

Book Review

Kenneth Lasson, *Trembling in the Ivory Tower: Excesses in the Pursuit of Truth and Tenure*. Baltimore, Maryland: Bancroft Press, 2003. Pp. 245.

Reviewed by Robert W. Gordon

It is often said that legal writers pick up ideas about ten to fifteen years after they have been broached and discussed elsewhere. This book, by a law professor at the University of Baltimore, would seem to illustrate the point. It bears a copyright date of 2003 but reads as if written back during the height of the Culture Wars of the late 1980s or early 1990s. It certainly echoes many books that were written then, such as Roger Kimball's *Tenured Radicals* (1990) and Dinesh D'Souza's *Illiberal Education* (1991).

Like those earlier books, this one is a polemic against what Lasson sees as injurious trends in universities. Now you might think that the big problems with universities these days would be things like tuition expenses that rise much faster than inflation and thus price lower-than-middle class students out of higher education; the corruption of science by corporate sponsorship; the shifting of teaching functions toward a reserve army of part-time, low-paid-with-no-benefits adjuncts and nomads; and the indifference of most students toward any but immediately instrumental goals of learning. But Lasson's bugaboos are the "excesses" of "political correctness": multiculturalism, radical feminism, the assault on traditional Western-culture curricula and their replacement with "oppression studies," unintelligible "critical theory" scholarship, language policing and campus speech codes, and sensitivity training workshops. Each chapter, "Scholarship Amok," "Feminism Awry," and "Political Correctness Askew" collects examples of the excesses, asserts that they are multiplying and pervading university life, and pleads for their reduction and a restoration of balance, tradition, and common sense.

"Scholarship Amok," reproduced from Lasson's 1999 article in the Harvard Law Review, targets legal scholarship specifically. This chapter's observations strike me as a mixture of the obvious and banal, the problematic and dubious, and the manifestly wrong.

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Lasson's obvious points are that the volume of scholarship is increasing: there are more schools, more law teachers, more journals, and, given stricter publication requirements for tenure, more and longer articles per person. Professors write to get tenure! (Some of them keep writing even after tenure—maybe because they can't break the habit?) Some of these articles are mediocre in substance or style—on tired or trivial subjects, badly written, pretentious, pedantic, full of jargon, far too long, and with too many footnotes! Many are of little use to the practicing bench and bar!

All this is hard to dispute, but why is it a crisis? Law schools traditionally had the least demanding tenure standards of any department in the university. The quantity requirements for tenure have been rising, in part because of pressure from central university tenure review committees, in part from intensified competition for law school jobs, and perhaps also in part from pressure to upgrade law schools' scholarly reputations in the *U.S. News* rankings. A candidate for a job in any of the top three tiers of law schools has to show he or she has written something publishable and is likely to write more. Such a system is bound to generate a fair amount of chaff along with wheat. In any field it's easy to pick out silly stuff, absurdly easy if one uses the Lasson method of simply listing funny titles and quoting obscure-seeming passages.¹ But what's the proportion of really bad or useless stuff to the whole? Is the quality at the top, or the average quality, declining? That seems to me most unlikely, given the intellectual credentials and achievements people now need to break into teaching jobs, far more exacting than they were twenty years ago.

Is legal scholarship less useful to real-world lawyers? Some lawyers, like Judge Harry Edwards,² have complained that it is less useful to judges; but that wouldn't be too worrisome if at the same time more of it were useful to legislatures or agencies or law reformers. Do legal scholars in fact generate fewer practical proposals, or analyses relevant to such proposals, than they did once upon a time? Maybe, but given the recent proliferation of empirical studies in fields like tort litigation, bankruptcy and credit extension practices, sentencing patterns and the death penalty, I'm inclined to doubt it. Is bad writing—Lasson's particular *bête noire*—the norm or the exception? Is bad writing actually more common in law than in other fields? Any list of

