Multiculturalism and Great American West: Some Ruminations

Sanford Levinson*

The highlight of 2009 was a driving trip that my wife and I took through parts of the “Great American West,” beginning (and ending) in Denver after a circumferential that included Cheyenne, Wyoming; Mount Rushmore and the Badlands in South Dakota—unfortunately, we did not have time to go to North Dakota—the Little Bighorn National Monument in Montana; Yellowstone National Park; and the Buffalo Bill Historical Center in Cody, Wyoming. Though it was not in fact the very first time I had been in those states, it was nonetheless a genuine revelation, raising a number of issues relevant, I hope, to the subject matter of the Journal of Law and Interdisciplinary Studies, a welcome new journal being published at the University of North Dakota. It goes without saying that the topography is endlessly fascinating; sometimes awesomely beautiful, sometimes almost frightening in its sense of desolation. But that is not the principal message I took from the trip, nor does it explain the fervor with which I urged friends to visit (at least) two stops on our itinerary—the Little Bighorn National Monument and the Buffalo Bill Historical Center. Both capture as well as any sites I am personally familiar with the true complexities (and tragedies) associated with “multiculturalism” in America.

It is obviously true that “multiculturalism” is a national phenomenon. It is not only the case that Texas, for example, where I have lived for 30 years, is often divided into “Anglo,” “Mexican-American,” and “African-American” communities; more relevant, perhaps, is that over 100 “first languages” are spoken by students in the Houston public school system, and a full quarter of its over 200,000 students are taking courses in English as a second language.¹ And, as a 2008 story in the New York Times indicated, “[t]here are an estimated 170 foreign languages spoken in New York City, and in nearly half of all households, English is not the primary language, according to the census in 2000.”² For better or worse, this particular kind of linguistic multiplicity—and the cultural pluralism that underlies it—is, relatively speaking, absent from the states of the Upper Midwest that I toured. Over 93% of North Dakotans speak only English,³ and I would be surprised if more than a fraction of the

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* Sanford Levinson is the W. St. John Garwood and W. St. John Garwood Jr. Centennial Chair in Law, University of Texas Law School; Professor, Department of Government, University of Texas at Austin.


6.3% who speak another language would classify that language as their “first language” that is, for example, spoken at home by immigrant parents who are lacking in basic English-speaking skills. It might be worth noting, that I was struck on my first visit to South Dakota, about three years ago, to learn that there was a Spanish-language radio station in Sioux Falls, presumably directed at the immigrant community working especially in meat-packing plants in the area.

So what special quality does “the Great American West,” especially that portion found in the Upper Midwest, bring to debates about multiculturalism that differs from what can be found in much of the rest of the country? The answer, I believe, involves the history (and present realities) of the encounters between and among the various American Indian tribes and nations and the invading population (almost exclusively) white settlers and the supporting power of the United States Army. It is obviously true that this history can be found throughout the country. My own home state of North Carolina includes a Cherokee Indian reservation less than a hundred miles from where I grew up, and I became familiar as a youngster with the “Trail of Tears” symbolizing the forced relocation of Cherokees from Georgia and North Carolina to Oklahoma during the administration of Andrew Jackson. One can find similar traces in almost any American state, including Texas, where Comanches were a significant presence into the 19th century. All of that being easily conceded, I know of no places quite like Little Bighorn and the Buffalo Bill Historical Center that attempt to come to grips with this aspect of American multiculturalism. I can testify that the National Museum on the American Indian doesn’t come close to equaling either of these sites either in emotional power or intellectual illumination. Both should be treated as national treasures, even if many may well be disturbed at what they teach the serious visitor.

Consider the fact that a national best-seller in the summer of 2010 has been Nathaniel Philbrick’s The Last Stand: Custer, Sitting Bull, and the Battle of the Little Bighorn. The book attempts, by and large successfully, to treat both of the sides in that epic battle as equals. Sitting Bull is presented as a remarkable leader of the Hunkpapa Lakota tribe within the Sioux nation desperately trying to preserve his distinctive nation, and its culture, against the invasive whites, who were, of course, often violating ostensibly solemn treaties entered into between the United States and the various tribes. (Though at least as important, in many ways, may be the slaughter of the buffalo herds on which much traditional Indian culture relied, a slaughter joined by whites and Indians alike.) Custer, though an absolute disaster as a leader in the battle which was often identified with his name, was a charismatic figure who provoked both devotion and hatred. It can occasion no surprise that in 1946, six years after the

http://arcgis.mla.org/mla/default.aspx (last visited Jan. 12, 2011) (detailing in great detail, through an interactive languages map, the various languages spoken in, among other places, North Dakota).


5. The major problem is that there are far more documentary sources available on Custer and the American Army than on the Sioux and other Indian tribes.
transfer of the site from the Department of War to the National Park Service, it was named the Custer Battlefield National Monument, since almost all “Americans” knew of the ruthless “massacre” by Sitting Bull and his minions of the courageous American soldiers trapped on the bluffs at the battle site. By 1993, however, it was changed to the present Little Bighorn National Monument as a result of legislation signed by President George H.W. Bush. That change itself, as well as the appointment, for the first time, of a member of the Crow Nation as the director of the Monument, no doubt represented a key moment in the saga of American multiculturalism. The shift of name inevitably serves to remove Custer and his troops from their accustomed role as the stars, albeit ill-fated, of the Battle that occurred there. They must now share that role with the Sioux and other Native Americans.

