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The Strawhorsemen of the Apocalypse: Relativism and the Historian as Expert Witness

by
REUEL E. SCHILLER*

What happens, Daniel Farber asks in his fascinating contribution to this symposium, when expert witnesses belong to a discipline that is no longer committed to objective notions of the truth? In particular, how do we preserve the integrity of the trial process when historians who are called upon to testify about historical facts accept a relativist epistemology that allows them to manipulate the truth to suit their ideological needs? According to Farber, historical relativism, post-modernism, multiculturalism, and critical legal studies have emerged as the four horsemen of the apocalypse, forming an unholy alliance that threatens to disrupt truth-finding in the judicial system.

The problem with Farber's paper is that these are not the four horsemen of the apocalypse but rather the four strawhorsemen. Reports of objectivity's demise, at least within the historical profession, are premature. Furthermore, the nature of the trial process prevents the abuses that Farber fears. By focusing his attack on these strawhorsemen, Farber ignores a more serious threat to the integrity of the past: falsehoods, myths, and ideologically-biased narratives masquerading as truths under the banner of objectivity. These are more corrosive of the political and legal discourse than the intellectually opaque theories about the subjective nature of truth that trouble Farber.

Since Peter Novick's *That Noble Dream* was published in 1988, there has been much talk among historians about how our profession

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is awash in subjectivist history. Yet, finding a genuinely “subjectivist historian” is rather like searching for a unicorn. After seven years in graduate school and at least as many attending history conferences, I have yet to meet a historian who claimed that his scholarship was nothing more than fiction or that his “version” of the events he studied was not an attempt to ascertain the truth. The historical profession is, at its core, profoundly committed to a search for truth about the past. Consider, for example, the story of David Abraham that Farber briefly mentions.¹ Abraham was an untenured history professor who was driven out of the profession by two eminent historians. Their indictment against Abraham was that his book about the relationship between big business and the rise of National Socialism in Germany contained numerous factual errors. Though Abraham corrected his errors and demonstrated that they did not affect the validity of his thesis, his detractors saw his sloppy archival research as symptomatic of the willingness of leftist historians to put political ideology above historical truths in their research. Even assuming this was what Abraham intended to do, which I do not,² the story does not indicate that believers in objective historical truth are under siege in the profession. Quite the contrary. Abraham’s detractors won out. “Objectivity” was a potent weapon in their successful campaign to drum him out of the profession.

Consider also the profession’s response to Simon Schama’s book *Dead Certainties*. Schama decided that he would write a work of fiction based on historical research he had done. He wished to speculate on the results of his research without the usual restrictions regarding proof and evidence imposed on historical monographs. Despite his disclaimers,³ the profession reacted to the book as if it were poison. As Schama put it, he was “held guilty of committing a fiction.”⁴ *Dead Certainties*, its detractors claimed, undermined objec-

1. See Daniel A. Farber, *Adjudication of Things Past: Reflections on History as Evidence*, 49 HASTINGS L.J. 1009, 1026 (1998).

2. There is no evidence that Abraham was committed to any sort of relativist epistemology or that he purposely misreported facts in order to support an ideological agenda. Indeed, many have accused his detractors of furthering their own ideological interests—which seem to have been to rid the profession of Marxist historians—at the expense of historical truths about the fall of the Weimar Republic. See PETER NOVICK, *THAT NOBLE DREAM: THE “OBJECTIVITY QUESTION” AND THE AMERICAN HISTORICAL PROFESSION* 619 n.60 (1988).

3. SIMON SCHAMA, *DEAD CERTAINTIES: (UNWARRANTED SPECULATIONS)* 320 (1991).

4. Gordon Wood, *Novel History*, N.Y. REVIEW OF BOOKS, June 27, 1991, at 12 (re-

tivity, made a farce of genuine scholarship, and weakened the public's faith in historians.⁵ Unlike Abraham, Schama had tenure as well as a reputation that could weather the storm of criticism he received. Abraham's and Schama's experiences hardly indicate that historians are no longer committed to finding historical truths. Indeed, the existence of objective truth seems to be something that a historian can question only at great peril.

