

OUTLINE FOR TV SHOW ON "COVERING"

1. Is it fair to say that the fundamental argument of your book is that, except in the perhaps infrequent situations where there is demonstrably good reason otherwise, people's ways of acting should not have to conform to that of the purported mainstream?
 - A. This is true for anyone, but is especially applicable to minorities or others who have been on the short end of the "stick," e.g., gays, blacks, jews, women, Latinos, etc. Right?
 - i. You think that in reality there is no such thing as an overall mainstream, because everyone has their idiosyncrasies as it were, even if they otherwise are part of the mainstream. But for *practical* purposes, for "operational" purposes, the mainstream can be taken as white Anglo Saxon heterosexual culture, right? You feel in this regard that we have a culture of white supremacy in this country, right?

2. Explain, in connection with your argument, why you feel that the particular can illuminate the general.
 - A. This feeling is what caused you to mainly spend the first half of the book on gayness, and then branch out more broadly in the second half, right?
 - B. You also feel that not forcing people to conform to the socially determined norms of WASP society except where this is demonstrably necessary -- e.g., all must obey the law -- is the great contribution that gays can make to the unfinished work of civil rights. Correct?

- 3(a). You discuss three stages of what is, either legally or in effect, forced conformity. The first is conversion.
 - A. In the first half or so of the 20th Century, there was a societal demand that gays convert into being straights, right? Psychiatry was horrendously complicit in this (just as it was in forcing forced political conformity in Russia, I note). Truly terrible methods were used -- electroshocks, lobotomies, etc. Of course, it didn't work -- because it *couldn't* work, right?
 - B. I note that conversion was used against Jews in the Spanish Inquisition.

- C. Conversion was impossible, of course, for women and racial minorities. So they were, in effect, doomed to second or third class status.
- (b). The second stage is passing. Here someone passes himself or herself off as a member of the majority, e.g., gays who pretended to be straights, blacks who were light skinned enough to pass as whites, Jews who pretended to be Christians (as the Maranos did in Spain).
- A. Much of your book describes, and please explain, the incredible psychological toll this takes on people because it creates inward confusion, is dishonest, is inauthentic, etc. It can lead even to suicide, as with Arad.
- (c). The third stage is covering. This means that one “admits” to some people what one is -- i.e., one tells some people he or she is gay -- or, that a characteristic is visible and cannot be denied -- e.g., one is a woman, or a black -- but one adopts several of the attributes of the mainstream culture (one covers) in order to “assimilate” as much as possible. E.g.s. can be -- and I note that sometimes these matters are “authentic” for people, but sometimes they are covering -- gay males who make a fetish of muscularity; gay females who wear their hair long; black males who make sure to wear suits and carry briefcases, and who don’t use the street vernacular; black females who have their hair straightened and wear it the way white women do; physically disabled people who -- like FDR sitting behind a desk in his wheelchair -- find ways of disguising their disabilities (other examples are visually-impaired people who memorize speeches or eye charts, or hearing impaired who have learned how to focus on a speaker’s mouth in order to understand the speaker without letting him know the listener is impaired); Jewish women who get nose jobs; Asian Americans who get “eyelid jobs” -- the “Asian nose job;” Jews who act like Christians so as not to be embarrassed by their Jewishness (tell of Harvard and Dershowitz in this connection); women at work who do not mention or focus on their children, so as to avoid the view that they are not committed to their jobs, will not work hard enough there because of time and energy demands as a parent, etc.; Muslim women who won’t wear veils.
- A. There is also “reverse covering,” which means that a minority, or a woman, goes out of his/her way to act in accordance with the stereotype for that person. Most often demanded by other minorities, you have found, this means, for example, that a gay is forced to adopt traits supposedly associated with gays even though he or she isn’t really that way, e.g., a gay man would have to say he loves receiving flowers or shopping for clothes even if this were not true, a gay woman would have to wear a “butch” haircut even if she likes to wear her hair long, a black male would have to act like a “street dude” even if he in fact

is an intellectual, etc.

