Review Essay–The Legal Challenges of Diversity

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Victoria Saker Woeste, *Henry Ford's War on Jews and the Legal Battle Against Hate Speech*, Stanford: Stanford University Press, 2012, pp. 424, $55 (cloth), $24.95 (paper).

Mariana Valverde, *Everyday Law on the Street: City Governance In an Age of Diversity*, Chicago: University of Chicago Press, 2012, pp. 272, $85 (cloth), $27.50 (paper).

Within the last year two excellent books, Mariana Valverde's *Everyday Law on the Street: City Governance In an Age of Diversity* and Victoria Saker Woeste's *Henry Ford's War on Jews and the Legal Battle Against Hate Speech*, address how social anxieties about "diversity" surface in the development and enforcement of the law. While the two books focus on different eras and countries, they similarly illustrate the tensions in legal contexts that can result from the growth in diversity.

Woeste's book focuses on events surrounding litigation of the 1925 federal trial of *Sapiro v. Ford* from the Eastern District of Michigan. In the case, a prominent Jewish attorney, Aaron Sapiro, sued car manufacturer Henry Ford for libel. In the 1920s, Ford owned the *Dearborn Independent* newspaper, which at his behest "had published a series of articles accusing Sapiro of leading a Jewish conspiracy to subvert American agriculture" (Woeste 1). Beginning in 1920, the *Independent* launched the "International Jew," a series of anti-Semitic articles that spoke of a Jewish conspiracy to control the world. The "International Jew" was an adaptation of a Russian work called the *Protocols of the Elders of Zion*, which detailed an alleged Jewish plot to take over the world. The trial ended in a mistrial and a settlement was reached before a new trial could begin. Woeste's book is divided into two parts. The first details the major players in the lawsuit and the circumstances that led to it. The second covers the trial and its aftermath.

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Plaintiff Sapiro was a Jewish-American lawyer nationally famous for organizing cooperatives for farmers. Ford believed Sapiro's work should be stopped. "Twentieth-century farms should operate . . . as bastions of individual self-sufficiency, not as . . . interconnected production units," he believed (Woeste 142). This seems ironic considering Ford's role in revolutionizing mass production. In 1924, the *Dearborn Independent*, at Ford's direction, launched a series of articles that attacked Jews and Sapiro specifically.

The articles alleged involvement by Sapiro and other Jews in agriculture and subversion of the cooperative movement by international Jewish financiers. They described a conspiracy in which American farmers were organized into national associations controlled by Jews, including Sapiro. The articles claimed that cooperative associations paid Sapiro for services they did not need, that he enriched himself at the expense of farmers and that his cooperatives failed to obtain a fair price for their crops.

When readers inquired about the veracity of the articles and whether they were supported by documentation, the paper could produce no evidence to corroborate them. Sapiro demanded a retraction from Ford and the *Independent*. His demand did not mention group libel and was framed solely as protecting his personal reputation. It notified Ford that legal requirements for libel had been met: Sapiro's reputation was harmed by the *Independent*'s articles, which contained falsehoods. When the *Independent* refused to print a retraction, Sapiro filed his lawsuit. Based on the law at the time, he had a strong case. A defense to defaming public figures was publishing the truth and Sapiro was able to contradict many of the *Independent*'s assertions. Additionally, he could "demonstrate the malice required for a damage award" by pointing to the *Independent*'s refusal to correct factual mistakes even after others had identified them (Woeste 174).

Sapiro's lawsuit came during a period when discrimination against Jews was not uncommon. While "antisemitism in America was muted compared to the more violent expressions" found in Europe at the time, many Jews in America still suffered social discrimination (Woeste 3). Yet, the federal judge assigned to the case refused to allow arguments about group libel, limiting the case to the issue of individual libel. Group libel laws of the time typically required that the accused publication have a tendency to cause a "breach of the peace."[1] Woeste concludes that the only legal remedy available to Jews at the time was to sue for individual libel by "prov[ing] that the publication was both false and malicious" (Woeste 83).