Since the profession is committed to the pursuit of truth, where do these accusations of subjectivity come from? Why do Farber and other non-historians, as well as many historians, seem to fear that history departments are soon to be abolished, their faculties incorporated into fiction writing programs? I believe there are four answers to this question.

1. The Success of *That Noble Dream*

In *That Noble Dream*, Novick examines how American historians' beliefs about the existence of historical truths changed from the late nineteenth century to the present. The book is well-written, thoughtfully researched, and powerfully argued. It is also full of delightful academic gossip. This combination of appealing attributes guaranteed it a wide readership among historians. Accordingly, the "objectivity debate" received a very wide airing.⁶ *That Noble Dream* revealed, as does Farber's piece, that there are some scholars in the profession who disparage the idea of searching for historical truths.⁷ This fact does not indicate how influential these ideas are or whether they affect the work of a majority of practicing historians. However, by exposing their existence and discussing their ideas seriously, Novick caused a negative reaction among historians concerned with the reputation of their profession.⁸ Suddenly, an "objectivity crisis" as-

viewing SIMON SCHAMA, *DEAD CERTAINTIES* (1991)).

5. See Wood, *supra* note 4; see also Linda Colley, *Fabricating the Past*, *TIMES LITERARY SUPP.*, June 14, 1991, at 5 (reviewing SIMON SCHAMA, *DEAD CERTAINTIES* (1991)).

6. Novick's discussion of contemporary historians' movement away from objectivist epistemologies is but a small part of his larger study of how American historians have thought about truth since the late nineteenth century. I can only imagine Novick's consternation that the last quarter of his book generated such controversy while the first three quarters went essentially undiscussed.

7. See Novick, *supra* note 2, at 599-605.

8. Colley's review of *DEAD CERTAINTIES* demonstrates a notable fear for the discipline's reputation. See Colley, *supra* note 5.

sumed titanic proportions.

2. The Widespread Recognition that Getting at the Truth is Difficult

While a vast majority of historians view their scholarship as a search for truth, they also recognize that finding the truth can be problematic. Subjectivity must be distinguished from healthy skepticism. Farber quotes Novick: "The notion of objectivity promotes an unreal and misleading distinction between historical accounts 'distorted' by ideological assumptions and history free of these traits."⁹ I'm not sure that this quote indicates an abandonment of objective truth. Rather, it recognizes that the truth can be hard to discern.

Typical graduate training in history has an objective component and a subjective component. The objective component consists of researching and writing a dissertation—searching for a historical truth in a particular area. The subjective component is historiography—reading the works of historians and examining how they have differing, sometimes opposing, interpretations of historical events. Studying historiography also involves examining how the conscious and subconscious biases of historians affect their work. The purpose of this subjective component of graduate education is not to turn graduate students into radical anti-foundationalists. Instead, it teaches skepticism and critical reading skills. It teaches you to be cautious of your own biases and to be suspicious of others'. Uncovering the truth is not impossible, but it is very difficult. Indeed, the debates going on at the trials that Farber recounts are historiographical ones that, because of their stakes, have taken on an acrimony that rarely arises in a seminar room. The existence of these debates, or the fact that each side accuses the other of bias, is not a denial of the existence of objective truth. It is just a dialogue (or screaming match) among historians who are taught to be wary of other people's biases.

3. Bringing in New Voices

While the success of Novick's book and the difficulty of the historian's enterprise are two reasons why people have begun to doubt

9. See Daniel A. Farber, *Adjudication of Things Past: Reflections on History as Evidence*, 49 HASTINGS L.J. 1009, 1025 (1998) (quoting NOVICK, *supra* note 2, at 6).

the profession's commitment to objectivity, alone they are not a sufficient explanation. Both phenomena are too parochial in nature to affect the public's perception of what historians do. Instead, the public's image of historians has been more dramatically affected by changes in the types of history that scholars are interested in and the political consequences of these changes. Starting in the early 1960s, historians began bringing new voices into historical narratives.¹⁰ The existing narratives were devoid of poor people, women, African-Americans, and other racial and ethnic minorities. By studying these groups, historians sought to complete these narratives by adding actors to the drama. This trend towards expanding the scope of the historical inquiry was an attempt to produce a more objective historical narrative—a complete history rather than a partial one.

