood, then one will lose an objective standard by which to assess the lies told by tyrants to consolidate their power. (p. 103) To illustrate the point, the authors note that a college newspaper editor has justified her decision to publish the ads of "Holocaust deniers" by using "radical multiculturalist language," arguing that "the deniers are simply revisionists who are 'reinterpreting history.'" (p. 109) (citation omitted) Farber and Sherry also insist that "the scientific method" and a "willingness to search for truth" promotes habits of mind useful for democratic citizenship "such as open-mindedness, humility, tolerance, and an awareness of obligations beyond self-interest." (p. 107)

The sixth chapter of *Beyond All Reason* is devoted to diagnosing radical multiculturalism—that is, trying to figure out why

radical multiculturalism persists in attracting legal scholars despite its perverse consequences. The authors conclude that the ideology's foundational rejection of objective standards makes it particularly intellectually insular and immune from rational challenge, (pp. 120-127) while its tenets provide psychological comfort to academics who wish massively to expand affirmative action in law school admissions and hiring, because those tenets deny that such expansion would be accompanied by any real costs. (pp. 127-133) The authors conclude their diagnosis with the observation that radical multiculturalism constitutes a particularly difficult form of mindset to uproot, because it resembles a species of paranoia—a self-sealing obsession that a pervasive conspiracy controls all law and all modes of reasoning. (pp. 133-137)

II

A central problem with *Beyond All Reason* is that it focuses entirely on the rhetorical consequences of radical multiculturalism rather than on its intellectual merits. With a practical lawyers' disdain for intellectual abstractions, Farber and Sherry abstain from any serious analysis of radical multiculturalism's claims about the social construction of reality beyond conceding inexplicably, that such claims are "astoundingly powerful." (p. 23) According to the authors, any such investigation into "the truth of the radical multiculturalist ideas" would be futile, because "[i]t is the very concept of 'truth' that is in dispute"—a dispute that, the authors seem to believe, is unresolvable. (p. 50) Maybe radical multiculturalism has flaws in its reasoning, Farber and Sherry concede, but who cares? "[H]aving philosophical problems does not necessarily distinguish radical multiculturalism from any other jurisprudential approach." (p. 7) Instead, the authors "prefer to ask whether [radical multiculturalism] . . . is wise politics"—whether it is a good way to "seek the best life for a community" (p. 50)—apparently on the odd assumption that it is easier to produce consensus on disputes about politics than epistemology.

The result of such an emphasis on practical consequences rather than truth is that *Beyond All Reason* is likely to forfeit the attention of its most likely audience—academics. Academics pride themselves on being tough-minded thinkers who will accept unpleasant consequences if they believe that such consequences follow from the most intellectually sophisticated view of

the world. Indeed, they might revel in the discouraging consequences of a world-view, because their acceptance of such consequences seems like proof that they are tough, Nietzschean thinkers, free from the laypersons' need to cling to comfortable superstitions. Thus, when Farber and Sherry argue for the rejection of Radical Multiculturalism on the ground that radical multiculturalism produces unpleasant consequences—illiberal, shrill, tendentious scholarship—they do not really address multiculturalism's central conceit that it unsparingly “unmasks” the reality behind notions like objectivity and impartiality. Given that Farber and Sherry abstain from challenging the tenets of radical multiculturalism on their merits, is it really a refutation of them to say that they make us uncomfortable or undermine our conventional understanding of “democratic constitutionalism” or that they lead to shrill, tendentious, unempirical scholarship? Maybe these consequences are the price we have to pay to remain tough-minded Nietzschean intellectuals who unflinchingly accept the world as it is, free from illusory concepts of objectivity and impartiality.

Each of the three arguments against radical multiculturalism is seriously weakened by this refusal to engage the intellectual foundation of radical multiculturalism. Take, for instance, the argument in chapter 3 that radical multiculturalism is anti-Semitic. As a preliminary matter, one might note that Farber's and Sherry's argument is, itself, tendentious at best. They reason that, if (1) conventional academic standards are the result of a conspiracy to exclude members of racial minorities and (2) Jews and Asian-Americans disproportionately succeed under conventional academic standards, then it follows that (3) Jews and Asian-Americans must somehow be a party to the racist conspiracy. But, even assuming that the first premise is a correct statement of radical multiculturalist arguments (which seems doubtful)⁴, the conclusion does not follow from the premises. The disproportionate success of Jews and Asians might simply be a fortuitous rather than intended result of the whites' efforts to exclude African-Americans. It might be that white Anglo-Saxon males lack the political or social power to reserve academic jobs for themselves with an express color bar.