Indeed, it is no completely innocent fact that the first Native American head of the renamed National Monument was a Crow, for the Crow cooperated (some, no doubt, would use the more loaded word “collaborated”) with Custer against their hated rivals within the Sioux Nation. Not the least remarkable feature of the modern site is the presence of dual—and what some might view as dueling—memorials, one to Custer, one to the Indian nations that, of course, killed Custer and every last one of the soldiers who had joined him at the fateful site. But there is also an independent recognition to the Crow scouts who had in effect been part of the American military. It is utterly foolish to assume that all Native Americans lived in harmony with one another, united against the invading presence of the United States Army. It is as if one expressed surprise that “Europeans” have historically been prone to killing one another in often savage warfare.

What this underscores is not only the violence necessarily attached to the saga of American multi-culturalism in the West; anyone familiar with King Phillip’s War in New England in the late 17th century is surely aware that violence is no more absent from the story of the “Eastern Conquest” than it was of its Western counterpart. But the difference, to be blunt, is that there is no truly serious engagement with this history in the Eastern part of the United States. Perhaps it is because some of the most important wars and battles took place well before the American Revolution (though this is scarcely true of the displacement of the Cherokees). Perhaps it is because none of the Eastern encounters have the almost mythic import of the “Last Stands”—the plural is crucial, as Philbrick notes (even though he used the singular in his own title)—instantiated in the remarkable and larger-than-life figures of Custer and Sitting Bull. It may obviously also have something to do with the fact that the American Indian, both literally and metaphorically, continues to be a greater presence in Montana and adjoining states than is true, broadly speaking, east of the Mississippi. I can testify, though, that it was deeply moving, in every way, to hear the Park Ranger at Little Big Horn, while delivering an almost hour-long lecture, attempt to integrate the competing narratives of those who fought there. “Integration,” in this context, certainly does not mean a single story; rather,

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it is the recognition that history is simply too complex to be reducible to a single narrative, that part of being an adult is to recognize the reality of these competing stories and then to embark on the difficult—some might say impossible—task of creating a society that can accept the inherent contradictions presented by these stories and not, instead, simply pick one as “the winner” and then in effect suppress, or ignore, the competition. Given my own interest in Israel and Palestine, I cannot help but think of the fact that the day on which Jewish Israelis celebrate the joyful day of “independence” in 1948 is treated by Palestinians as the day to remember the Nakba, the “catastrophe” signified by the rise of the explicitly “Jewish state.” It is, alas, unthinkable that the present state of Israel could “integrate” both the celebration and the lamentation into its civic calendar or that, more modestly, one could imagine state-paid guides offering the kind of historical overview that is now presented at the Little Bighorn National Monument. To be sure, one must address the possibility/probability that this kind of generosity in historical understanding is best explained by the brute fact that the United States represented by Custer, whatever his fate on June 25, 1876, clearly won the overall war. Would “we” who are not American Indians be so generous (if that is the right word) if the Indian Wars of the 19th century had in fact turned into the American equivalent of the Hundred Years War, so that Dakotans and Montanans lived in genuine fear of renewed attacks by brave Indian warriors armed with modern weaponry? Magnanimity may be easier after unequivocal triumph than in the case of a standoff, where the result remains uncertain and subject to “renegotiation” following the renewal of battle.

There may, then, be multiple explanations for why there is nothing in the rest of the United States truly comparable, at least in my own experience, to the Buffalo Bill National Historical Center in Cody, which, by being brilliantly divided into quite different sub-centers, attempts to treat with equal seriousness and dignity the competing histories and narratives of the American West. It does not feature “heroes” or “villains,” but, rather, complex human beings (including William F. “Buffalo Bill” Cody) who were responding to the challenges presented by their own lives. This is not to say, of course, that there were no heroes or villains, only that it is a mistake to overemphasize their presence and to collapse all of the central figures into one or the other category.

Law—and law schools—have as one of their potential excellences the ability to train students in what Keats termed “negative capability,” the capacity of humans to be “capable of being in uncertainties, mysteries, doubts without any irritable reaching after fact & reason ….” The American (indeed, Minnesotan) author F. Scott Fitzgerald put it more directly when he wrote that “[t]he test of a first-rate intelligence is the ability to hold two opposed ideas in mind at the same time and still retain the ability to function.” Every first-year student is undoubtedly challenged, if not driven near-crazy, by having to accept the reality that both majority and dissenting opinions may be equally “lawlike” and therefore, in a profound sense,

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“correct.” There are no algorithms in law that allow us to state, with confidence, the single “truth” about the meaning of, say, “equal protection of the law.” In this aspect, law simply mimics our fundamental “existential” reality. Indeed, from the greatest—and still most discomforting and challenging—of all essays on American law, Oliver Wendell Holmes’s *The Path of the Law*, came “[c]ertainty generally is illusion, and repose is not the destiny of man.”

The challenge of living in America—and, I am surmising, of living in the Great American West more particularly—is precisely to live in the “mystery” of a national history that does not allow some satisfying conclusion, “of fact & reason,” with regard to such a fundamental aspect of that history as the encounter between American Indians and their various enemies. No one can leave either Little Bighorn or the Buffalo Bill Center in Cody without being tested as to the ability to hold “two opposed ideas”—i.e., the legitimacy of the radically competing narratives posited by American Indians and their conquerors. Even more fundamental is the challenge to use this opposition in productive ways as a means of achieving a truly more “functional” American society—we might even speak of a “more perfect Union”—that can, among other things, work to rectify the continuing gaps, in both material resources and understanding, between American Indians and those of various races, ethnicities, and religions who are joined in representing the winners in the military struggle signified by Little Bighorn.