As part of this enterprise, many historians sought to understand the people they were studying by examining how they perceived events. Thus, the history they wrote was perspectival in that it explored how certain groups interpreted the world around them: what slaves thought about being enslaved, what immigrants thought about the process of immigration and assimilation, what southern whites thought about the trial of the Scottsboro Boys.¹¹ This was getting at the truth, but a different truth than more traditional history sought out. These historians wished to learn the truth about people's beliefs and impressions, not the truth about some external event. They wished to know, for example, whether southern whites thought the Scottsboro Boys were guilty, not whether they actually were.

Certain segments of the public reacted negatively to this new type of historical inquiry. By bringing in new voices, it undermined many of America's most cherished myths. Was America a melting pot or a place where immigrants were coercively assimilated? What was a Native American to make of Manifest Destiny? Were the railroads miracles of modern technology that brought the United States limitless prosperity or dangerous machines that mangled human limbs and disrupted traditional economic relationships? Historians who explore these questions are engaged in the process of truth seeking. Yet they are accused of revisionism, political correctness,

10. This story has been told many times, most recently by Joyce Appleby in her presidential address to the American Historical Association. See Joyce Appleby, *The Power of History*, 103 *AMER. HIST. REV.* 1, 4-5 (1998).

11. See EUGENE D. GENOVESE, *ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE* (1974); Gary Gerstle, *Liberty, Coercion, and the Making of Americans*, 84 *J. AM. HIST.* 524 (1997); JAMES E. GOODMAN, *STORIES OF SCOTTSBORO* (1995).

and subjectivity.¹² The sad fact is that many Americans have no desire to learn a historical truth if it contradicts a preconception that they hold about the past.¹³ Accordingly, they berate historians who seek out these uncomfortable truths and explore the perceptions of people who have existed outside of the mainstream of American history. The tactic they frequently use is an accusation of subjectivity. Historians are not seeking the truth but are instead out to hide it, driven by an ideological desire to write “victims’ history” and disparage our nation. In fact, the truth is often hard to take, and the profession has paid the price, in accusations of subjectivity, for aggressively seeking it.

12. See GARY B. NASH, CHARLOTTE CRABTREE, AND ROSS E. DUNN, *HISTORY ON TRIAL: CULTURE WARS AND THE TEACHING OF THE PAST* (1997). These accusations are part of the huge literature about “political correctness” in the American academy. The *grandpere* of this genre is Dinesh D’Souza’s quasi-factual *ILLIBERAL EDUCATION: THE POLITICS OF RACE AND SEX ON CAMPUS* (1991). For critiques noting D’Souza’s tendency to play fast and loose with facts see JOHN K. WILSON, *THE MYTH OF POLITICAL CORRECTNESS: THE CONSERVATIVE ATTACK ON HIGHER EDUCATION* 69-72 (1995); John Weiner, *What Happened at Harvard*, in *BEYOND P.C. TOWARDS A POLITICS OF UNDERSTANDING* 97-106 (Patricia Auferheide ed., 1992). Even a sympathetic reviewer of *ILLIBERAL EDUCATION* admitted that “the book turned out to contain some serious and irresponsible factual errors.” C. Vann Woodward, *Freedom and the Universities*, in *BEYOND P.C. TOWARDS A POLITICS OF UNDERSTANDING*, *supra*, at 27. D’Souza attacks multi-culturalism in *ILLIBERAL EDUCATION*, *supra*, at 59-93. For other examples of accusations of political correctness, subjectivity, and revisionism aimed at those who would expand the historical or literary canon, see MARTIN ANDERSON, *IMPOSTORS IN THE TEMPLE* 145-57 (1992); ROGER KIMBALL, *TENURED RADICALS: HOW POLITICS HAS CORRUPTED HIGHER EDUCATION* 27-33, 63-75, 166-89 (1990); ALLAN BLOOM, *THE CLOSING OF THE AMERICAN MIND* 356-82 (particularly 366 n.17) (1987); Thomas Short, “Diversity” and “Breaking the Disciplines”: *Two New Assaults on the Curriculum*, in *ARE YOU POLITICALLY CORRECT? DEBATING AMERICA’S CULTURAL STANDARDS* 91-117 (Francis J. Beckwith & Michael E. Bauman eds., 1993) [hereinafter *POLITICALLY CORRECT*]; Irving Howe, *The Value of the Canon*, in *POLITICALLY CORRECT*, *supra*, at 133, 133-46; Allan Bloom, *Western Civ--and Me: An Address at Harvard University*, in *POLITICALLY CORRECT*, *supra*, at 147, 147-61; John R. Searle, *Is There a Crisis in American Higher Education?*, in *OUR COUNTRY, OUR CULTURE: THE POLITICS OF POLITICAL CORRECTNESS* (Edith Kurzweil & William Phillips eds., 1994) at 227, 227-43; David Sidorsky, *Multiculturalism and the University*, in *OUR COUNTRY, OUR CULTURE*, *supra*, at 244, 244-57.