When the Sapiro case ended in a mistrial because of juror comments expressing bias against Ford, the case was settled out of court with a retraction of the *Dearborn Independent*'s claims and a payment that would cover Sapiro's court costs. Separate from the settlement agreement, Ford signed a formal apology letter that was released to the press. The letter admitted that the

1. Evan P. Schultz, Group Rights, American Jews, and the Failure of Group Libel Laws, 66 Brook. L. Rev. 71, 78 (2000).

Independent's articles were fiction. It also stated that Ford took responsibility for publication of the articles without admitting that he knew of their contents. The agreement allowed Ford to claim ignorance of what was in the newspaper's stories in exchange for his "promise to restrain the circulation of "The International Jew" in the United States and Europe" (Woeste 271). This promise was viewed as a victory for Sapiro and the Jewish community because it stripped "The International Jew" and, by extension, *The Protocols of the Elders of Zion*, of the power and prestige of Ford's name.

But Woeste concludes that *Sapiro v. Ford* did not represent a victory for stemming the spread of anti-Semitism and did not fulfill its potential of curbing hate speech. At the time of the litigation, there was much uncertainty over the law involving free speech rights. The case's resolution did nothing to clarify this law because the apology that ended it could not be enforced by law and subsequent legal developments made it difficult to curb hate speech.[2]

Despite a series of fabrications that demeaned the Jewish population because of Henry Ford's anxiety about the presence of Jews in the United States, U.S. law in 1925 was unable to protect the true targets of his libelous campaign—the Jewish people. Woeste's primary concern is that Ford's apology permitted him to evade a more lasting judgment. Today, dozens of editions of "The International Jew" with its hate speech message can be purchased from Internet booksellers. A logical extrapolation from the book is that the Sapiro case also illustrates U.S. law's inadequate facility for accommodating a respect for diversity in the face of overarching First Amendment concerns.

Valverde's *Everyday Law on the Street: City Governance in an Age of Diversity*, takes us to present day Canada where many of the same tensions arise over where and how to express concerns about changes in diversity. While Canadian law stands in marked contrast to U.S. law because it treats hate speech restrictions as constitutionally valid limits on freedom of expression, Valverde's empirical examination of Toronto municipal governance suggests that Canada is not free of conflicts over the realities of diversity—this despite the fact that Toronto's motto is "Diversity is our strength." Indeed, Valverde notes that Toronto is becoming more unequal and poverty increasingly racialized even amid declarations by many of its residents of the value they place on diversity (Valverde 3).

Valverde's book makes a systematic study of various Toronto municipal governing venues, including zoning appeals boards and licensing tribunals, from 2003 to 2010. The book examines how sublegal regulations, inspections and enforcement practices shape everyday urban life in ways that affect diversity.

2. Brandenburg v. Ohio, 395 U.S. 444 (1969) (holding that government cannot punish inflammatory speech unless there is an intent to incite lawless action). In the case, an Ohio criminal statute would have been applied against a televised Ku Klux Klan rally at which crosses were burned and speakers talked about their desire to seek revenge against blacks and Jews.

For instance, Valverde provides examples of how private citizens can use the law as a tool against cultural trends they find threatening, as when an English-speaking couple living next door to a Chinese couple became annoyed by the smell of Chinese cooking. The English-speaking couple sought help from the municipality, which sent an inspector to mediate. The Chinese couple installed a new hood to contain fumes but their neighbors were not satisfied. They filed a private nuisance lawsuit, claiming that the smells were unpleasant and potentially carcinogenic. In addition, their lawyer wrote a letter to the Chinese couple telling them that their deficiency in speaking English was not a defense and that they should not seek sympathy from the court. The litigation came to the attention of The Chinese Canadian National Council, a group that promotes Chinese immigrant rights. The council asserted that the suit was racially motivated. Though the case was ultimately settled out of court, the English-speaking couple sued the Chinese Canadian National Council for libel and defamation for asserting that they were racist.

