

Hope Tsai

Professor Delaney

LJST-231

24 October 2020

Shaky Theory Against Solid Reality

Movements occur not in an organized classroom, but in an ever-changing and nuanced world. Thus, though they may appear cut and dried, they are often more complex than legal discourse allows. Discussions, then, can miss or even distort the very *essence*, and thus experience, of movements. Consequently, if they are misunderstood, how can the state (which utilizes legal discourse) and movements productively engage? At best, the state solves a non-prioritized or nonexistent issue. At worst, it punishes movements for thoughts and actions that aren't even theirs. In both, it uses time and money for inconsequential issues. Therefore, if the state wishes to be more productive, legal discourse should move from oversimplified or simply incorrect movement perspectives to more authentic and helpful ones.

Firstly, how does legal discourse distort movements? It misses reality. After Legal Realist movements took off in the 1920s, this has never been more apparent. When outside politics barged into law schools, “the contrast between the schools and the streets” became too drastic (Gordon 642). Activists saw a flaw in the system, and could not afford to go in circles about legal discourse and their place within it. Thus, law students discovered that the theories they learned and discussed were not applicable in the environment right outside their windows. Though passion then fueled students to help society via the courts, they became further disillusioned upon realizing that social life was only discussed “casually and in passing,” if at all (Gordon 645). Evidently, the legal discourse that law students learn does not address real issues,

systems, or experiences; additionally, the new consciousnesses they adopt are not welcomed in their workplace, thus inhibiting useful change.

Why does that matter? As stated before, legal discourse that misunderstands society and its movements impacts the state, which will accordingly generate unproductive results. Consider dissent. Admittedly, activists are “often wrong,” and some even use violence as a dissenting “tactic” (Shiffrin 95). As a result, skeptics argue that the right to dissent should be restricted. However, they fail to realize another reality: sponsoring dissent promotes “truth in society,” and does not imply that actions do not have consequences (Shiffrin 94). The right to dissent does not void any other rights or laws. Therefore, when discussions distort the effects of dissent, its right and the potential to find “truth in society” may be on the line (Shiffrin 94).

Skeptics further argue that dissent produces too vindictive, “too individualistic,” or “too selfish” citizens (Shiffrin 90). Again, they miss the actual, lived *experience* of the action. On the contrary, activists “seek agreement, support, and often, group mobilization and collective action” (Shiffrin 92). Dissent often unites. Moreover, most activists do not wish to “destroy” a country. Instead, many wish to “revolutionize it” because they are, at heart, optimists “who [see] the promise of a better tomorrow” (Lovell 64). When discussions distort the intentions and thoughts of activists, the state is at risk of erasing an engaged and hopeful community.

One final misunderstanding about dissent is its frequency: dissent occurs less often than one may expect. Pressures to conform, legal frameworks that limit change, the tendency for “masses of people [to] passively suffer atrocious treatment,” and other factors create a world where dissent is encouraged, but not often practiced (Gordon 646). Skeptics’ worries of the potential harms above may be laid to rest. If misunderstandings such as these are not resolved, then the state may restrict or even eliminate the right to dissent. Consequently, “a form of social

engagement” and the chance to find “truth in society” will be lost; furthermore, the proposed benefits will not even manifest, because they are based in shaky theory. (Shiffrin 91, 94).

To extend the conversation, it can be noted that legal discourse may even misunderstand the state. Consider democracy. If discussions mistakenly paint the state as democratic, then it allows the state to hypocritically judge movements for being *undemocratic* and even coercive. The state erroneously obtains the higher moral ground, while its demands for activists to adhere to democracy in its undemocratic system only favor the unjust status quo (Medearis 2). When discussions misunderstand entities’ democratic status, it also fails to realize that there are more obstacles to democracy than it allows. It becomes unhelpful and even harmful to society.

Why is this important? The state utilizes knowledge from legal discourse; it then creates law. Any effects, positive or negative, will start at legal discourse and only grow from there. For example, while legal discourse may only disapprove of dissent and “undemocratic, coercive” tactics passively, law can do so actively; it is a powerful tool that becomes dangerous in the wrong hands. If law supports injustice *in the name of justice*, it is “of little value” to those it allegedly protects (Lovell 16). Therefore, law is only as useful as legal discourse is accurate.

When the state claims that its current system is “natural, inevitable, and necessary,” that dissent mainly produces instability and selfish citizens, and that it is democratic while movements are not, it declares that the system is adequate, that the right to dissent should be restricted, and that movements should not be so tolerated in society (Gordon 650). It silences voices. By valuing shaky theory over solid reality, discussions based in legal theory “*miss the point*” by missing reality--movements are varied, nuanced, and battling more than it realizes. If the state wishes to retain its “visionaries” and continually pursue progress, it should let go of these deceiving, inauthentic, and ultimately unhelpful perspectives (Lovell 64).