4. The central claim of radical multiculturalists is not that white academics exclude minority candidates for academic positions because of deliberate racism but rather because they are led by their unconscious “white mindset” to overlook the importance of minority scholars' achievements. Farber's and Sherry's argument concerning anti-Semitism does nothing to address this more subtle claim.

Instead, whites choose an ostensibly race-neutral standard—good grades, high test scores, etc.—that they predict will disproportionately benefit themselves. Jews and Asians might fortuitously happen to achieve disproportionate success under the standard chosen by the whites (perhaps because Jewish and Asian tradition, religion or culture encourages Jewish and Asian children to cultivate an interest in being highly literate and skilled at the interpretation of texts). It hardly follows that the disproportionate success of Jewish candidates is somehow the result of a Jewish or Asian conspiracy or even the intended result of a white conspiracy.

Farber's and Sherry's response to this possibility for fortuitous Jewish or Asian-American success is obscure. They seem to argue that fortuitous Jewish or Asian-American success is ruled out by the radical multiculturalists' premise that "white gentiles impose standards of merit to solidify their own power." (p. 60) Apparently, Farber and Sherry argue that, because whites are (by hypothesis) capable of controlling access to academic positions, Jews and Asian-Americans could not surpass whites unless whites deliberately decided to bestow such a benefit upon them. But this assertion does not follow from any radical multicultural premise: it might be that whites simply cannot use a more precise standard without betraying their purpose of racial exclusion. Thus, they have to use a cruder proxy for whiteness, one that unfortunately (in the views of white gentiles) admits a lot of Jews. It is hard to see why such a conspiracy theory implicates Jews in white racism or even suggests that Jews or Asian-Americans are the stooges of racist whites.⁵

In short, the argument that radical multiculturalism has anti-Semitic implications seems, at best, to be the highly speculative product of Farber's and Sherry's imagination rather than a genuine risk of adhering to multicultural ideas. But, quite apart from its implausibility, it is odd that Farber and Sherry prefer to plunge into the morass of identity politics and draw byzantine inferences of anti-Semitism from implausible multiculturalist

5. To be fair, Farber and Sherry provide some evidence that white gentiles have used criteria to reduce the success of Jewish college applicants, such as requirements of geographic diversity or pedigree or "character." They contend that the deployment of such standards indicates that Jews could not succeed without the active acquiescence of white gentiles. But the natural response is that such ostensibly race- or religion-neutral criteria obviously did not prevent substantial Jewish success in college admissions, either because their invidious purpose was detected and the standards were repealed or because Jewish applicants overcame the disability of such criteria. These facts do not show that white gentiles have infinite capacity to manipulate the system for their own benefit.

conspiracy theories rather than simply defend the concept of objective merit in a straightforward way. As I shall argue below in Part III, the obvious objection to the radical multiculturalists' theory of merit is that it rests on an incoherent theory of knowledge and meaning. Yet Farber and Sherry somehow feel that such objections are foreclosed to them by the "astoundingly powerful" nature of radical multicultural arguments. It is a mark of how much they are willing to concede to the relativism of their opponents that they instead insist on making their case against radical multiculturalism through their own tortured inferences from the logic of identity politics.

The same criticism applies to Farber's and Sherry's arguments in chapters 4 and 5 that radical multiculturalism undermines commitment to public discourse and truth. By contrast with the "anti-Semitism" argument in chapter 3, these arguments in chapters 4 and 5 are at least supported by quotes from multiculturalist scholarship, which indicate that radical multiculturalists are prone to shrill denunciations of opponents, unintelligible narratives, witch hunts into writers' lack of racial "authenticity," and ideologically convenient self-delusion about the facts. Moreover, Farber and Sherry plausibly suggest that these tendencies are not aberrations but rather the natural consequences of radical multiculturalism's foundational premises—its emphasis that all knowledge is really nothing more than the "mindset" of some social or racial group. The difficulty with Farber's and Sherry's arguments, however, is that, because *Beyond All Reason* refuses to challenge the intellectual truth of those foundational premises, the book cannot provide any interesting reasons to believe that shrillness, factual inaccuracy, etc., are adequate grounds for rejecting multicultural scholarship.

Take, for example, Farber's and Sherry's claim in chapter 4 that radical multiculturalists distort debate with their "stress on legal storytelling." (p. 73) Farber and Sherry argue that reliance on personal narratives tends to impede constructive debate about the truth or value of social policy, because there is no way to verify or evaluate the personal narratives on which radical multicultural scholarship tends to rely. But the whole point of radical multiculturalism is to transform the style and method of academic debate to reflect the alleged reality that scholarly positions are really a function of the authors' race, gender, or sexuality. Therefore, it is hardly a devastating blow to their foundational premises to say that they would undermine traditional

academic dialogue. That's what radical multiculturalists *want* to do.