13. The controversy surrounding the Enola Gay exhibition at the Smithsonian is a good, if profoundly depressing, example of this phenomena. See *History and the Public: What Can We Handle? A Round Table About History After the Enola Gay Controversy*, 82 J. AM. HIST. 1029-1144 (1995).

4. Historians in the Courtroom

The final factor that has contributed to this image of a subjectivist historical profession was a series of encounters between the legal system and historians. Indeed, it is these incidents—the Sears sex discrimination case, the Webster brief, the Colorado gay rights case—that seem to give Farber the most concern. If historians are not committed to seeking objective truths, then how can they claim to be experts? Farber is worried that they have become nothing more than advocates who use their authority as historians to hide the fact that they are willing to make up whatever facts they need because they do not believe that an objective truth exists.

Farber's concern is misplaced. Surely "Law Office History" or, as one historian has eloquently put it, "the illicit relationship between Clio and the Court,"¹⁴ existed long before the rise of relativist epistemologies. As long as advocates exist, so will warped history. Consider Justice Taney's opinion in *Dred Scott*¹⁵ or Justice Black's dissent in *Adamson v. California*.¹⁶ Each is an example of the misuse of history—or perhaps I should say the use of fake history—to justify a particular outcome. Yet nobody would accuse Taney or Black of being epistemological relativists.

In addition to this age-old temptation to mold history to suit the needs of litigants, the nature of the historian's search for truth—even when such a search is completely bona fide—often does not mesh well with the needs of the legal profession. When Alice Kessler-Harris wrote about her experience testifying for the plaintiffs in the Sears trial, she did not write about the need to shape her testimony to the needs of the EEOC.¹⁷ Instead, she wrote about her intense frustration with a trial process that did not allow her to explain the complexities of the evolution of gendered conceptions of work.¹⁸ A trial often demands more than a historian can offer. It asks for definitive answers when a historian may prefer to give cautious, conditional an-

14. Alfred H. Kelly, *Clio and the Court: An Illicit Love Affair*, 1965 SUP. CT. REV. 119.

15. *Scott v. Sandford*, 60 U.S. 393 (1857).

16. *Adamson v. California*, 332 U.S. 46, 69-92 (1947) (Black, J., dissenting).

17. As Kessler-Harris pointed out, she would not have been asked to testify if her findings were incompatible with the position of the plaintiffs. Alice Kessler-Harris, *Equal Employment Opportunity Commission v. Sears, Roebuck and Company: A Personal Account*, 35 RADICAL HIST. REV. 57, 63 (1986).

18. *See id.* at 72-75.

swers. The law needs black and white, while historians often deal in shades of gray. The currents of historical causation are multifaceted, profoundly complicated, and often contradictory. Yet a trial has no time for these subtleties. Indeed, discussing them leaves oneself open to attack on cross-examination. As Kessler-Harris wrote:

Testimony had a double-edged quality. In this case, once given and written, it had a life of its own, at the mercy of cross-examining lawyers, and not subject to qualification. Because it constituted the boundaries within which examination could happen, it had to encompass the totality of my expertise: broad enough to meet the needs of the plaintiff, and yet sufficiently restrained as to offer few loopholes that the defendants could use to undermine it. What sort of claims to truth could be justified by such expertise?¹⁹

Perhaps the problem is not that historians no longer believe in the existence of historical truth, but instead that a trial is not always the best way to discover it.

