Say It Loud! On Race, Law, History, and Culture

Author _ Randall Kennedy
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As someone who has been a lawyer for two decades and a school librarian for less than five years, I am always interested in books that bridge the fields of law and librarianship without necessarily being about legal librarianship. With its focus on legal decisions, theories, and personalities and emphasis on the critical value of intellectual freedom, Randall Kennedy's new essay collection *Say it Loud! On Race, Law, History, and Culture* sits firmly on that bridge between professions.

Kennedy himself also sits, as a thinker, in the middle ground between optimism and pessimism, espousing an approach to race in the United States that may be best considered as practical realism with a solid dash of hope. Throughout the twenty-nine essays, the theme of considering and acknowledging all facts—good and bad, positive and negative, welcome and unwelcome—pervades Kennedy's writing. While Kennedy discusses the serious racial issues that remain in this country, he couples the discussion with reminders to the reader of the immense strides toward a more egalitarian society achieved through actions like the passage of the Civil Rights Act and the (admittedly slow) desegregation of schools following the *Brown* decisions. This balance reminded me of the approach set out in Hans Rosling's *Factfulness* (Flatiron Books, 2018). While Kennedy never references Rosling, he certainly would agree with the existence of a real-world paradox that things can be both better and still bad.

Kennedy certainly comes across as far more interested in humanism, distributive justice, and dialog as a tactic for promoting change rather than in figuring out which, if any, political camp on the issue of race in America is "right." Positing himself as a realist resigned through personal experience to the pursuit of "racial decency," Kennedy is no longer the bright-eyed optimist he may have been when younger, but he does hold out hope for a more equitable society and speaks favorably of Derrick Bell's view that "struggle against racial injustice is a life-affirming activity in which one should be involved regardless of outcome" (while also criticizing Bell's dogmatic approach).

In support of the dialog he sees as necessary to the functioning of our society, Kennedy collects a group of essays that present a range of views on the issue of race in America. In "Black Power Hagiography," Kennedy examines the various approaches to "liberation from racial oppression" from racial integrationists to racial separatists. He also examines the contributions of Black political and legal thinkers, including Derrick Bell ("Derrick Bell and Me"), Clarence Thomas ("Why Clarence Thomas Ought to Be Ostracized"), Frederick Douglass ("Frederick Douglass: Everyone's Hero"), Eric Foner ("Eric Foner and the Unfinished Mission of Reconstruction"), Charles Hamilton Houston ("Charles Hamilton Houston: The Lawyer as Social Engineer"), and Thurgood Marshall ("Remembering Thurgood Marshall"). Key to Kennedy's assessment is that each of these individuals is a fully fleshed human being with characteristics and achievements to be praised and with shortcomings and failings to be acknowledged as well. While he (and the reader) may not agree with each of these individuals politically or philosophically, Kennedy consistently asserts the value of understanding the positions and motivations of prominent individuals, giving credit where credit is due, but not unduly placing human beings on pedestals above the critical evaluation of others.

Also key to Kennedy's analysis is his belief in the critical value of intellectual freedom. This belief is most fully fleshed out in "The Princeton Ultimatum," in which he criticizes the demands of professors at Princeton seeking antiracist action. Among the demands of the professors were calls for "a faculty committee to 'oversee the investigation and discipline of racist behaviors, incidents, research, and publication on the part of faculty.'" In this demand, Kennedy sees a direct threat to the intellectual freedom that is necessary for the flourishing of academic dialog in a democratic society. In threatening intellectual freedom, Kennedy fears, calls for policing of thought and

censorship also threaten the effort to address systemic racism by overreaching.

Kennedy argues throughout his essays that only a balanced approach that respects a range of opinions and thought can continue the development of change. One clear example of this call for balance appears in "Inequality and the Supreme Court," in which Kennedy reviews Adam Cohen's book *Supreme Inequality* (Penguin, 2020). Cohen criticizes the Supreme Court decision in *Citizens United*, which essentially equates campaign spending by corporations with free speech by individuals. Kennedy faults Cohen for not considering other views and reminds readers that the ACLU, a champion of individual liberties and no politically conservative organization, "has consistently opposed parts of the campaign finance legislation that Cohen champions" due to free speech concerns. Kennedy posits that critics of the Court's decisions simply cannot ignore opponents. Though "one might well reject their position . . . it deserves a hearing and careful consideration."

Kennedy's stance is consistently that intellectual freedom is both good and also necessary because of the "prudent fear of state power," as he notes in "Policing Racial Solidarity." In that essay, addressing racially hateful speech, Kennedy avers, "I support, however, private parties and associations of private parties that mobilize to refute, challenge, condemn, shame, and ostracize racism in its manifold guises." Similarly, in discussing the removal of monuments to white supremacy and the renaming of buildings that honor individuals now acknowledged to be unacceptably racist ("Race and the Politics of Memorialization"), Kennedy argues that the answer is never less speech, less intellectual freedom, but *more*: "I would prefer an outcome based on addition rather than subtraction." Ultimately, as Kennedy sums up in the final essay, "Racial Promised Lands?," the only real solution is to "foreswear strict allegiance to any grand blueprint that would seek to master our unruly racial reality" and to keep engaging in an effort to seek change through dialog.

Kennedy's own views on race and the effort to achieve a more equitable, egalitarian culture are most fully laid out in the titular essay, "Say It Loud! On Racial Shame, Pride, Kinship, and Other Problems." In this essay, the reader sees Kennedy's introspection and thought as he struggles with his own competing concepts about how, why, and whether race matters. The inclusion of this essay is, I believe, important for providing a baseline for understanding Kennedy's position in most of the other essays. I found it to be powerful reading.

Setting aside the critical, theoretical aspects of *Say It Loud!*, Kennedy is a masterful storyteller and memoirist. Some of my favorite moments in the book are when Kennedy simply shares the stories of other legal and political theorists, including his own encounters and experiences with them. I walked away from the book feeling like I had a more holistic understanding of the personalities of historical figures like J. Waties Waring, Thurgood Marshall, and Derrick Bell. Kennedy is also very good at explaining legal decisions in plain terms that even non-lawyers will easily understand. I highly recommend this essay collection to others interested in the intersection of law and intellectual freedom. The book would be a valuable addition to an academic library, especially at a law school or an undergraduate school with a political science or pre-law program. It would also be a worthwhile acquisition for public libraries where there is patron interest in the circulation of titles on civil rights, political theory, and race.