Moreover, by refusing to make the intellectual case against radical multiculturalist premises about truth, meaning, and merit, Farber and Sherry substantially undermine any reason to be concerned about the distortion of academic debate caused by narratives. After all, if multicultural theories of truth and meaning are correct, then it would follow that conventional academic dialogue achieves only a spurious and illusory progress toward any meaningful truth. Why, then, be worried that the tendencies of radical multiculturalism undermine such a useless social practice as academic dialogue? Worrying about the loss of honest and open debate without defending the notion of objective truth is like worrying about the quality of one's stereo system while being indifferent to music.

The argument in chapter 5 suffers from the same weakness: without a defense of the concept of truth, the authors cannot easily show why one should worry about the concept's loss. One can concede for the sake of argument that Farber and Sherry might be correct that the idea of objective truth has democratic virtues; perhaps democracy thrives best when voters and politicians believe that their descriptions of reality are "objective" in that they transcend race and gender. But this argument puts the cart before the horse: a belief cannot be useful for democracy unless people actually believe it, and people will generally not believe something that is demonstrably implausible. Therefore, Farber's and Sherry's argument in favor of the notion of objectivity goes nowhere until they show that such a notion is persuasive or coherent—that is, true. One might as well construct a defense of the concept of Heaven and Hell on the grounds that these ideas, if believed, would promote democracy by discouraging anti-democratic conduct with the threat of eternal damnation. Maybe they would—but if one can make no persuasive argument that such beliefs are true, then the notion of an afterlife will provide very little support for democracy, for no one will believe it. Likewise, if the concept of objective truth really is an implausible fiction and multicultural relativism is, in fact, a persuasive account of our world and beliefs, then democrats and egalitarians ought to construct a defense of democracy and equality that does not depend on such weak reeds such as the theory of objective truth. In short, Farber and Sherry seem to engage in what Leo Strauss called the *reductio ad Hitlerum*—the

fallacy that an argument is sufficiently refuted if it was made by, or might benefit, Hitler.

In any case, even as a consequentialist argument, Farber's and Sherry's case for "truth" is underwhelming for two reasons. First, there is no real evidence that those who believe in radical multicultural theories of truth and meaning inevitably or even usually turn against constitutional democracy. As Farber and Sherry note in passing, (p. 20-21) radical multiculturalist scholars tend to favor enforcement of conventional constitutional rights: critical race scholars objected to Critical Legal Studies precisely because CLS "trashed" conventional constitutional rights that might protect racial minorities from racist governments. In other words, radical multiculturalists seem perfectly capable of simultaneously endorsing their strange relativism rooted in the epigoni of Foucault and Derrida and also supporting conventional democratic and constitutional norms.

Second, Farber and Sherry present only a weak and unconvincing case that the concept of "objective truth" promotes democracy. Part of the trouble is that Farber and Sherry have an impoverished notion of what it means for statements to be "objectively true" (meaning, one supposes, non-transitory, reliable, or persuasive). They seem to define "objective truth" to mean truth as established through some sort of "scientific method." According to *Beyond All Reason*, "the scientific method" is good for democracy because "empirical experimentation designed to approach objective truth" promotes a skeptical attitude towards "institutional authority": "[i]n science as in democracy, what matters is not who says it but whether it is right. We are all free to reject another's beliefs, and no dogma is too sacred to challenge." (p. 107)

Why is such a destruction of institutional authority good for democracy, which, after all, presumably rests on the authority of democratic institutions? With unintentional irony, Farber and Sherry support the democratic credentials of scientific skepticism about authority only by citing authorities—namely, a paragraph of statements by John Dewey and another paragraph of quotes from a law professor, William Marshall. But, despite the distinguished citations, this encomium to scientific skepticism as the best promoter of democracy seems positively perverse. After all, if skepticism is the cardinal virtue of democracy, then one would think that radical multiculturalism would be even more democratic than the scientific method, because radical multiculturalism is even more skeptical about claims of truth and merit.

If one really wants citizens with open minds “free to reject one another’s beliefs” (including presumably beliefs favoring democracy), then the radical skepticism of Foucault and Derrida might be just the thing we need to perfect democracy.

