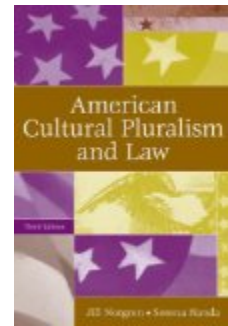


H-Net Reviews

in the Humanities & Social Sciences

Jill Norgren, Serena Nanda. *American Cultural Pluralism and Law*. Westport: Praeger, 2006. xvii + 287 pp. \$29.95 (paper), ISBN 978-0-275-98699-5.

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The Third Time Around: Well Worth the Whirl

I found myself reading—and rereading—the thirteen chapters of *American Cultural Pluralism and Law* from several different but related perspectives. As a legal historian, I kept seeking greater attention, even in a book organized thematically, to temporal context. Can this book’s intended audience, undergraduate students, hope to understand the role of “law” and “cultural pluralism” with only this text’s minimalist overview of how U.S. legal institutions—let alone its diverse cultures—have changed over time? I also wondered how the law-related literature understandably not represented in this textbook might change its analyses of contested issues. Might not a work generally weighted toward appellate court decisions have given more attention, for example, to the growing body of work on the other institutions and the different practices through which “law” works? Questions, such as these, of course, open up space for a reviewer to offer her or his critical commentary and can satisfy the urge to provide, in the guise of a review, the outlines of a competing study. How might, for example, the already strong chapter entitled “Religious Belief and Practice: The Mormons” have been even better had it drawn from Sarah Barringer Gordon’s exemplary historical study, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth Century America* (2002)?

Yet, as I revisited my comments in the margins of the review copy and on scattered sheets of paper, one overriding and much more relevant question continually resurfaced. What might this book, intended as a teaching tool, offer to instructors and students when they meet

on that most treacherous of terrains, the college classroom? Can I envision, in short, this book offering a viable teaching platform?

First, anyone who has served time preparing a new edition of a previously published textbook can appreciate how well Jill Norgren and Serena Nanda succeeded in revising a book initially published in 1988. This third time around for *American Cultural Pluralism and Law*, if not providing the proverbial charm, has yielded a very thorough—and, more important, thoughtful—revision. This is not a warmed over version of the first or even the second edition.

The collaboration of a political scientist (Norgren) and an anthropologist (Nanda), scholars with well-regarded specialized publications of their own, yields a clear, overriding theme that emerges from the disciplinary traditions of both authors. The individual chapters explore “the interaction of law” with people from diverse cultural groups that simultaneously seek “both getting in and staying out” of “the larger society” (p. xv). This interaction—in various legal arenas, particularly courts—involves “the continual negotiation that occurs between culturally different groups and the larger society” (pp. xiii, xiv). A brief introduction (“*E Pluribus Unum?*”) lays out this theme, and the book even more briefly returns to it at various points, particularly in its concluding chapter, “Cultural Pluralism and the Rule of Law Post 9/11.” The dominant legal culture’s emphasis on “individual rights” rather than “group cultural interests,” the introduction further argues, creates a ten-

sion between distinct cultural groups and guardians of a nation-state legitimized by an adherence to the rule of law (p. xv). Various stories about this tension, which can be creative as well as destructive to the interests of culturally distinct groups and to a rule of law ideal that has come to include both protection for difference *and* for national unity and security, emerge in the case studies that follow.

These topical discussions within *American Cultural Pluralism and Law* fall into four broad, thematic categories: race and ethnicity, religion, gender, and community and citizenship. Within these, the book treats such diverse topics as Native American land claims, rights claims by native Hawaiians, clashes over immigration policies and school curricula, legal rights of homeless persons, disputes over the religious beliefs and practices of Amish groups, and the internment of families of Japanese descent during the Second World War. This revised edition also incorporates new sections that discuss legal-cultural tensions involving such issues as gay marriage, Puerto Rican sovereignty, and disability rights. Moreover, a number of chapters, such as the one on African American issues, have been updated.

The chapter on Japanese internment, although not significantly altered except for an updated bibliography and a final paragraph, still provides an appropriate prologue to the entirely new chapter that addresses themes after September 11, 2001. Can, for instance, in the wake of the events of 9/11, *Hirabayashi v. U.S.* (1943) and *Korematsu v. U.S.* (1944) be dismissed as wrongly decided cases that even if not explicitly overruled have been effectively repudiated? Perhaps not is the answer here. The final chapter, then, looks at the status of *Rumsfeld v. Padilla* (2004) and *Hamdi v. Rumsfeld* (2004) along with the issues of profiling Muslims and of using "Torture" to wage "the U.S. War against Terror."

The final, new chapter helps to highlight a problem inevitably posed by a book of this kind. When dealing with ongoing legal problems and issues, any edition, revised or not, will involve not only the difficult-enough task of addressing matters in the media-legal spotlight at the point when the manuscript leaves for publication but also some tricky guesswork about what issues will remain there when a bound book becomes available for classroom use. (Here, it seems appropriate simply to pose, for another day, a pedagogical question: Would not some type of updating feature, via the Internet, be an appropriate and valuable ancillary for texts, such as this one, that revolve around "problem studies"?)

In discussing the *Padilla* and *Hamdi* cases, then, the final chapter of this book necessarily must try to hit two moving, somewhat elusive targets. Similarly, the discussion of the profiling of people whose religion or ethnic background might tend to mark them as potential terrorists likely lacks the current salience of another issue: using the claims of national security, as in the current (March 2008) dispute over revising the statute of the Foreign Intelligence Surveillance Act, as justifications for what critics see as unconstitutional surveillance practices that affect more than members of culturally distinct groups. In this regard, it might be interesting to consider how dangers allegedly posed by "cultural pluralism" might be employed, explicitly, not only against people from groups that seem different but also, more subtly, as arguments for expanding legal-constitutional understandings about the scope of governmental power.

The final chapter's discussion of torture-related issues, at this early 2008 moment, seems to fare somewhat better in terms of relevancy than its treatment of other post-9/11 matters. The book, critics of current Bush administration practices might note, pointedly highlights the circumscribed critique of torture offered in 2005 by Senator John McCain. His position on torture failed to "draw specific attention to ... the ways in which U.S. soldiers and interrogators singled out Islamic culture" (p. 261). A recent study by Marc Sageman, *Leaderless Jihad: Terror Networks in the Twenty-First Century* (2008), for example, might be cited in support of Norgren and Nanda's final claim: The U.S. commitment to law and cultural pluralism represent a powerful form of "soft power" that the nation's leaders can effectively deploy in today's world. *American Cultural Pluralism and Law* puts the case this way: "Strategic self-interest," as well as moral-legal considerations, led previous U.S. leaders to embrace agreements reining in the use of what some of their successors, perhaps even members of the current U.S. Supreme Court, would now accept as "enhanced interrogation methods" (p. 262). "Our long-standing respect for law and courts," along with a similar respect for cultural diversity, "will ultimately define who we are and how we aspire to interact with societies around the world" (p. 262).

Every potential adopter will, inevitably, dissent from some of the formulations and arguments in *American Cultural Pluralism and Law*. It is *simply that kind of textbook*. This also means that its ambitious and thoughtful materials, especially as revised for this third edition, should provide instructors with a broad platform on which to build a course of their own.

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