1. The titles actually don't strike me as all that funny—"The Legal Status of Fish Farming" or "Mongolian Bankruptcy Law: A Comparative Analysis with the American Bankruptcy System" (36-37), for example, seem merely specialized, not outlandish. Nor are the passages he quotes from law review articles to exemplify bad writing (53-60) all that difficult or obscure: Lasson should try reading some Heidegger sometime. The object of most of Lasson's attacks is writing in one genre or another of critical (cultural or literary) theory, which certainly produces few models of lucid or elegant prose, but is accessible enough to readers with a little patience; graduate students in the humanities pick it up after a semester or two. Besides, I'm not sure that someone capable of sentences like "Such arcania [sic—possibly "arcana"?) but scratch the surface of the word- and thought-policing that has evolved almost helter-skelter over the past two decades" (124) has standing to complain of bad writing.
2. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 *Mich. L. Rev.* 34 (1992).

top legal scholars is likely to have on it some exceptionally good writers—like Jack Balkin, Charles Black, Robert Bork, Ronald Dworkin, John Hart Ely, Lawrence Friedman, Grant Gilmore, Thomas Grey, Duncan Kennedy, Anthony Kronman, Arthur Leff, Catharine MacKinnon, Richard Posner, Carol Rose, Kathleen Sullivan, Cass Sunstein, Lawrence Tribe, and Charles Alan Wright, just to name a few who come immediately to mind. Is the undeniable fact that more legal writing is now directed to fellow scholars in the legal academy and other academic disciplines a good thing or a bad thing? Lasson hints that it's bad, but he doesn't say why, except to repeat that many articles are bloated and badly written. His complaint, basically, is that lots of strange new stuff is being written and he finds some of it hard to read.

More controversially, Lasson claims that legal scholarship is beset by intellectual orthodoxy because young scholars have to write to please the sixties-reared tenured faculty in their schools: “[E]verything a professor says, writes or publishes must be politically correct” (33). He doesn't even try to substantiate this and it would be really hard to do so. I'm perfectly willing to believe that law faculty on the whole are politically more liberal than practitioners, since they are drawn from lawyers willing to forgo big bucks in practice and (these days) political power in order to teach and write.

I'll even concede that some fields, like antidiscrimination law and maybe constitutional law generally, are dominated by left-liberals, though this is changing as conservative former law clerks gradually filter into the academy. But legal writing on ordinary private law subjects like contracts, torts, procedure and property, or on corporate, securities, tax, or antitrust law, isn't particularly left wing. Indeed, to the extent it's influenced, as much of it is, by Chicago-brand law-and-economics, quite the contrary. Lasson doesn't seem to have noticed that post-seventies legal scholarship actually shattered a (relatively) orthodox consensus in the legal academy rather than creating one. Instead of redoubts of Stalinist thought control, the law schools have become Babels of conflicting methods, disciplinary allegiances, and political views. This isn't to say that tight-knit intellectual cartels don't form in various subfields to try to proclaim and enforce canons of what's worth writing about and how to write it. But the proliferation of law schools and (mostly student-edited) journals makes heterodox views much harder to police than in fields like economics where there are only a few journals and those few edited and peer-reviewed by members of the cartel.

Lasson's really ridiculous claim is that left-wing PC scholars have taken over the legal academy. However you define them, they have not even come close to taking over any law school that I'm aware of. In a few schools there are faculty factions who exercise a strong influence on faculty appointments: they favor candidates whose work resembles their own, find it hard to see merit in any other kind of work, and gradually congeal their numbers into a critical mass. As far as I know, these factions are invariably composed of legal economists—*vide* Chicago, Northwestern, USC (for a time), B.U., and George Mason—about whom Lasson has nothing to say.

The next chapter, "Feminism Awry," finds more crushing orthodoxies to take on, announcing that the "time is past due for an intellectually responsible challenge to the radical feminists who have assumed command of the Ivory Tower" and that to refuse that challenge "amounts to endorsement of an authoritarian ideology that runs roughshod over the few scholars who dare to question its merits" (71). Again his main examples come from law schools; and again one has to ask, what on earth is he talking about? What schools have been taken over by radical feminists, and what crowds of followers do they hold in thrall and bondage? His case is anyway immediately undermined by his own account of the variety of schools of feminism ("liberal," "cultural," and "radical" feminism) and the vigorous disagreements among them. The feminist scholars supposedly silenced by their sisters' orthodoxy are actually its most trenchant critics. In this chapter at least he pays some attention to the substance of feminists' ideas.