- B. To some extent, everyone in this society covers because we want to get along with people and so adopt a persona that they will like, or at least will not react badly to, even if we feel differently than we are acting.
- i. So covering is to some extent the normal human condition, right?
 - ii. Yet the problem remains that America has historically considered itself an assimilationist, melting pot society, which has pressured everyone to act in the “approved” way, which is the WASP way, right? So there has been and still is pressure on people to act like WASPS, right?
 - iii. Women have faced a particular problem because of the rise in the 19th Century (along with industrialization) of the two spheres idea. Women’s sphere was the home, and they were expected to be warm and nurturing. Men’s sphere was the workplace, where they were expected to be competitive and aggressive.
 - (a) To this day women often have to walk a fine line in business, right? A woman must appear female -- must walk and talk and comport herself in a feminine way -- while (in a feminine way) being sufficiently hard driving, aggressive, competitive, etc.
- (d). Your fundamental point, to reiterate, is that people should be free to act in ways that fit *their* individual personalities: a competitive woman should be free to appear highly competitive without losing advancement, because of it, a guy who likes to receive flowers should be able to let this be known without embarrassment and without fear of losing a promotion, etc., etc.
4. Explain the “model minority” problem.
- 5(a). Explain that the law has now advanced to the point where, generally speaking, a person cannot be disadvantaged for merely being a minority or a woman.
- (b). But what is happening instead is that courts are allowing punishments or disadvantages for *acting* in a way demanded by, or customary for, people of that particular type -- of that status. This is often, defacto, no different from punishing persons for the status of being a particular type of person. E.g., Orthodox Jews are not allowed to wear skull caps in the military; gay people lose their children if they are physically affectionate toward each other in the home; Native Americans are

criminally punished for using peyote in religious ceremonies; African American women, especially saleswomen, are fired for wearing their hair in cornrows; African American men are not allowed to wear dashikis on the job; pregnant women are denied access to health insurance benefits without it being sex discrimination because women don't *have* to get pregnant and lots don't (nor is the "condition" (pregnancy) one that "affects" men (but prostate problems are insured though women don't get them)); somewhat contrary to statements above, women are fired if they *don't* use make-up; Hispanics are not allowed to speak Spanish at work.

- A. Courts have allowed this because they have focused only on, and have given short shrift to, the reasons why the minority person or woman wants to do what he or she is doing. (E.g., who *needs* to wear cornrows, why do bilingual people *need* to speak Spanish to each other at work rather than English?)
- B. If we are to maximize freedom, courts should also consider -- and often find wanting, because they *are* wanting -- the reasons why an employer or government is enforcing a "social conformity edict" on someone. What *is* a valid reason why someone shouldn't wear a dashiki or cornrows? What *is* a valid reason why a woman should be compelled to wear makeup, or a Jew not be allowed to wear a skull cap, or a Muslim woman a veil?
 - i. There *can* be valid reasons, as in the driver's license for identification case you mention. But too often the reason is social conformity.
 - (a) In this regard, don't you find a lot of this -- e.g., the cornrows example, when it was argued that customers won't like it -- to be the equivalent of the disallowed "heckler's veto" in free speech? That is, it was often argued that people could be stopped from saying things because listeners won't like it. But we don't permit that argument now. Similarly, it was argued that public accommodations laws are unconstitutional because whites wouldn't patronize establishments that served blacks. (A civil rights heckler's veto, if you like.) But that argument has been disallowed for four decades now.
- C. You believe that the needed changes will not be made by law, but through "reasons forcing conversations" among people, right? This is another way of saying, isn't it, that the views of society must change before law will change?
 - i. Of course, some courts have here and there seen the light as it were. But isn't it an essential problem that judges, in reality, are nothing but

highly successful conformists. Radical lawyers, after all, do not get appointed to the bench. Only conformist lawyers do. So to expect social progress from judges may be a bit unreal, isn't it? In this view (which I personally hold) the period 1954-1968 in the Supreme Court was pretty much an aberration. What do you think about all this?

- (a) I note that you yourself ran up against the problem when you were still attending law school and were filled with law professor-induced awe of federal judges, only to find out that a judge who wrote an opinion disadvantaging gays, and who should have known the history of discrimination against them, did not know what "queer" meant or what the "pink triangle" had initially represented and later evolved into.
- (b) Explain what happened on the Hardwick case between Powell and his clerk, Chinnis. Tell what some gays think of Chinnis in consequence, and how you yourself feel. In the long run Powell conceded his vote was a mistake but didn't really give much of a damn about this fact, did he?
- (c) Because the law is such a straightjacket, I think the best advice you ever got had to be from the faculty member who told you not to try to fit your views within the existing law, but to set forth what you regard as the truth and let the precepts of the law ultimately change to fit that truth. Do you agree that this was superior advice? Who was the faculty member who gave it to you?
- (d) More than "merely" highly conformist, the minions of the law are also often highly corrupt and hypocritical in actions that disadvantage minorities. Tell of Bower's hypocrisy vis a vis Shahaar
- (e) What do you think of the following idea. As you point out, the courts and society have enforced a type of social conformity on those who are in various ways different. The ways in which people have been forced to conform relate to social inessentials - - hair style, clothes, sexual orientation, etc. If the law and the courts are to force conformity on people, it should be in regard to the *essential* traits of a decent society, i.e., they should force honesty on people, should demand competence, should punish

hypocrisy, should require some concern for others instead of the unalloyed greed that is intellectually sponsored by the University of Chicago.

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