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Book Review of Prejudicial Appearances: The Logic of American Antidiscrimination Law

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Prejudicial Appearances: The Logic of American Antidiscrimination Law. By ROBERT C. POST, *et al.* [Durham, North Carolina: Duke University Press. 2001. 169, (Bibliography) 1 and (Index) 3 pp. Paperback £14.50. ISBN 0-8223-2713-9.]

THIS is a small volume with large ambition. The centrepiece is an argument by a prominent legal academic (Robert C. Post) on how and why to re-conceptualise American anti-discrimination law. His proposal is commented on by four equally august scholars drawn from departments as diverse as African-American studies and philosophy (K. Anthony Appiah), rhetoric and comparative literature (Judith Butler), and law (Thomas C. Grey and Reva B. Siegel, respectively), with Post given a final rejoinder. The complex and thoughtful contributions in this volume provide a welcome addition to the growing discipline examining the intersection of legal doctrine and visual culture, of which the most prominent branch is perhaps that of critical race theory.

Post's essay ("Prejudicial Appearances: The Logic of American Antidiscrimination Law") begins with the claim that the rationale underlying current anti-discrimination law compels the judiciary to formulate remedies that "liberate individuals from the thrall" of socially held stereotypes, when in reality law itself can do no more than "reshape the nature and content" of those conventions (p. 1). According to Post, anti-discrimination provisions are geared towards ameliorating disadvantages that individuals incur when their appearances are associated with inaccurate judgments about their capabilities and moral worth. While disassociation may seem like a laudable goal, wholly diverging personal visible identity from appearance engenders difficulties because the two concepts are linked. Moreover, a legal regime that vitiates their connection for the sake of upholding people's dignity or worth (as an example, through application of "colour blind" policies) is invariably overreaching. As an alternative, Post advocates for an anti-discrimination theory that would acknowledge its true goal as seeking to change those practices underlying undesirable social convention. Doing so requires society to resist the "dominant perspective" that imagines law "as standing in a neutral space outside of history", and to instead "recognise how law functions to embody itself in history" (pp. 39, 41).

Appiah ("Stereotypes and the Shaping of Identity") notes that stereotypes have various manifestations, including statistical, false, and normative ones. Further, accepting Post's sociological understanding of stereotypes as contributing to the formation of personal identity raises concerns that stereotypes will not only facilitate third parties in excluding certain people, but also act as a disincentive for those individuals to invest in themselves. Because Appiah perceives anti-discrimination law as encompassing ideals of autonomy, dignity, and individualism, he suggests that it focus on the question of "what makes two people or two kinds of

people morally alike” for the purpose of understanding equality theory (p. 57).

Adding to the critique of Post’s conception of stereotypes, Butler (“Appearances Aside”) takes issue with the idea of personal identity expressed through stereotype as being either static or controlling. Butler argues, instead, that an individual can have several personal identities, depending on changing social circumstances, and that each of these selves can contribute to an overall self-identity. Hence, she maintains that law should not endorse social conventions that define and fix personhood.

Grey’s essay (“Cover Blindness”) locates Post’s thesis within “the conventional landscape of American civil rights history, theory, and doctrine” (p. 87). He observes that the first wave of anti-discrimination was directed at overt exclusions based on personal identity characteristics, such as race-based restrictions. By contrast, contemporary civil rights law requires “deliberate strategic intervention into social life” (p. 89). As an instrumentality of change, Grey asserts that law must always be understood contextually as a mechanism that “reinterprets and often redirects the force of the social impulses that drive its content” (95–96).

Modelling her perspective on anti-discrimination law from a socio-historical perspective, Siegel (“Discrimination in the Eyes of the Law: How ‘Color Blindness’ Discourse Disrupts and Rationalises Social Stratification”) focusses on social stratification, a concept that is absent from Post’s essay. Believing that this notion must be understood if any sense is to be made of anti-discrimination law’s central trope of identity-blindness, Siegel provides a detailed account of how social stratification among groups is a result of “the interaction of social structure and social meaning” (p. 100). Next, her essay describes how legal discourse on colour blindness can either diminish or reinforce social stratification, depending on the time and sociohistorical context of the dialogue.

In the concluding section, Post (“Response to Commentators”) reiterates several of his earlier assertions, including the motivating aspiration of analysing anti-discrimination law from an external, sociological, perspective that would reveal how that area of jurisprudence “actually functions” (p. 160).

Providing some astute and interesting insights into anti-discrimination law, *Prejudicial Appearances* is a brief but illuminating invitation to further explore the ways in which individuals are treated because of their appearance, as well as what law can, and possibly should, do to counteract those effects. If the book has a failing it is in its scope. There are many personal identity characteristics that need not be related to readily discernable characteristics, homosexuality and mental disability to name but two examples, that also subject individuals to unequal treatment

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