But not very serious attention. An "intellectually responsible challenge" to a set of ideas, one would think, would begin by carefully putting forward the best and most sympathetic account possible of the thought of a leading proponent of the ideas—in the case of radical feminism, this might be Catharine MacKinnon, whom Lasson refers to more than anyone else—as a preliminary to critique. Now MacKinnon is of course sometimes a very polemical writer, with a slashing, aphoristic, and occasionally incendiary style. She is also by common consent the most original and provocative theorist of legal feminism; with a large body of serious work that repays careful reading, even if one may find in it, as many critics have, much to object to. This is not, however, Lasson's approach. He picks out phrases and assertions, and more funny article titles, from feminists' work that he finds especially outrageous or extreme, sometimes assuming that they are self-refuting, sometimes calling on the authority of right-wing culture critics like Camille Paglia or Harvey Mansfield to refute them; and he always sides with the critics, without explaining why.

Consider this extract: "Cultural feminists [who assert the importance of basic gender differences] are... attacked by the radicals on the ground that those qualities traditionally ascribed to females—for example compassion and empathy—are in truth neither natural nor inherent, but simply an adjustment to the social subordination of all women by all men. ... The radicals see sexual coercion as the root of the whole 'woman problem'" (87). This insight, evidently MacKinnon's, is startling but interesting. It traces the gentleness of the gentle sex to their relative weakness in power relationships: women cultivate sweetness of temperament, submissive manners, avoidance of aggressive confrontation, the talent for sustaining relationships and the skills of caring for others, because they have had no choice. The womanly qualities thus cultivated as strategic adaptation then become reasons for excluding them from masculine occupations and roles. Maybe the insight is exaggerated, but it seems to me to have considerable explanatory force. But Lasson does not then discuss this insight on the merits, probe it to see what truth may be in it, or offer any arguments about why it might be wrong;

he seems to think it self-evidently absurd, and veers off into a charge that MacKinnon has been given more credit than she deserves for pioneering sexual harassment law.

Lasson's stance is always that of the guardian of common sense wisdom against outré bullshit: thus he mostly approves of liberal "equality" feminism—law should generally treat men and women equally—but thinks the radicals are wackos. Until the 1970s the common sense stance was that *liberal* feminists were wackos, since it was absurd to suppose that women could or should do all the jobs that men do, given the basic differences in their natures and destinies. That's the problem with common sense: it makes no room for the mind-stretching idea, the idea that imagines a form of society in which it too might in turn become common sense.

"Political Correctness Askew" is the weakest chapter of all. It recycles most of the widely circulated PC-on-Campus horror stories of the 1980s and 1990s, without pausing to sort out which are true, which only partly true, and which pure myth; and then wildly generalizes all the anecdotes into pervasive all-encompassing trends.

[H]undreds of American colleges and universities...are currently engaged in entrenched warfare over the nature and development of the curriculum. At many of them, traditional teachings of Western civilization have been supplanted with [sic] compulsory feminist-oriented and "Third-World" courses... Along the way "deconstructionism" [sic], "multiculturalism", and "sensitivity training" were created and applauded, while "Eurocentrism," "traditionalism" and even modern science were denounced. Students are subjected to mandatory intensive "prejudice reduction workshops" and professors are hounded by "sexual harassment task forces" (126).

Lasson runs down the familiar list of complaints: Identity groups press for the creation of ethnic and feminist studies majors; postmodernism and social-constructionism have politicized all knowledge; language and sexual-harassment police have hounded professors out of jobs for incorrect speaking; universities have adopted speech codes broadly banning speech offensive to minorities; affirmative action has become an unquestioned dogma; weak-minded university administrators have capitulated to all these assaults on tradition, freedom, and common sense.