There is no doubt that historians came out of the trials that Farber recounts looking bad. Furthermore, there is no excuse for the behavior of the historians who seek to silence others who uncover ideologically inconvenient truths.²⁰ Yet, despite inflamed passions on the part of the historians, the lesson I draw from these cases is that the adversarial process is an excellent buffer against those who would abuse historical truths in the interests of their client. Through the use of rival experts and impeaching cross-examination, lawyers put historians' testimony through a crucible that uncovers biases, flawed data, laughable interpretations, and outright deceit. That unicorn-like creature, the relativist historian, who blatantly shapes the facts to suit the needs of his client, may warp young minds in the classroom, but he will be challenged and discredited in the courtroom. While historians debate the merits of Derridian relativism in their ivory tower, the legal process is safe.

Farber ends his paper by stressing the potentially liberating nature of historical inquiry. Objective truth, not historical relativism, is the ally of democracy and the enemy of totalitarianism.²¹ I whole-

19. *Id.* at 74.

20. It seems to me that, contrary to the stories that Farber recounts, it is usually the right that is coercing the left into silence. See JOHN K. WILSON, *THE MYTH OF POLITICAL CORRECTNESS* 31-63 (1995); James Boyle, *The P.C. Harangue*, 45 *STAN. L. REV.* 1457-60 (1993). Also, consider the story of David Abraham, *supra* note 2.

21. The association of post-modernism with fascism is a common trope in the writings of those who attack relativist epistemologies. To the extent that post-modern

heartedly agree with Farber. So I was forced to ask myself why portions of his paper irked me so. Ultimately, I am disturbed by the tendency of both liberal and conservative critics to make mountains of relativist fascism from molehills of postmodern leftism. Where is the inquiry about the other side in this so-called "culture war"? Who is John Finnis and why does he seem to show up in a surprising number of legal cases involving historical testimony, always on the same, conservative side? What about Elizabeth Fox-Genovese, another frequent foot soldier in the culture wars, whose lapsed left-wing credentials make her an attractive talking head for those opposed to the "excesses of political correctness"? What about the hundreds of other scholars, funded by the Olin Foundation or the Heritage Foundation, whose scholarship—surprise, surprise—supports a particular, conservative world view?²² Trendy, left-wing relativism makes such an easy target that we seem to have forgotten about the other side.

Farber's article presents the "problem" of instrumentalist scholarship as if it is only a phenomenon of the left. Perhaps the real problem is that only the left attempts to rationalize its assaults on the truth with zany epistemological models, more easily ridiculed than understood. The right undertakes its campaign of misinformation under the banner of objectivity, thereby hiding its biases. These right-wing assaults on historical truths are more potent than those propagated by the left-leaning academics who, quite candidly, most Americans had not heard of until Dinesh D'Sousa and Rush Limbaugh exposed their alleged depredations. Indeed, the right's abuses of the truth are committed by those with a wide audience and a great deal more media savvy, economic support, and political clout than Peter Novick, Hayden White, or Gary Peller. Is it not time we discussed them? Let us not stay trapped in an ivory tower where liberals and leftists attack each other over issues of objectivity while the rest of society listens to a well-financed and uncontested stream of historical half-truths.

thought owes as much to Deweyan pragmatism as it does to Heidegger or Paul De Man this connection is mystifying. See generally RICHARD RORTY, *PHILOSOPHY AND THE MIRROR OF NATURE* (1979); RICHARD RORTY, *THE CONSEQUENCES OF PRAGMATISM* (1982); RICHARD RORTY, *CONTINGENCY, IRONY, AND SOLIDARITY* (1989). This guilt by association is like dismissing modern American poetry as totalitarian because of the importance of Ezra Pound within the canon.

22. See JEAN STEFANIC AND RICHARD DELGADO, *NO MERCY: HOW CONSERVATIVE THINK TANKS AND FOUNDATIONS CHANGED AMERICA'S SOCIAL AGENDA passim* (1996); see also Wilson, *supra* note 20, at 26-30; Boyle, *supra* note 20, at 1460.

