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Book Review - Reviewing Anthony E. Cook, *The Least of These: Race, Law, and Religion in American Culture* (1997)

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legal significance of *Brown* is open to debate. Paul Gewirtz, for example, argues that *Brown* "has opened up a new range of problematic issues for our society" because "promoting this diversity by using race-based policies is a wrong turn in light of the distinctive dangers of such policies" (p. 127). Hazel Carby, however, observes that while much about the African-American experience has been integrated into the mainstream of American society, the *Brown* decision did not dismantle American "apartheid." She also notes that the same legal system which produced *Brown* has since moved toward the political right, thereby abandoning blacks in the process. Carol Greenhouse suggests that the most important aspect of *Brown* may well have been its narrative structure, for it "defined a version of the classic ethnic success story that has been central to twentieth-century discourses of the nation" (p. 186). Lawrence Friedman, however, places *Brown* within a larger historical context by cautioning scholars against trying to draw too many conclusions from the decision on the basis of excessive discussions of legal craftsmanship and judicial logic. "Anybody who feels that a more tightly crafted and better reasoned opinion in *Brown* would have had a bigger (or even different) impact on life in rural Mississippi (or Washington, D.C., for that matter) than what Warren actually wrote, can't be living on this planet. In fact, most of the people for and against racial equality or desegregation . . . have never read Warren's opinion" (p. 51). The other contributors discuss a wide range of issues, including the positive impact that *Brown* had on later Supreme Court cases and the full meaning of *Brown's* legacy on future generations of African-American lawyers.

Race, Law, and Culture is an engaging and provocative collection of essays, and it will generate much discussion within the academic community for years to come. Unfortunately, its technical language and legalistic tone will appeal to few outside the legal academy, which is regrettable given that the book addresses so many issues that are clearly deserving of a wider reading audience. Nonetheless, the appearance of this volume reminds us that for all its shortcomings and imperfections, *Brown*, in the words of one contributor, remains "firmly ensconced in the pantheon of sainted cases" (p. 50). Still, like all other Supreme Court decisions, *Brown* is best understood and evaluated in its own time. *Brown* was about integration and assimilation, but increasing numbers of blacks today reject both. The goal of the present generation, at least from the perspective of those who embrace a broader "multicultural" perspective, is not melting into a pot, but rather sharing the power and the resources. And for those reasons, much of what *Brown* represents may not seem timely or relevant. But, as Friedman reminds us, "That *Brown* did not put an end to racism is perfectly obvious; it is also perfectly obvious that millions of blacks still lead segregated lives. . . . But I still think *Brown*—and Earl Warren, not to mention the plaintiffs, and their lawyers—deserve a moment of silent appreciation, forty or so years down the road" (p. 65).

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ANTHONY E. COOK, *The Least of These: Race, Law, and Religion in American Culture*. New York: Routledge, 1997. 256 pp. \$59.95 (cloth). \$18.95 (paper).

One complaint which I have with *The Least of These*, Anthony E. Cook's thoughtful and thought-provoking book, is that the title promises more than much

of the work delivers. Judging from the subtitle, "Race, Law, and Religion in American Culture", the work should engage in a broad examination of these institutions in American life. Cook's well-written book does less in some ways, but does more in others.

The first two parts of this tripartite work focus more narrowly on how race and philosophy (Part I) and race and religion (Part II) have influenced—or failed to influence—progressive liberal discourse in American political life. While both parts contain some discussion of the history of American law as it relates to race (e.g., *Brown v. Board of Education* (1954) and the civil rights movement), the emphasis is not on law *per se*. Instead, in Part I, Cook explains how John Dewey and the philosophy of Pragmatism, on the one hand, and the American Legal Realists (whom Cook calls the "pragmatists of the law"), on the other hand, failed to develop a normative vision to guide America "toward the substantive ends of law capable of protecting the most vulnerable and marginal segments of the American population." According to the author, this created a lost opportunity for racial justice in America and "opened the door for a conservative variant of liberalism committed to a jurisprudence of colorblindness that fueled the reactionary backlash against the civil rights movement" (p. 20).

The normative vision for a just American society could have come from religious principles, but, in Cook's view, both Pragmatism and Legal Realism were uncomfortable with numerous aspects of religious practice and philosophy. Without this normative guidance which religion could have provided, American democracy slipped all too easily into a political culture where there are insufficient limitations on the abuse of power exercised by the majority against the minority.