Of course, Farber and Sherry might respond that they support a happy medium—not the post-modern “nihilistic” skepticism of the radical multiculturalists but rather the moderate skepticism of the scientific method. They might argue that, while citizens should be skeptical about the claims of liars and tyrants, they should not be senselessly skeptical about democracy and the truth. But this argument surely underestimates the corrosive tendency of the “scientific method.” One might argue in opposition that modern scientific rationality, at least as it is widely understood by social scientists since Max Weber,⁶ actually undermines democratic values—indeed, all values—by maintaining that statements about values are either *unjustifiable* or at least *less justifiable* than statements about facts. To the extent that democracy relies on *values*—say, the value of human equality, self-rule, and government through the consent of the governed—positivist science would seem to undermine rather than strengthen such values by relegating them to the status of mere preferences incapable of principled justification. As Steven Smith has argued in a recent book, it is not obvious whether modern democratic constitutionalism can survive such value-skepticism.⁷

In sum, it is difficult to say that the relativism purveyed by radical multiculturalists is obviously worse for democracy and equality than the scientific skepticism promoted by Farber and Sherry. Since both Farber and Sherry and most radical multiculturalists endorse constitutional democracy, it is hard to believe that the fate of democracy hangs in the balance of their dispute. This is not to say that Farber and Sherry have not usefully collected evidence that radical multiculturalist scholars frequently engage in shrill, dogmatic scholarship rife with baffling narra-

6. For Weber’s statement and justification of the fact-value distinction, see Max Weber, *The Methodology of the Social Sciences* (Edward A. Shils & Henry A. Finch, eds. and trans., The Free Press, 1949).

7. Steven D. Smith, *The Constitution and the Pride of Reason* (Oxford U. Press, 1998). For a cogent description of how positivist science might threaten democratic liberalism, see G. K. Chesterton, *The Poetic Quality in Liberalism*, 5 *The Independent Review* 53 (Feb.-Apr. 1905). As Chesterton notes, “Science, properly speaking, knows nothing, for instance, of ‘the Rights of Man’ ideal. Pure science does not admit the existence of the Rights of Man. Pure science, indeed, does not admit the existence of Man at all. ‘Man’ is only the gross name we give to a certain patch in the tapestry of evolution, which shades away into other things by nameless gradations.” *Id.* at 61.

tives, obsessions with psychological “authenticity,” and witch hunts for traitors to the canonical racial, sexual, and gender groups. *Beyond All Reason* provides an honest catalogue of some serious intellectual breakdowns. At an intuitive level, candid readers can sense that something is radically amiss with radical multicultural scholarship simply by reading the multicultural material quoted in *Beyond All Reason*. But, beyond such common-sense intuitions, Farber and Sherry provide no arguments against radical multiculturalism’s follies that would persuade anyone who is remotely inclined to take the multiculturalists seriously.

III

Farber and Sherry might rightly respond that my objections to their methodology are pointless unless I can come up with a better way to address the arguments of radical multiculturalist theories of truth and merit. If Farber and Sherry are correct that any debate about such matters would be fruitless, then it is merely churlish to find fault with their approach.

But I believe that Farber and Sherry give up too easily. Both they and radical multiculturalists ignore a rich literature from the philosophy of mind and language indicating that the foundational premises of radical multiculturalism are deeply confused. Moreover, these arguments against relativism have a special virtue: rather than contesting the claim that our concepts are “socially constructed,” these arguments suggest how the very fact of “social construction” makes cultural relativism incoherent. But to explain this point adequately, one needs to say a bit more about “social construction” and how it might preclude the sort of relativism urged by multiculturalism. In what follows, I will sketch a crude picture of how several philosophers think about language. This picture necessarily distorts this philosophical thinking, the essence of which is that concepts cannot be captured in formulae or pat summaries. But my hope is that such distortion will point the way toward a cure for an even cruder distortion prevalent in radical multicultural scholarship.

It has been a commonplace since at least the publication of Wittgenstein’s *Philosophical Investigations* to note that the application of our concepts cannot be explained by formulae or “assertibility conditions” contained in a single language user’s brain. Rather, the application of concepts depends on what Wittgenstein called a “form of life”—meaning the practices,

habits, interests, values, beliefs, attitudes, points of salience, etc., of a community of language users. In this sense, contrary to Farber's and Sherry's assertion, one can say that *all* of our terms—not only terms referring to social institutions, but also logical rules, natural kinds like “water” and “gold,” proper names like “Mount Everest”—are “socially constructed”: they are intelligible only when one takes for granted a myriad of social practices and background assumptions. But, to avoid easy platitudes about “language games,” “forms of life,” “meaning as use,” and so forth, all of which can so easily be a substitute for thinking, it is useful to rehearse the arguments, familiar though they might be. After I explain how language might depend on our social practices, I will then suggest that this very dependence precludes the sort of relativism that radical multiculturalists want to defend.

