

## Part VI "How it Happened: Race and Gender Issues in U.S. Law"

A view of the rights and status of people on the 'wrong side' of socially constructed differences, as reflected in the legal documents that come from the American past (in the U.S., that is). What is discovered? That "from its inception, the laws and institutions of the United States were designed to create and maintain the privileges of wealthy white males. The discrimination documented in the early parts of this book is no accident. It has a long and deliberate history. Understanding this history is essential if we are to create a more just and democratic society." [371] (Background question to keep in mind as we reflect on these problems: every society has power inequalities, and some of them are not even arguably voluntary or subject to elimination. But much of the challenge being addressed in this book, i.e., the challenge to construct a society that does not disadvantage entire groups, is to face head-on the problem of how to distribute power fairly given that wherever there are power advantages, those *with* the power will attempt to retain their advantage. Upshot: if power inequality is immoral, is a society free of power inequality *possible*? It is not enough to say that there are inequalities in the distribution of power, since some of these inequalities *are* built into natural differences, and furthermore, human social groupings invariably attempt to acquire and sustain advantages as part of their survival strategy. How can we accommodate the healthy survival instincts of human beings in groups without embracing unfair and unjust power advantages of the kind being noted in this chapter, and in the book generally?)

But first, some philosophical questions about history:

History is a selection of what has happened in the past. The selection process can serve many purposes, and has often excluded happenings that were of significance to people of color, to women, and to the ordinary human beings who work in the 'trenches of history'. This seemed to be an unnecessary distortion of history, and so modern historians in the west have attempted to correct it. Howard Zinn is an example. His is a "History from below." Clearly, this corrects some distortions in the way we understand and think about the past.

But we should be aware of some problems for this revolution in historical studies. Like many modern historians, Rothenberg claims that "a more inclusive" portrait of history is a "more accurate account of the past." Here, as she states it, what must be 'included' are different *perspectives* on what happened in the past. But is this a good test for the accuracy of memory? Should the history of Germany between 1932 and 1940 include the perspective of Nazis in order to be "*fair*"? What are the consequences of widening the perspectives we are willing to include in what counts as the 'true facts of history', and how do we institute principles that will prevent the perspectives of those with narrow interests from distorting and undermining the possibility of an objective history?

Further, is an 'objective history' possible? If so, then one must ask whether it is, as Rothenberg asserts, a "bit of fiction" that Columbus discovered America? In what sense is it a fiction, and in what sense is it a fact? Surely there is *some* legitimate sense in which Columbus *did* discover America, since all kinds of well-known consequences followed from his exploration of the 'New World', whether or not it was brand-new to every living human being at the time that it was undertaken, or only brand-new to white Europeans (and Asians, by the way). Rothenberg

implies that this 'fiction' was foisted on unsuspecting children in order "to render Native Americans invisible and thus tacitly excuse or deny the genocide carried out by European settlers." Is this an oversimplification of a complex historical event, or just 'redressing the record of history in the light of differing, but equally accurate perspectives'? Is Rothenberg being fair to white Europeans? Deliberately provocative, or is her view of history here in dead earnest?

I raise this because it is not as simple as it might seem to construct a *true history of the world* simply by including more of the real experiences of actual people as they reported them to others, or recorded them in writing, etc. Real people have, among other things, real reasons for distorting their own experience (this must be true if Rothenberg's claim that white Europeans wrote history to make Native Americans invisible and justify genocide). What must be look for in order to judge the truth of historical claims, from *any* perspective? Should history have objectivity as its goal, or is objectivity something that only the self-interested power brokers who write history in their own interests pursue, and then only as a put-up job meant to disguise the reality, which is that there is no objective history, only that which can be found in the many, and various perspectives of all the participants?

The Grand Vision of the Framers vs. the Reality of American in 1790: pg. 372 marked.

*People v. Hall* 1854: the chinese become legally "marked as inferior"; *Dred Scott v. Sandford* 1856: the black man is not "part of the people of the United States" by U.S. law and custom.

Black men received the vote in 1868, women in 1920.

*Plessy v. Ferguson* 1896: a decision that supports apartheid in America (the "separate but equal" rule is said to pass muster with the 14th Amendment's requirement that there be "equal protection of the laws" for all citizens of the United States).

*Brown v. Board of Ed of Topeka*, 1954: separate but equal is not equal.

## Chapter 1: Indian Tribes: A Continuing Quest for Survival

Indian tribes are separate political units according to the U.S. constitution.

Indian Removal Act of 1830

"Corporate ownership of land" vs. "Communal ownership of land": 'civilized v. savage' property regimes [380]

The 'christianizing' of Native Americans: the Board of Indian Commissioners under President Grant..1869; criminalizing the sun dance, 1892; restricting the jurisdiction of Indian courts to Indians alone (US Supremes, 1883): "....the United States will be governed by such considerations of justice as will control a Christian people in their treatment of an ignorant and dependent race." [381]

The present: Indian self-determination and the end of publicly supported racism against Native Americans.

Chapter 2: An Act for the Better Ordering and Governing of Negroes and Slaves, South Carolina, 1712