Nor are public nuisance municipal inspections free of biased dynamics. In responding to noise complaints, nepotism and discrimination play a role in the allocation of municipal resources, the author says. The disparity in a resident's resources can determine even the kinds of inspections and services delivered by the municipality, she says. Another example in Valverde's book cites a noise complaint from a bar called Maxwell's, which played loud music during hours when it was illegal to do so. The law prohibited it between certain hours followed by the clause, "so as to disturb the peace." The bar's lawyer argued that the standard was arbitrary and not objective. The court ultimately disagreed, finding, "An inner-city community as opposed to a suburban community, or again, a community of predominantly retired residents as opposed to a community of predominantly university students may tolerate a very different standard of what are reasonable night-time noises" (Valverde 65–66).[3]

For Valverde, this sort of holding perpetuates institutional discrimination. "Those who cannot afford to buy a house or pay the high rents demanded by luxury apartment owners are imagined by law as either not deserving protection from noise or as culturally predisposed to minding noise less" (Valverde 66). The judge in the case sought no evidence from local residents, trusting officers to make the determination of whether complaints were credible or frivolous. Though municipal officers do not set out every morning solely to protect the rights of wealthy homeowners, certain cultural assumptions persist.

Valverde provides many other examples from taxi licensing, issuance of permits, adult entertainment licenses, enforcement of bylaws, zoning hearings and the licensing of food vendors to demonstrate how in "cosmopolitan cities that have experienced major demographic changes as a result of changing patterns of global migration, certain issues that are the subject of negotiations between developers and planners—or developers, neighborhood groups and

3. Ottawa (City) v. Freidman, 1998 Carswell Ont 5974 (Ont. Prov. Ct. 1998).

city councils—frequently become lightning rods for fears and anxieties about cultural differences that often remain otherwise unspoken, especially in cities like Toronto where locals consider it very impolite to say anything about other cultures that is not nice" (Valverde 192). The problem arises from the fact that with the cultural norm of color-blind discourse there are no outlets to discuss changing demographics. This leads residents to act out their concerns about diversity under other subtexts in municipal governing contexts where race and ethnicity are not even legally relevant.

Valverde concludes by calling for the creation of a new system of city-wide planning interactions that promote both democratic involvement and social justice in terms of diversity. But, she says, the new forum must focus on the city as a whole and not just on ad-hoc individual properties that can be held hostage to social anxieties. The current direction of abolishing city planning on a larger scale in favor of "village-elder-micro-local" systems is likely to lead to further inequality and exclusion, she believes (Valverde 208). Her message for all demographically diverse cities is that the substance of law and regulation as well as the cultural presuppositions of everyday bureaucratic and legal interactions should be reconsidered to further equality.

For readers interested in examinations of how law operates in the midst of social anxiety about demographic diversity, both Valverde and Woeste deliver in-depth analyses rich with ethnographic and historical detail. Reading both books, one discovers a unifying common theme, that fostering meaningful equality in diverse communities can only be done where law is not willfully color-blind. Rather, it is race conscious and power conscious enforcement of equality norms that takes the messiness out of diversity. In Woeste's context, that theme suggests that the continued race-blind absolutist approach to the First Amendment in the United States will continue to hinder the realization of full equality for those groups that are systematically targeted with hate speech messages.[4] In Valverde's contemporary urban context, diverse cities are urged to implement large scale city-wide planning that directly engages concerns with diversity in a race conscious fashion. Both authors provide the sort of nuanced and substantive discussions of diversity that are sorely needed in public discourse today.

4. Tanya Katerí Hernández, Hate Speech and the Language of Racism in Latin America: A Lens for Reconsidering Global Hate Speech Restrictions and Legislation Models, 32 U. Pa. J. Int'l L. 805, 807–15 (2011) (detailing the harms to equality from hate speech).