Consider, first, why learning language might seem mysterious. One might think that this is a simple matter: one could learn the definition of a word by seeing someone skilled at a language point at a thing—say, Mount Everest—and utter some sound from the language—say, “Mount Everest.” This “ostensive definition”—pointing—would inform one that the sound referred to the thing. Having seen the word applied to the thing, I can now properly apply “Mount Everest” to the thing by making statements such as “Mount Everest has snow at its peak.”

But here is the mystery: how can I know that I am using the name “Mount Everest” properly—that I am following the rule for the word's use that was laid out by the definer when she pointed her finger at Mount Everest? The answer is not self-evident. One has to interpret the pointing gesture to extract the rule from it. Was the definer pointing at a particular mountain, the entire Himalayan range, the planet earth? Or maybe some combination of these items with the time of day, temperature, season, and so forth? Or perhaps the gesture was intended to denote something *behind* the speaker or *above* her: it is not self-evident that extending an index finger means that one wishes to draw listeners' attention to items in the trajectory of the finger's tip. One might try to examine all the cases in which the pointer used the term “Mount Everest” and pointed her finger to see what they all had in common. But, as W.V.O. Quine famously explained, one could interpret every sentence in which “Mount Everest” is uttered to refer to everything in the universe *except*

Mount Everest and produce a logically consistent set of sentences.⁸

In short, it seems mysterious how one could acquire the definition of a word from finger-pointing alone. One can reproduce the same mystery if one tries to explain how we use words by arguing that we carry a definition of the word's proper uses in our heads—a list of “truth conditions” or “assertibility conditions” that tell us when to utter the words. Under this view, one might attempt to explain the mastery of a word like “Mount Everest” by a set of criteria that one carries with one in one's memory—say, “the mountain climbed by Sir Edmund Hilary in 1953” or “the tallest mountain in the world.” When one wishes to use the word in a particular situation, one first consults the list to see if the use is appropriate. This picture of language, however, will fail for the same reason that the simple picture of ostensive definition fails. The list of criteria, after all, would seem to require interpretation just as much as the world of which I wish to speak. If I need a list of criteria in order to choose the right words with which to talk about the world, then why do I not also need instructions in order to select the right list of criteria? Then I face a dilemma: if I need such instructions, then there is an obvious prospect of an infinite regress. On the other hand, if the list of criteria is self-explanatory, then why cannot the world also be self-explanatory? The list is either superfluous or inadequate.

And yet there is no use denying the obvious: we seem to speak to each other. The point of the *via negativa* is not to establish solipsism but rather to show that “[i]nterpretations by themselves do not determine meaning” because the interpretation “hangs in the air along with what it interprets, and cannot give it any support.”⁹ The meaning of words does not come packaged in a neat list of assertibility conditions or paragraphs from a dictionary or any other abstract formula. Then where does it come from? Wittgenstein¹⁰ famously tells us that meaning

8. See W. V. Quine, *Pursuit of Truth* (Harvard U. Press, 1990).

9. Ludwig Wittgenstein, *Philosophical Investigations* § 198 (G.E.M. Anscombe, trans., Macmillan Company, 3d ed. 1958).

10. There is a cottage industry of interpreting Wittgenstein's delphic writings. I am neither qualified nor inclined to attempt any contribution to this industry's output: the interpretation offered here is (or, at least, is intended to be) substantially identical to the view of Wittgenstein's writings offered by Hilary Putnam and Jonathan Lear. See Hilary Putnam, *Pragmatism: An Open Question* 27-56 (Blackwell, 1995); Hilary Putnam, *Words and Life* 264-77 (James Conant ed., Harvard U. Press, 1995); Hilary Putnam, Review of The Concept of a Person, in 2 *Mind, Language and Reality: Philosophical Papers* 132-38 (Cambridge U. Press, 1975); Jonathan Lear, *Transcendental Anthropology in*

is rooted in our “form of life”¹¹—our whole culture, social practices, customs, desires, values, beliefs, interests, points of salience, institutions, etc. These interests—“the fixed point of real need”—and not lists of assertibility conditions, truth conditions, or any other relatively circumscribed set of linguistic artifacts that breathes life into our words. Moreover, such interests need not be present in our head when we use a word: it is enough that they are evident in the acts and customs of language users. If we are initiated into the proper use of the language by the community, then we can properly apply a concept even when we are thinking about something else entirely. Thus, we “blindly”¹² apply our concepts or see the finger point at Mount Everest, because, given the social meaning of actions in the context of our form of life, Mount Everest *is* the salient item and the direction of the finger *ought* to go from wrist to finger-tip, and that’s that. No further reason can or need be given: we “have reached bed-rock, and [our] spade is turned.”¹³

How might this notion of a “form of life” preclude the relativism defended by radical multiculturalists? One might initially think, to the contrary, that such a view of language as dependent on values, interests, and concerns would actually make relativism even easier to accept. After all, one might argue that, because African-American scholars and white scholars have different values, concerns, and interests, they also have mutually unintelligible languages with mutually untranslatable concepts of truth, merit, and so forth. In other words, one might think that different persons could have different forms of life, differences that would suggest “incommensurable” (meaning non-translatable) conceptual schemes. This seems to be the notion of relativism that radical multicultural scholars want to defend. Why is not such a notion completely compatible with Wittgenstein’s theory of language?

