

## Law As Unfinished Social Action

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Sara Ahmed, [On Being Included: Racism and Diversity in Institutional Life](#) (Duke University Press, 2012).

After reading [Presumed Incompetent: The Intersections of Race and Class for Women in Academia](#)<sup>1</sup> and attending the Symposium organized around the book by the Berkeley Journal of Gender, Law and Justice, I came home to find Sara Ahmed's *On Being Included: Racism and Diversity in Institutional Life* waiting in my mailbox (this Jot is about *On Being Included*, although I'm quite prepared to say that I like *Presumed Incompetent* (lots) as well). The combination of these two books, both filled with personal stories and institutional insight, cracked my vision of my own place in the legal academy, and the "practice" of diversity, wide open. I read this work as a person who shares a (not surprising, really) number of experiences-as-academic with Ahmed. I read it just after reading the often deeply personal essays in *Presumed Incompetent*. I also read it as a person who has worked to avoid being noticed as "the problem" while trying to maintain a commitment to anti-racist work. These days, that means deep concern that my own strategies and efforts are nothing more than thinly veneered cooptation. All of these things, I think, amplified the impact of the book on me. But I still do not hesitate to recommend it to you, Jotwell reader.

*On Being Included* is a different kind of offering from a well-known Black British feminist, Professor in Race and Cultural Studies at Goldsmiths (University of London), whose work draws on feminist theory, queer theory, critical race theory and post colonialism. She writes, "It develops my earlier arguments about 'stranger making' by thinking more concretely about institutional spaces..." (P. 3.) The book is a study of "diversity" as work inside institutions of higher education. Unlike most of her other work, this one developed out of an empirical study she undertook with a team (read the Introduction for the description of how this happened). Ahmed's interviews, her personal connection to the subject matter (her presence is part of how her institution does diversity (P. 153), and she has done 'diversity work' there as well), and her linking of empirical and theoretical insights make this a deeply engaging read.

The theoretical underpinning of this work is a mix of sociology (mainly in terms of methods) and philosophy. Although not the author's focus, law is embedded in the work. The need for diversity is often driven by regulation, whether found in state laws or rules and regulations binding the institution, whether external or internal. In the UK, at least, many of the interviewees hold positions created after the Race Relations (Amendment) Act 2000 created a positive duty "[to promote equality of opportunity and good relations between persons of different racial groups](#)" which applied to a wide variety of public bodies, including "[institutions within the further education sector](#)". "[I]n effect," writes Ahmed, "[diversity] practitioners in the public sector in the UK have been writing documents to comply with the law." (P. 8.) Law is what lies behind the production of the documents that Chapters 3 and 4 are focused on. Ahmed notes the "language of compliance" in that the documents written to comply with the law often refer to those laws in their opening paragraphs. (P. 86.) The law, she argues, is "an occasion of action." (P. 88.) And what is that action? Ahmed suggests that the requirement of having a document created another duty—to "find the writer." (P. 88.) The identity of the writer of the institutional document will matter in terms of how the document is received and acted upon, as Ahmed discusses in Chapters 1 and 3. And yet all of this "compliance" is taking place inside an institutional culture which is often focused on anything but law, which has cultural norms and established practices, where whiteness is often overwhelming, and "diversity workers" are needed for even quite superficial challenges to these

traditions.

The book offers two important things, going beyond a critique of diversity as being something altogether different from anti-racism. First, it considers diversity not by asking what diversity might look like, or whether it has been achieved, but as both the product of work, and as doing work itself. What is “doing diversity” doing? Using interviews with a group of “diversity workers” (in Britain and Australia) and a variety of textual sources, Ahmed develops a picture of what the work is, and how it is done. Working with Butler’s performativity, she develops a notion of “non-performatives,” where “the failure of the speech act to do what it says is not a failure of intent or even circumstance, but *is actually what the speech act is doing*.” (P. 117.) For those who are working in the area of equality law, the book also offers a different lens on (our own) calls for legal reform in ways which require “diversity,” or demands that legal institutions, such as the judiciary, be “diverse.” As we think more about diversity not just as a contestable outcome, but as a daily work process engaged in by human actors within existing institutional structures, we might understand the likely outcomes of our work differently. I am not claiming that this understanding will lead to a complete revisioning of goals—even Ahmed leaves some space for optimism that diversity imperatives can be leveraged into ways to force people past the “brick wall” and to “the table” where conversations about what “diversity” conceals can finally happen.

Secondly, the book is focused on diversity work in institutions of higher learning (albeit mainly in the UK context, where the pace of change seems particularly blistering at the moment). There may be a particular benefit for academics and students in thinking about how “diversity” is operationalised inside institutions with which we are so familiar. What does it mean when job advertisements say, for instance:

Osgoode Hall Law School is committed to equality and diversity. The Law School has an Employment Equity Plan, which aims to ensure that our faculty is reflective of the four designated societal groups identified in the federal *Employment Equity Act*: women, visible minorities, Aboriginal persons, and persons with disabilities. The Law School welcomes applications from members of these groups and encourages candidates to self-identify in their initial applications (e.g. in cover letters).

Does this mean Osgoode Hall is doing diversity? Does it also mean the institution is male, white, settler, and able-bodied? What boxes are ticked by this? Is it anti-racist? Reading this book might offer a way of engaging and trying to understand institutional practices (and, perhaps, strategies) in “our own” institutions. I was particularly intrigued by Ahmed’s engagement with “performance culture” in Chapter 3. While Ahmed believes that “the development of state mechanisms for ensuring the accountability of public institutions can have progressive as well as disciplinary ends”, she wants to consider what happens when “equality becomes a performance indicator.” (P. 85.)

It might be ironic, [given Ahmed’s previous work](#), that I found the book enjoyable to read. Her conclusions are not particularly optimistic in terms of the possibility that “diversity” will produce forms of equality which are meaningful. Diversity work, says Ahmed, tends to obscure exclusion, race and racism. It creates a discourse and a practice which can prevent the development of institutional habits of diversity. And, in fact, Ahmed argues, these effects, these non-effects, are the ones that much diversity work is designed to do. Yet Ahmed also suggests that the very “hollowness” of the term may allow possibilities for those diversity workers (not all of them) who are trying to use the space created for diversity work to force difficult conversations on unwilling institutions. Read this work to reflect on how “in legislating for equality (and against inequality) it can be assumed that equality is achieved *in the act*...it is as if having a policy becomes a substitute for action...which can work to conceal the inequalities that make the law necessary in the first place.” (P. 11.)

1. **Presumed Incompetent: The Intersections of Race and Class for Women in Academia** (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. González, & Angela P. Harris, eds., Utah State University Press, 2012).

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