While Cook raises important points, he fails to give sufficient credit to the Legal Realists for the instrumentalist approach which they took to American law—an approach which was designed to further positive social change. Cook takes to task all Realists, save Felix Cohen, for the failure to develop a normative vision to create a just society. This overlooks the important contributions to American political life of the other Realists, such as William O. Douglas. Another quibble which I have with Cook's treatment of the Realists is his failure to deal with the recent scholarship on American Legal Realism.¹

Part II of the book contains Cook's examination of the Social Gospel of Walter Rauschenbusch and the concept of the Beloved Community embraced within the philosophy of Martin Luther King, Jr. In Cook's opinion, key aspects of these two socio-religious philosophies could guide American liberals toward a resolution of the problems in the race debate. Rauschenbusch believed that Christianity's role in society is to seek to eliminate evil by encouraging individuals to follow God's will and to advance the cause of the least fortunate. King's philosophy was influenced both by Rauschenbusch's thinking and by the general African-American religious tradition. This latter tradition was forged in a time of slavery and segregation, which resulted in the creation of a sense of community. This tradition "encouraged an intensely personal relationship with God while nurturing the possibilities of collective defiance and [societal] transformation" (p. 105). Out of this tradition developed the notion of the Beloved Community, the united society which would emerge in America out of the struggle to eliminate racism and oppression. But, in order for the Beloved Community to emerge, indi-

1. For example, Morton J. Horwitz's *The Transformation of American Law: 1870-1960* (New York, 1992) comes readily to mind.

viduals would have to see themselves as interconnected with all others in society, including (especially) the poorest and most oppressed. This Beloved Community would be based on a “properly constituted love for others” (p. 113) and would require a redistribution of wealth and power in America.

It is in Part III that Cook fully develops his thesis and finally delivers upon the promise of his book’s title. Here, the author examines how a “religiospiritual” normative framework could provide the reinvigoration needed by contemporary American liberalism—and American society in general—in the quest to end such societal ills as racism and poverty and to promote justice and love for “the least of these” (i.e., society’s most disadvantaged) (pp. 139-40).

American liberalism’s main problem is its fear of state coercion in the realm of individual rights; this fear has resulted in a shift among many liberals toward the conservative, laissez-faire view in which government should simply guarantee individual rights and let the market take care of the rest. According to Cook, a love-based, just society, anchored by religious principles in which individuals love God and love their neighbors as they should love themselves, is attainable if liberalism only could rise above its fear-based view of the state. Construction of a just American society—the Beloved Community founded upon love for the least of these—will not be easy; the one person who would have been most capable of uniting the disparate groups seeking this end, Martin Luther King, Jr., was assassinated in 1968.

Racism is the biggest enemy of the coming of the Beloved Community, and racism continues to undermine the progressive liberal agenda in America. Cook defines racism as the “belief in the inherent inferiority of a group, ascribing to individual members of the group a presumption of inferiority based solely on their membership in the group” (p. 177). Under this definition, one is racist only if he or she engages in racial generalizations for the invidious purpose of classifying as *inferior* individual members of the targeted group.

For Cook, a reconstituted program of affirmative action is the first step toward the ultimate elimination of the evils occasioned by American racism. Cook criticizes affirmative action as currently practiced: it allows white racists to continue to feel superior to members of racial minorities to the extent that these racists are able to make a convenient scapegoat of affirmative action for the advantages which they (i.e., the racists) no longer receive. Affirmative action should be employed for the purpose of giving opportunity to the oppressed and to diminish inequality. However, affirmative action is not an end in itself; rather, it is a means to Cook’s ultimate end: opportunity and love for all (including society’s least advantaged) in a society which celebrates individual differences and respects individual worth.

Cook’s arguments are unlikely to win many (if any) converts among conservatives. Indeed, Cook largely is preaching to the choir—those who already support some form of affirmative action and share, at least to some degree, his vision of the Beloved Community. Conversion of the conservatives, though it doubtless would be welcomed, is not the main purpose of this book. Instead, Cook’s goal is to shore up liberals’ faith and to shepherd back into the fold some of those sheep who have lost their way amid the background noise of the reactionary backlash against the civil rights movement. Cook’s aspirational work is likely to resonate with such an audience.

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