The problem with such multicultural logic is that the very premise that one’s language depends for its meaning on one’s form of life—one’s usages, practice, concerns, and so forth—indicates that no one can intelligibly refer to concepts outside their “form of life.” The reason is rooted in the theory of

Subject, Thought, and Context 267-98 (Philip Pettit and John McDowell eds., Clarendon Press, 1986).

11. Wittgenstein at § 241 (cited in note 9).

12. Wittgenstein at § 219 (cited in note 9) (“When I obey a rule, I do not choose. I obey the rule *blindly*”) (emphasis in original).

13. *Id.* at § 217.

meaning outlined above. None of our concepts have any coherent application when separated from the social practices that help constitute and breathe life into such concepts. It follows that no one can sensibly use their concepts such as “language” or “meaning” or “mind” to refer to some notion of language, meaning, or mind outside of that form of life, for such concepts would necessarily be empty sounds, terms devoid of real use in the speaker’s language. As Wittgenstein notes, “[t]he common behaviour of mankind is the system of reference by means of which we interpret an unknown language.”¹⁴ Therefore, if some alleged word were to be used in ways that bore no relationship to such “common behavior of mankind,” we could not recognize it as language. One cannot tear concepts like “language” and “meaning” out of the context of familiar concerns and interests that give them life by pretending that we have some abstract idea of “language” that can be separated from the familiar uses that we make of such words: “[i]f the mental item floats free of the use we make of the expression, then it floats free of the meaning as well.”¹⁵

To see how the dependence of words on social practices limits the possibility of using words to refer to practices that are radically distinct from our own, consider an analogy between language and the game of baseball. No one doubts that the rules of baseball are “socially constructed” in the sense that their content is rooted in our society’s interests, beliefs, practices, values, etc. But it does not follow that the rules could be changed in any way, no matter how drastic, and still remain intelligible as a game.¹⁶ For instance, one could probably not imagine the game being altered so that the object was to *avoid* hitting the ball with the bat. Any actions that could plausibly stand as evidence for such a game (say, batters who never even appeared to care about hitting the ball and pitchers who never apparently wished to pitch a strike) would be even more plausible evidence that the players simply were not playing any intelligible game at all—that they were simply goofing off in the sandlot without having the object of winning the game by missing the ball. In other words, because one could not attribute any of the “players’” actions to any familiar set of concerns and interests, one would not

14. Id. at § 206.

15. Lear, *Transcendental Anthropology* at 274 (cited in note 10).

16. For an account of the different senses in which one might use the term “social construction,” see Sally Haslanger, *Ontology and Social Construction*, 23 *Philosophical Topics* 95 (Fall 1995). Here, I use the term “social construction” in a sense roughly similar to what Haslanger calls “strong pragmatic construction.” Id. at 105-108.

be justified in attributing to them the motive of playing a game with the real purpose of missing the ball.

Applying these considerations to radical multiculturalist claims, it becomes apparent that the dependence of our words on our practices precludes the sort of conceptual relativism that radical multiculturalists want to defend. Radical multiculturalists want to argue that one can intelligibly refer to concepts that are coherent in one social group's language yet inaccessible to another group. So, for instance, they argue that there can be a concept of "merit" or "truth" that is intelligible to, say, African-Americans but that is inaccessible to white, male scholars. But the burden of Wittgenstein's work is to show that this talk of radically incommensurable schemes—that is, untranslatable languages—is meaningless and incoherent. No white male scholar is justified in talking about concepts of merit that can in principle play no role in his form of life, because white, male scholars (like everyone else) can use words only to the extent that such words are rooted in his everyday practices, assumptions, beliefs about the world, and so forth. To talk of other concepts that are inaccessible to oneself yet meaningful is to presume that one can somehow travel outside one's form of life, viewing it as it were from the exterior, and use words like "concept," "language," "merit," "truth," and so forth without reference to the myriad of assumptions that make one's words meaningful. But this is an illusion born of the notion that words gain their meaning from abstract dictionary definitions that one carries around in one's head rather than the unspoken and unspeakable social practices that determine the proper use of words.

