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DAN SUBOTNIK, TOXIC DIVERSITY: RACE, GENDER, AND LAW TALK IN AMERICA

*Reviewed by Hannah Abrams**

Toxic Diversity addresses feminist scholarship and critical race theory, particularly in higher education and legal academia. The book's title is deceiving, leading one to believe that the author sees "diversity" as poisonous, but that is not Dan Subotnik's message. He asserts a belief in harmony amongst races, ethnic groups, and genders, with faith in people's ability to accomplish positive results and to engage in respectful behavior. What he sees as lethal to this harmony is the work of these influential critical race and gender theorists. In his view, these "scholars" have turned the dialogue of race and sex relations into a monologue of suffering and righteousness.

From the outset, Subotnik asks whether "contemporary gender and race texts [are] too quick to cast suspicion on everything that white males do and say, while refusing to subject women and minorities to similar scrutiny."¹ This book is his attempt to do so without conveying a message reduced to "Get over it."² Without a

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¹ Dan Subotnik, *Toxic Diversity: Race, Gender, and Law Talk in America* x (2005).

² *Id.* at xiii (discussing the genesis of his writing when Subotnik's bid to teach a course entitled "Racism and American Law" was declined).

thorough, or for that matter any, knowledge of these “scholars” and their work, it is difficult to say whether Subotnik’s inquiry is valid. However, it is possible to provide a glimpse of his reasoning and make comment on his writing style and ability to engage the reader.

Intriguing part, chapter, and subchapter titles invite curiosity and inspection. One wonders what “The Signifying Monkey” or “Smelling the Sewers but Not the Flowers” is. Will “Part II, The Vagina Monologues,” describe Eve Ensler’s hit play? Did Chicken Little really go to law school³ and how did the Signifying Monkey become “The Signifying Honky”?⁴ As a wordsmith, Subotnik has created catchy aphorisms and parodies of well-known quotes to grab the reader’s attention. He displays humor and candor in his choice of language. One cannot resist a chuckle when the author questions whether nations “have an ethical responsibility to feed guerillas in its midst.”⁵ Expressions in subtitles to chapters, such as “Let It Rain, Let It Pour, All We Want Is Color War”⁶ motivate and challenge the reader to continue exploring the text. Similarly, one wants to discover “The Metaphysics of Bums and Booze,”⁷ “The Power of Negative Thinking,”⁸ or “The Tall Tales of Women Teachers.”⁹ The author has used his imagination and creativity to spur further thought while introducing the objects of his analysis. Dan Subotnik has

³ *Id.* at 129.

⁴ *Id.* at 258.

⁵ *Id.* at 170.

⁶ Subotnik, *supra* note 1, at 27.

⁷ *Id.* at 225.

⁸ *Id.* at 87.

⁹ *Id.* at 146.

turned what could have been a dry haranguing counter-complaint into a humorous and interesting treatment of a sensitive subject. His analysis is at times light, yet always enlightening. He calls upon such diverse voices as Jane Austen, Alan Dershowitz, Louis Farrakhan, Martin Luther King Jr., and Chris Rock to point out that gender and race scholars have lost their way and are out of touch with reality.

At the start of *Toxic Diversity*, the author analyzes the use of politically correct speech and thought by examining the consequences of Harvard law students' parody of a murdered feminist professor's work and, no less a controversial matter, the O.J. Simpson trial. Lack of taste exhibited by the Harvard students was deemed equivalent to the crime of rape.¹⁰ "Fifteen Harvard Law professors signed a letter charging that institution . . . with maintaining an environment of 'sexism and misogyny'."¹¹ The author questions how this lampoon of the late woman's work was an attack on women. Describing a voice as a "black voice" caused Johnnie Cochran to burst into paroxysms of protest against such an offensive thought, thus silencing prosecutor Darden's line of inquiry, but did not stop Cochran from attacking a white male detective's use of the n-word.¹² Quoting Alan Dershowitz, the author wonders how "[r]adical feminists can accuse all men of being rapists, and radical African Americans can accuse all whites of being racists without fear of discipline or rebuke."¹³ This is the central question of the book.

¹⁰ *Id.* at 4.

¹¹ Subotnik, *supra* note 1, at 4.

¹² *Id.* at 5-6.

¹³ *Id.* at 8.

Illustrating the preposterous stance of the race theorists, the author describes the works and words of leading critical race theorists. Derrick Bell sees the decision to create a national holiday honoring Reverend Martin Luther King, Jr. not as a victory, but as a pacifier to keep the black man down.¹⁴ “White people have unfairly taken away a stick that he would have had to beat them up with.”¹⁵ Orlando Patterson says with great moral indignation that whites have no right to discuss race while Patricia Williams has said that integration is equivalent to self-erasure.¹⁶ Yet, they both insist that there must be open discussion of race matters. “Pleas for frank . . . interracial dialogue . . . can hardly be taken seriously when, while stressing the benefits of real interracial dialogue with one voice, . . . race theorists dismiss its value with another.”¹⁷ Added to this schizophrenic view is the drive for authenticity and cultural identity, as expressions of self-esteem. Hip-hop is currently the focus of this drive for a “rich and real” black culture. “Glorifying drugs, machismo, guns, and even murder, hip-hop is the authentic culture of opposition.”¹⁸ Denial of mainstream middle-class values does nothing but foster a separatist mentality leading to division and isolation, and thus rejects assimilation into the larger society and further ensures inability to reap the benefits of that association. “[H]owever quickening the prospects of racial and cultural transformation, minorities are surely better off living with,

¹⁴ *Id.* at 103.

