American Cultural Pluralism and Law

by Jill Norgren and Serena Nanda
(New York: Praeger, 1988), 254 pages.

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American Cultural Pluralism and Law was written in response to the lack of textbooks dealing with "the legal treatment of cultural minorities"[1] and it deserves consideration for undergraduate classes in civil liberties, minorities and women's studies, and other interdisciplinary courses dealing with those concerns. The work is not intended for specialists, who will find little new material here.

Norgren and Nanda seek to examine "the interaction of law with cultural pluralism in the United States, specifically, the continual negotiation that has occurred between culturally different groups and the larger society."[2] They bring the advantage of an interdisciplinary perspective, with Norgren a political scientist specializing in law and ethnic policy, and Nanda an anthropologist whose work has dealt with law and minority groups.

Focusing on the Supreme Court, they use lengthy (as long as eleven pages of small print) excerpts of well-known high court opinions to examine six types of "culturally different groups": racial, religious, female, homosexual, linguistic, and spatial.[3] Many of the cases covered are standards in civil rights and liberties classes, including such decisions as *Plessy v. Ferguson*[4] and *Brown v. Board of Education*[5] (racial segregation); *Korematsu v. United States*[6] (Japanese-American internment); *Minersville School District v. Gobitis*[7] and *West Virginia State Board of Education v.*

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1. Jill Norgren and Serena Nanda, *American Cultural Pluralism and Law*, ix (1988).

2. *Id.* at 1.

3. "Spatial" groups merely refer to people who happen to live in the same community. They frequently have other characteristics in common (e.g. income, race) and sometimes share the desire to prevent certain other people (e.g. welfare recipients, blacks) from also living in that area.

4. Norgren & Nanda, *supra* note 1, at 36-43 (quoting 163 U.S. 537 (1896).

5. *Id.* at 46-47 (quoting 347 U.S. 483 (1954).

6. *Id.* at 58-61 (quoting 323 U.S. 214 (1944).

7. *Id.* at 84-91 (quoting 310 U.S. 586 (1940).

Barnette[8] (compulsory flag salutes for Jehovah's Witnesses); and *Wisconsin v. Yoder*[9] (the Amish and parental control over the schooling of children). Also examined are cases dealing with Native Americans, Mormons, gays and lesbians, women (employment, marital rights, abortion, prostitution, and pornography), and speakers of Spanish and Black English.

These categories reveal the primary focus of this work, which is not cultural pluralism but liberal causes. The only conservative case studied—the campaign to teach creationism—is also the single instance where a "culturally different group" is treated unsympathetically by the authors. A judge who rules in favor of the creationists exhibits a "stubborn refusal to see the significant differences between theistic religions . . . and secular humanism, which is an open system of inquiry."[10] Creationists' arguments are dismissed as the "transparent efforts of religiously motivated proponents of fundamentalist views."[11] Feminists, by contrast, seek "true equality between men and women,"[12] while homosexuals work to *expand* the *restricted* definition of the family, trying to include the "realities that constitute contemporary American life."[13]

An awareness of this leftward tilt is important for an adequate understanding of this work, which is not so much an examination of cultural dynamics as an expression of a certain viewpoint. Terms such as "dominant culture" or "marginal culture" are given only brief and unsatisfactory definitions; although "culturally different groups" are fairly easy to identify, it is sometimes difficult to see who is left to compose the dominant group. Indeed, the use of the terms "subculture" and "culturally different groups" may be for strategic rather than analytical reasons. In the 1980s, labeling a group (e.g. the hearing impaired, homosexuals) as a "subculture" seems to convey greater legitimacy. Those formerly considered deviant or deficient are thereby elevated in status, giving them firmer ground from which they can challenge the legitimacy of their differentiation or claim special treatment because of it.

Even those favorably disposed toward the authors' leftists views may be unhappy with the weak arguments made here. For example, the authors differ with those who believe that the *Dred Scott* decision is no longer important: "But this dismissal underes-

8. *Id.* at 92-98 (quoting 319 U.S. 624 (1943).
9. *Id.* at 104-19 (quoting 406 U.S. 205 (1972).
10. *Id.* at 136.
11. *Id.* at 134.
12. *Id.* at 180.
13. *Id.* at 155.

timates the historical significance of an opinion which put the official seal of approval on Black exclusion, a fact of American life which continues to the present day."[14] No evidence of this "historical significance" is offered, however, leaving the reader only argument by assertion. (To imply that *Dred Scott* provides valuable support to contemporary racial segregationists seems to me to require an overly favorable estimate of the intelligence of bigots.)

A little later, Norgren and Nanda write "The legitimacy of Black demands for economic equality is borne out by the extensive data indicating persistent and significant gaps between blacks and whites in income . . . education, housing, health, and other measures of well-being."[15] But surely this is absurd: the legitimacy of demands for economic equality have nothing to do with statistics! If people have a right to equal treatment or equal results, that right exists regardless of current conditions. The legitimacy of demands for voting rights, for instance, has nothing to do with the numbers who enjoy the right to vote. Regardless of whether 100 percent or 0 percent actually vote, those demands are still *legitimate*. Conversely, however, statistics indicating a disparity are not arguments for the elimination of that disparity. An argument must still be made to show *why* that disparity is illegitimate, or how it has developed through unfair practices.

Yet another example of sloppy reasoning occurs when the authors argue that the different treatment of Japanese-Americans and Amish must be seen as the result of different perceptions of the groups' social behaviors. But what about the fact that one case dealt with actions taken during the first few months of World War II, while the other occurred during peacetime calm? My opposition to the Court's decisions on Japanese-American internment is second to no one's, but Norgren and Nanda's criticism of those decisions is simply not convincing.[16]

As these examples suggest, the book's value will probably vary inversely with the reader's sophistication. Undergraduates, the primary intended audience, will find the work informative, and will gain a greater understanding of the importance of the courts in mediating conflicting group claims. A chapter on alterna-

14. *Id.* at 34.

15. *Id.* at 49.

16. The consequences of these types of shortcomings go beyond this book, I might add. The political successes of conservatives in the last few decades have been preceded by intellectual advances. No longer is the term "conservative intellectual" an oxymoron, and no longer are conservative thinkers lonely voices in the wilderness. Basic history such as is presented in this book can be part of an effort to meet the conservative intellectual challenge, but that effort would be greatly strengthened by much more careful and tough-minded analysis.

tive conflict resolution will help those unfamiliar with the legal system realize the limits of judicial influence (although this chapter does not seem to fit with the rest of the book). Law students seeking a quick review of Supreme Court cases dealing with these groups will also be rewarded. Experts such as lawyers and political scientists are not the intended audience, however. Norgren and Nanda do not seek to offer insights into "minority perspectives," or offer views with which white, middle and upper-middle class Americans (e.g. lawyers, political scientists, law students) might not be familiar.[17] Rather, this book's contribution is to document the legal history of some widely known civil rights and liberties issues, giving the newcomer to the field an introduction to one aspect of an important debate.

17. It should be noted that a few pages do offer some perspectives not always available to those who are white, male, Anglo-Saxon, Protestant, and middle (or upper) class. Norgren & Nanda, *supra* note 1, at 5-7. These are merely quotations from other published works, however, and the reader looking for different perspectives should turn to other sources, such as the voluminous sociological literature on subcultures. For those desiring such enlightenment with minimal work, a convenient and readable—if somewhat strident—collection can be found in *The Graywolf Annual Five: Multi-Cultural Literacy* (ed. Rick Simonson and Scott Walker 1988).