Therefore, when confronted with claims that other persons have access to concepts of truth or merit or logic that are in principle untranslatable into one's own language or inaccessible to oneself, the properly humble assumption is to assume that the claimant is speaking gibberish. The reason is simply that one must honestly confess one's own limits. Such claims must necessarily be gibberish, because they can by hypothesis play no role in one's own form of life and practices. The very premise of "social construction" requires one to confess that one's own life and practices are all that one has.

This view that talk of radically incommensurable schemes is unintelligible is not simply an inference from the writings of Wittgenstein. It is also the view of some of the most influential philosophy of language in the United States today. Philosophers like Donald Davidson and Hilary Putnam disagree on many im-

portant points,¹⁷ but they agree that the notion of radically incommensurable conceptual schemes is precluded by the dependence of our language on our form of life. For instance, Davidson has made essentially this argument against the notion of incommensurable conceptual schemes in his essay, *On the Very Idea of a Conceptual Scheme*. The central insight of Davidson's essay is that, if a language is in principle untranslatable into our own language, then we would cease to be able to recognize it as a language at all: "if all we know is what sentences a speaker holds true, and we cannot assume that his language is our own, then we cannot take even a first step towards interpretation without knowing or assuming a great deal about the speaker's beliefs."¹⁸ If we have evidence that the speakers' beliefs depart from our own in fundamental ways, making it impossible for us to appreciate or translate those beliefs, then this is even better evidence that the alleged speaker is no such thing at all—that the alleged words really are idle sounds, akin to the illusory "baseball" game. This is not because we imperiously impose our notions of meaning on other cultures but because we humbly cannot extend our own words "language," "meaning," and "truth" into areas where the familiar social practices and assumptions that make them meaningful do not apply.

One might protest that this view of language cannot be correct, for it seems to eliminate the possibility of principled and intelligible disagreement among persons—an absurdity that would, indeed, condemn the theory. But the theory has no such consequence. Far from precluding disagreement, it makes such disagreement possible. Disagreement, after all, is possible only if speakers share a world about which they can disagree. As Davidson points out, the possibility of meaningful disagreement "depends entirely on a foundation—*some* foundation—in agreement. The agreement may take the form of widespread sharing of sentences held true by speakers of 'the same language', or agreement in the large mediated by a theory of truth

17. See Putnam, *Words and Life* at 64-68 (cited in note 10) (explaining what Putnam regards as errors in Davidson's account of language); Donald Davidson, *Belief and the Basis of Meaning in Inquiries into Truth and Interpretation* 141, 143 (Clarendon Press, 1984) (taking issue with Wittgenstein's notion that linguistic meanings ought to be explained on the basis of "non-linguistic intentions, uses, purposes, functions, and the like" on the grounds that such an account of language would eliminate "theorizing" about language). For a discussion of how Wittgenstein's account does not preclude reflection about one's linguistic practices, see Lear, *Transcendental Anthropology* at 293-98 (cited in note 10).

18. Donald Davidson, *On the Very Idea of a Conceptual Scheme*, in *Inquiries into Truth and Interpretation* 184, 196 (cited in note 17).

contrived by an interpreter for speakers of another language.”¹⁹ But widespread agreement must exist for disagreement to be possible.

So, for instance, suppose that I am watching a football game with someone who exclaims, “Look at that player! He is off-sides!” If it is obvious to me that the player is not off-sides, then I have two choices available to me. I can assume that my companion understands the use of the term “off-sides” in football and has simply made a mistake of fact. Or, if it seems that she has as good a view of the field as myself, then I can assume that she made no mistake of fact but simply does not understand the terminology of football and misused the term “off-sides” to refer to some other, true fact about the player’s observed action—say, “clipping” or “holding” or some other violation of the conventional football rules. But one option is foreclosed to me: I cannot say, “While everything in my normal practices, usage in football, the context of your statement, and habits of observation indicate that this player is not ‘off-sides’ according to my concept of ‘off-sides,’ it is possible that the player is properly described as being ‘off-sides’ according to some other notion of ‘off-sides’ that cannot be translated into any words used in my language.” For me to talk about concepts that are radically untranslatable in this sense is not merely to talk gibberish (for how can I simultaneously admit that the word plays no role in my language and yet use the word?) but also to make any meaningful disagreement with my companion impossible. I must simply nod and say nothing.

Put another way, disagreement about matters of fact and language has a place within our form of life, provided that the disagreement is sufficiently narrow, occurring against a background of larger agreements. As one removes more of the aspects of common culture so that the discussion becomes more remote from one’s form of life, meaningful disagreement disappears, to be replaced by academic prattle without any real consequences for anyone’s actions or beliefs. Many of the radical multicultural statements quoted in *Beyond All Reason* have this characteristic. They must be written off as meaningless rather than incorrect. For instance, when Gary Peller denies that “there is a difference between rational, objective representation and interested, biased interpretation,” (p. 28) (citation omitted) the proper response is to hand him a reliable English dictionary.