This is not of course an entirely imaginary picture of the university world in the last twenty years, as anyone who has inhabited that world has to acknowledge. There have indeed been battles over mandatory core curricula in those few universities that require them; most colleges under pressure from students have added courses, majors, and departments in Women's Studies, and African-American and other ethnic studies; some colleges (very imprudently, in my view) adopted hate speech codes; virtually all (under fear of liability and also because they thought it was a good idea) have sexual harassment policies. PC scolds—critics of what they perceived to be offensive linguistic usages and discriminatory practices—acquired some localized cultural power though

they also inspired resentment and conservative counterattacks, well funded from the outside. University administrators, not a notably courageous breed, sometimes gave in to unreasonable demands of vocal concentrated interests, just to buy a little peace. (These days, as Lasson admits in his closing chapter, the vocal complainers are rather more likely to be conservatives claiming to be victims of political correctness.)

Many of these changes I regard as progress: women's and race and ethnic studies programs created places to study vast and important but neglected areas of human experience; sexual harassment policies undoubtedly went overboard at times but responded to a real problem; the battles over core curricula opened up space for the study of non-Western thought and culture in a globalizing world. All this came along with a good deal of turmoil, outrageous claims and counterclaims, exotic new theories and approaches, and bureaucratic overreach in implementing institutional policies. Some faculty and students accused of tactless, demeaning, or offensive language were indeed unfairly disciplined by overzealous or gutless administrators. But how serious and pervasive was the stupid and oppressive stuff? And was there not plenty of stupid and oppressive behavior from the other side—such as the antics of Dinesh D'Souza and his fellow merry conservatives who used the *Dartmouth Review* to urge that their black classmates were too dumb to belong in their college?

For a writer who sternly accuses the left of “shabby scholarship” and advancing arguments “in the absence of empirical evidence” (23), Lasson is remarkably careless about uncritically appropriating charges of dubious provenance and vague and reckless overgeneralizations from right-wing harangues against PC. A few examples: “[I]n many modern English departments, Shakespeare is not only regarded as just another man of letters [sic—as opposed to what?], but he is tossed to the ash-heaps, [which turns out to mean]—no longer required reading at some large universities, even for those who major in English Literature!” (22). Have Shakespeare courses been expelled from the curriculum? (A quick random check of leading university catalogues will tell you, No, Shakespeare is alive and well everywhere.) Was Shakespeare *ever* required reading of all undergraduates? (If it was, which I doubt, he doesn't say where.) Where exactly is a Shakespeare course not required of English majors? And would that matter if all or almost all of them took the course anyway? Note the casualness with which statements of frequency and quantity (“[H]undreds of...colleges and universities are engaged...”) occur in these sentences, with no apparent attempt to back them up or make them more precise. Another example: in two pages devoted to affirmative action Lasson briefly cites Bok and Bowen's book claiming that preferential admissions of blacks and Hispanics has been a success,³ but immediately adds, “But that conclusion is strongly refuted by Stephan and Abigail Thernstrom...who regard the

3. Derek Bok and William G. Bowen, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* (Princeton, N.J., 1998).

Bok/Bowen treatise as elitists thumbing their nose at the public majority” (183). Even supposing the Thernstroms’ imputed ad hominem slur of Bok and Bowen as cultural snobs were on the money, how would it “refute” Bok and Bowen’s claim? Elsewhere Lasson brings up the 1999 report of an MIT committee that found systemic discrimination against female science faculty (145). Without describing the report and its conclusions and methods, he simply quotes with seeming approval three anti-feminist critics who disparage it.⁴

In short, Lasson’s skepticism simply deserts him when he collects and recycles right-wing talking points. He doesn’t seem to recognize that much of the anti-PC rhetoric is not concerned to defend apolitical scholarly standards against a leftist vanguard that would politicize all knowledge, but is itself the tool of a political movement that uses the charge of political correctness to demonize people and ideas it wants to suppress, in much the way that conservatives in the 1950s used charges of Communism and fellow-traveling to discredit liberals and their ideas.⁵ Lasson writes that “revisionist PC historians have caused at least four different exhibits to close at the Smithsonian Museum and Library of Congress” (118).