¹⁵ *Id.*

¹⁶ Subotnik, *supra* note 1, at 28-29.

¹⁷ *Id.* at 29.

¹⁸ *Id.* at 98.

contributing to, and taking from the America of today than losing themselves in triumphalist fantasies.”¹⁹

Subotnik is no less kind to gender theorists. He asserts that “gender theorists have . . . enthusiastically blamed white men for a legal system that allegedly impairs women’s lives in every way.”²⁰ Specifically, they point to laws surrounding the institution of marriage. “Not only does the law fail to properly recognize women’s household and child-rearing labor during or after marriage, but it also ensures that when the marriage fails, women are not compensated for the lack of skills that prevent them from competing in the marketplace.”²¹ Failure to protect women in the domestic arena extends to the workplace; men are seen to have distinct advantages in both spheres.²² In the gender theorists’ world, men are ultimately to blame.

Although decrying their complaints, Subotnik does credit early feminists’ achievements “in such areas as equitable distribution, insurance coverage for pregnancy, equal pay for equal work, family leave, and sexual harassment.”²³ However, the author also avers that the problems that women face and their resulting frustration might be resolved if women were more like men—women must abandon their traditional relationalism and challenge one another’s thinking and behavior.²⁴

¹⁹ *Id.* at 101.

²⁰ *Id.* at 109.

²¹ Subotnik, *supra* note 1, at 109-10.

²² *Id.* at 111-12.

²³ *Id.* at 112.

²⁴ *Id.* at 125-26.

Subotnik hones in on charges made, in a now well-known law review article authored by Lani Guinier and several other women (the Penn Researchers), of the hostile learning environments prevalent in an Ivy League law school. “Seeing law school as a painful and endless trial for women,” the researchers concluded that male student dominated classroom discussion, failure of instructors to “use gender-neutral language or control other sexist impulses,” resulted in the alienation of and consequent distinctly lower grades of women law students.²⁵ The law school experience was “destructive of women’s identities.”²⁶ One gender scholar went so far as to say that women law school graduates were forced to give up their feelings, personal beliefs, and morals and described them as “maze-bright rats.”²⁷ Further research is nothing more than an extension of the now familiar whining.²⁸ This inconsistency with the author’s personal observations led him to conduct his own survey and study of law students. He found none of the complaints recorded by the Penn Researchers and other feminist authors.

Toxic Diversity hits the nail on the head. Society, led by the gender and race critics, has established a politically correct mode of speech, behavior, and thought when dealing with the topics of race and gender in America. If not within the prescribed mold, one cannot or has not the right to speak. Caucasians cannot address the subject of racism without being considered racist. Men cannot discuss

²⁵ *Id.* at 129-31.

²⁶ Subotnik, *supra* note 1, at 131.

²⁷ *Id.* at 134.

²⁸ *Id.* at 137.

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gender without being considered sexist. Race and gender theorists are still arguing about equality and why it does or does not exist, and principally whose fault it is. Their quest for a culprit—the white male—has engendered a sense of “learned helplessness” and victimization. These academics have so imprisoned themselves in this philosophy that it has subverted the original cause of the feminist and civil rights movements.

Subotnik is not a backlash voice but rather one of calm mediation and invitation to discourse. He endeavors to understand the issues posed by these critical race and gender theorists. He also points out the things these academics do not want to hear. He shows how the lies and myths perpetrated by these critics do nothing to further their cause but everything to harm it, and mostly, how they keep these critics in business. Subotnik points out that laws enacted to aid these groups now have the opposite effect. Affirmative action programs have led to a situation where the goal is solely diversity rather than excellence; past wrongs provide excuses for indefensible behavior; politically correct speech has stultified free expression; punishment for sexual harassment has aggravated tensions between the sexes; and multicultural celebration has led to alienation and division rather than union. Subotnik looks at the scene as it is, not as his race and gender theorists wish it to be.

In sum, women cannot blame their situation on men and blacks cannot blame their plight on whites. They must take responsibility for themselves. First and foremost, the author urges race and gender theorists to stop searching for and bemoaning

differences, relinquish the role of the victim, and find positive avenues for discussion and change. For him, extreme philosophies are harmful and white males do have something to add to the discourse on race and gender. *Toxic Diversity* presents a primer for dialogue in shaping and developing human relations. For those interested in this important work, this book is a valuable guide.