19. Id. at 196-97.

If he insists in response that he is using the terms “rational,” “objective,” etc., in a sense different from the ordinary usage, then we might ask him to provide an account of his usage in terms of our “form of life”—that is, offer a thicker account of his claim in conventional English. But if he insists that such translation is impossible and refuses to give an intelligible account of the statement that is false in ordinary English, then disagreement is at an end: we must view the statement as meaningless gibberish because it is “useless” in Wittgenstein’s sense of the term, having no real consequences for our lives or practices. It is a wheel spinning apart from the machine.²⁰

IV

Farber and Sherry are intuitively aware that such inflated multicultural rhetoric precludes reasoned debate. This is their complaint in chapter 4. But they ignore the voluminous philosophical literature that analyzes such claims of radical incommensurability, and they provide no careful account of what it means for a sentence to be “socially constructed.” Thus, they inexplicably contend that scientific statements about the natural world are *not* socially constructed, while they seem to panic at the thought that statements about social institutions might be socially constructed—all the time ignoring the possibility that *all* sentences might depend on our social practices and concerns for their meaning and “social construction” in this sense might not be so terrible after all. Instead of analyzing radical multiculturalist claims carefully in chapters 1 and 2, they solemnly treat such claims as setting forth serious propositions and then engage in a sort of intellectual blackmail, threatening us with horrible consequences—anti-Semitism, a breakdown of polite debate, factual inaccuracy, shrill accusations of racial treason and the like—if we dare take such claims seriously.

But this argument about horrible consequences might be exactly backwards. The problem with such abstract rhetoric is not the radical consequences that follow, but rather the *lack* of any meaningful consequences. Such abstractions have no serious role to play in policymaking of race relations. One could

20. Wittgenstein at § 271 (cited in note 9) (“Imagine a person whose memory could not retain *what* the word ‘pain’ meant—so that he constantly called different things by that name—but nevertheless used the word in a way fitting in with the usual symptoms and presuppositions of pain”—in short he uses it as we all do. Here I should like to say: a wheel that can be turned though nothing else moves with it, is not part of the mechanism”) (emphasis in original).

contrast such scholarship with empirical work that makes no pretentious claims about meaning but which documents with distressing detail the degree to which sexism and racism shape American life. Consider, for instance, Nancy Burns' book on the incorporation of suburban municipalities in the 1950s and 1960s, which uses sophisticated statistical inference to show that incorporation decisions of suburban residents and developers are best explained by racially exclusive purposes.²¹ Or consider Ian Ayres' research suggesting that bail decisions and used car sales are heavily influenced by the race or gender of the defendant or buyer.²² The sheer factual specificity of the data and sophistication of statistics in this work makes it far more disturbing—more “critical”—than the now-jejune extrapolations from the writings of Derrida and Foucault that characterize the relativism of radical multicultural scholarship.

The American academic Left, in short, has had an unfortunate relationship with French social theory, a relationship that has drawn it into sterile ground with the false promise of radical critique. One suspects that the attraction of such theory owes a lot to the intellectual's traditional romance with Paris as the historical home of the heroic intellectual-revolutionary—the city of Robespierre, Lamartine orating from the balcony in 1848, the June Days, expatriate revolutionaries on the Left Bank, Sartre in the cafe, and students on the barricades in '68. Is it any wonder that law professors would be attracted by these heady connotations of romantic radicalism suggested by French social theory, ignoring the comparatively stodgy atmosphere of British and American philosophy departments and the dense arguments of Donald Davidson, Saul Kripke, Putnam, Tyler Burge, and other philosophers of language who spend their time analyzing apparently dry matters like Convention-T, the scope of the concept of “arthritis,” and the reference of demonstratives?

Beyond All Reason does little to provide a serious intellectual challenge to French social theory's more bizarre claims. The book is a useful, well-written description of an unpromising trend in the legal academy, but it provides only the weakest of antidotes to cure these maladies. By choosing to rest their arguments exclusively on the dangerous consequence of radical

21. Nancy Burns, *The Formation of American Local Governments: Private Values in Public Institutions* (Oxford U. Press, 1994).

22. Ian Ayres and Joel Woldfogel, *A Market Test for Race Discrimination in Bail Setting*, 46 *Stan L. Rev.* 987 (1994); Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 *Harv. L. Rev.* 817 (1991).

multiculturalism, Farber and Sherry have missed an opportunity to provoke a much-needed debate on the claims of linguistic relativism.