That is one way of putting it, for sure. One of these exhibits was the Enola Gay exhibit at the Smithsonian, which a group of eminent historians tried to turn into a sober reassessment of the decision to drop nuclear bombs on Japan and its aftereffects. They assumed that fifty years after the end of World War II it might be possible for the American public to be treated like grownups and to be exposed to serious arguments about whether dropping the bombs was necessary to end the war, and to empathetic contemplation of the devastation they had worked on the people of Hiroshima and Nagasaki. They guessed wrong: groups like the Air Force Association and American Legion led a ferocious assault on the planned exhibit. The protestors claimed they were defending truth from vogueish revisionism. But in fact their critique was entirely political: a national museum exhibit, they thought, should celebrate the moral rightness of America’s policies, leaders, and soldiers. Critical reassessment of the past was for losers like Germany and Japan. The protestors got the exhibit cancelled and replaced with one full of egregious misstatements and one-sided interpretations of controverted historical evidence.⁶

Similarly, Lasson cites as gospel truth attacks by neo-conservatives such as Lynne Cheney on the National History Standards in the 1990s. The attackers

4. One of the critiques was published by a group Lasson identifies as “the independent Women’s Forum,” as if to certify its independence. The group is the Independent Women’s Forum, a well-known right-wing anti-feminist organization.
5. This point is developed with exceptional elegance and force in James Boyle, *The Anti-PC Harangue*, 45 *Stan. L. Rev.* 1457 (1993).
6. See, e.g., Letter from Kai Bird and Martin Sherwin, Co-chairs of the Historians’ Committee for Open Debate on Hiroshima, to I. Michael Heyman, Secretary, The Smithsonian Institution, (July 31, 1995) (on file with the author) (on the revised Enola Gay Exhibit), available at <<http://www.doug-long.com/letter.htm>> (last visited July 1, 2006).

often grossly misrepresented the Standards, but accurately asserted that the Standards gave considerably more emphasis than traditional history curricula to the social history of women, slaves, Native Americans, and immigrants, and considerably less to the political history of Founders and other statesmen. This was a legitimate ground of difference with the Standards, but again it was a political difference, not a scholarly one—the scholarship behind the Standards was generally first-rate—an argument about what it is most important for students to learn, and (as with Enola Gay) whether they should be educated in a primarily celebratory appreciation of America’s history, or a critical history emphasizing struggles of the marginalized and downtrodden for a place in the polity and society, or a history of ordinary people rather than of political leaders. To his credit Lasson quotes the UCLA historian Joyce Appleby urging the (to my mind) perfectly defensible case that the standards showed how to surround Thomas Jefferson (and figures like him) “with his daughters, grandchildren, slaves, hired laborers and ordinary neighbors...” (141), and that this is a useful and valuable sort of knowledge to acquire about the past. But instead of answering this defense, Lasson just reverts to one of his familiar gripes, that some of the new historians are guilty of bad writing.⁷ Lasson repeatedly condemns ideas not by demonstrating their falsity, but by speculating on their possibly malign political consequences—an especially strange procedure for a writer who complains that the search for Truth has been compromised by political correctness.

Readers who have got this far may wonder why anybody would bother to review a palpably unserious book like this at such length. One reason is that it comes festooned with encomia by famous people who ought to know better (“[A] really important book [that is] also very witty, easily readable, and fun” —Alan Dershowitz; “[A] skewering new book, full of wit and wisdom...”—Nadine Strossen). More important, the book is a good representative of a genre of cultural critique that these days appears mostly, though not exclusively, on the right: a sloppy political polemic professedly written to vindicate high intellectual standards and a non-political ideal of truth (and some other values that necessarily sometimes conflict with truth-seeking, such as upholding “tradition” and “common sense”). The author apparently thinks it unimportant to grapple sufficiently with any of the ideas he disparages to present them fairly and thoroughly to his audience. To take a minor but (among conservative culture critics) irritatingly frequent example, he amalgamates all the many different forms of critical literary theory into a single form he calls “deconstructionism,”⁸ and then never defines it or says what’s wrong with it. I

7. His example is a passage pointing out that regions, like nations, are socially constructed “imagined communities” and that these “imaginaries” are contested (142). Lasson makes fun of this: “Asia” he says, is a physical place, a continent, not a fantasy. This is obtuse and obviously wrong: Physically, “Asia” is on the same land mass as “Europe.” Where “Europe” ends and “Asia” begins is represented very differently by different groups, depending on their situations and agendas.
8. I’m reminded of a conference I attended at Yale almost ten years ago, at which some right-wing culture critic (I vaguely recall it was Gertrude Himmelfarb, though I may have this wrong) was thundering about how “deconstruction” had taken over humanities departments

strongly suspect that if called upon Lasson could not give a coherent account of “deconstructive” method and would probably say, “Oh, whatever!”, that it just doesn’t matter—one fancy French theory is much like another, and none of them worth attending to enough to understand. Of course people are free to choose how to invest their intellectual effort, and one can hardly blame them for not choosing fancy literary theory, but if they don’t do the work to understand an idea, they should keep silent about it.

The book in short exemplifies how all the modes of argument that Lasson and people like him attribute to “tenured radicals” have become the stock in trade of conservative political-intellectual culture. There are no more thoroughgoing post-modernists than the propagandists for the Bush Administration who insist that reality—such as the state of the Iraqi insurgency, or the effects of man-made emissions on global warming, or the success rates of abstinence-only sex education programs, or the likely size of budget deficits in five years—is not something objectively “out there,” but a construct to be manufactured by the powerful. The most influential critics of curricula these days are religious enthusiasts who want Intelligent Design given equal time with Darwinism as an explanation of the evolution of species; and David Horowitz and his fellow crusaders for “Academic Bill of Rights,” legislation that would give students a cause of action to require political “balance” —basically, any view that any group of students think is underrepresented—in the classroom. The numerous think tanks on the right, like AEI or Cato, have a purely political or instrumental view of knowledge: one knows exactly how the “studies” they commission will come out merely by looking at the letterhead. Ask researchers in universities who they think are the powerful enemies of the scientific enterprise, and it’s doubtful many will name “deconstructionists” —they will point to corporate sponsors who pressure them to distort or conceal inconvenient research findings, and government agencies that reject their data in favor of those supplied by Christian advisors or drug companies or the Global Petroleum Research Institute.

To be sure, some people argue that what is happening is that postmodernist theory, the repeated assertions that all knowledge is situated, contextual, political, has simply migrated over to the right, and is coming home to roost. Live by the relativist sword, die by it. This strikes me as wholly improbable: it gives English Departments and Cultural Studies programs a reach they never came close to having. (The most popular majors for undergraduates have completely avoided critical studies of any kind—Psychology, Business, Economics, and Biology.) Conservatives for the most part never bothered to learn enough about deconstruction or critical legal studies or feminism or any of the other horrors they deplore to have been infected by them. To the extent they articulate a meta-theory of knowledge, it’s usually not that the truth is whatever is politically convenient, but that it’s objective and absolute, rooted in science (according to one faction) or tradition, or Biblical revelation (according to

at Yale. I was sitting next to a senior member of Yale’s Comparative Literature department at the time, and asked him how many practitioners of deconstructive method were then at Yale. “None,” he said. “Not one. They left or retired years ago.”

others). (Having possession of absolute truth, however, apparently entitles them to do a good deal of lying and exaggerating, whatever may be necessary to defeat their relentless Satanic adversaries.)

The interesting problem for those of us in the academy is how to respond to this wanton conversion of the enterprise of scholarly inquiry into an instrument for the crudest kind of propaganda for profit and power seeking. One very tempting response is to lapse back into the pre-critical stance that academic research must be purely objective, impartial, and disinterested. This just isn't going to work. Knowledge can't be worked free of its genealogy, contexts, aims, and implicit assumptions and values. Much legal scholarship anyway is avowedly normative—it has to be structured by underlying, and contestable, views of reality, social visions, and (broadly) political aims. But we can, and should, still stand for honest argument, the refusal to ignore or suppress contrary evidence, the willingness to articulate and fairly evaluate the best cases that can be made against our views and to revise or abandon positions we can no longer justify.