

The Spirit of the Law: Religious Voices and the Constitution in Modern America, Sarah Barringer Gordon, Cambridge, MA: Belknap Press of Harvard University Press, 2010. Pp. 316. \$29.95 (ISBN-10 0674046544). doi:10.1017/S0738248013000394

The Spirit of the Law is Sarah Barringer Gordon's thoughtful analysis of a significant era in the development of American church–state law. Rather than offering a conventional history with doctrinal church–state analysis, however, Gordon examines various groups and cultural forces that impacted the law's development. Readers will quickly be won over by the compelling stories and Gordon's engaging narrative. Readers will also appreciate Gordon's nuanced thesis and how her overall theme relates an important, but often overlooked, aspect of how divergent litigants impact the development of the law.

Gordon's title provides both a play on words and synopsis of the book's theme. In common parlance, the term "spirit of the law" connotes those higher principles that animate the law and ensure that its ultimate purposes are not lost in their mundane applications. As Gordon's book is about modern church–state controversies, the term takes on a second meaning that has religious connotations. Here, "the spirit is a driving force" representing matters of prior importance to earthly matters. Gordon is not talking about "higher" law, but how religious convictions of disparate individuals have been a catalyst for expanding the grand promise of equality under law. People of faith, particularly those embracing unconventional views, are frequently caught between conflicting temporal and spiritual worlds, forcing them to navigate between religious and legal realms. By exercising their spiritual convictions via the legal system, these litigants have contributed to the fulfillment of that popular idiom.

Gordon uses such actors to demonstrate an alternative perspective toward the law. Gordon calls the conventional perspective "technical constitutionalism," the dominant discourse of lawyers, judges, and legal scholars. She contrasts this with a "popular constitutionalism" espoused by religious dissenters who insist that the Constitution should recognize their perspectives, but on their terms. The book, in essence, is the story about "[r]eligious groups and individuals who claimed constitutional rights not recognized in law [and] tapped into a powerful alternative interpretation of the Constitution that was not tied to legal language." Often acting out of self-interestedness with little consideration for the greater legal principles at stake, these disparate religious litigants have helped "to explain the true meaning of the Constitution's religion clauses."

To develop her thesis, Gordon divides the book into case studies of various religious groups in recent history. The unifying theme of these studies is how, through their efforts, these disconnected groups brought about a merger of popular constitutionalism with technical constitutionalism. Some of the groups are familiar (Salvation Army, Jehovah's Witnesses); others are less familiar but deserving of recognition (Black Muslims). Still others do not fit comfortably within her theme of religious outsiders (postwar Protestants; evangelical

women; liberal Jews). But Gordon seeks to demonstrate the breadth and inclusiveness of the idea of popular religious constitutionalism.

Gordon's thesis is strongest in her chapters on the Jehovah's Witnesses and the Nation of Islam, both groups being perpetual religious outsiders. In their quest for legal protection for their evangelism and against forced patriotism, Witnesses faced seemingly insurmountable resistance from the legal and political establishments. Gordon demonstrates how the Witnesses only increased the difficulty of their task by their theological intolerance and rejection of a new ethos of ecumenicalism represented by President Eisenhower's very inclusive public religious stance ("Our government makes no sense unless it is founded on a deeply felt religious faith . . . and I don't care what it is."). The chapter on the Nation of Islam is an even more profound study on the clash of cultures and the legal resistance to recognizing the law's promise. Arising out of the black prison experience, the Nation of Islam pursued a protracted campaign for religious validation under the harshest of circumstances. The ultimate legal recognition of their faith claims in prison was important not only for black identity, but for many other disparate communities of faith.

From the Nation of Islam, Gordon switches to a different type of protagonist: conservative evangelical women of the 1970s and 1980s. This group was hardly an outsider in the same sense; however, Gordon shows how evangelical women found their religious values marginalized by an increasingly secular culture. Focusing on Christian activist Beverly LeHaye and her Concerned Women for America (CWA), Gordon traces their legal battles against an encroaching secular humanism, particularly in the public schools. Alleging that public institutions and a hostile culture discriminated against conservative Christian values, CWA sponsored lawsuits challenging curriculum and sex education, famously losing most. Nonetheless, the crusade resonated with many conservative Christians who, following the Court's school prayer and abortion decisions, felt increasingly alienated from the prevailing constitutionalism. Although enlightening, the chapter feels incomplete in two respects. First, the reader is left with the impression that CWA and aligned groups had little impact on the law, when, in fact, they were highly successful in transforming First Amendment jurisprudence by moving claims of religious expression out of the religion clauses into the free speech clause. Second, the question of how to define religion for legal purposes first appears in this chapter. Unfortunately, this important discussion is relatively brief, and secondary to the larger story, when it could have provided an additional theme to tie together the case studies.

The two remaining chapters consider the role of Protestants—particularly, the organization Protestants and Other Americans United for Separation of Church and State—in developing modern church–state jurisprudence (1940–1965), and liberal Jews and Protestants in their activism for marriage equality (1990s and 2000s). Although the studies provide much insight, neither of the

groups nor the episodes fit comfortably within the book's overall theme. Neither group possessed the same outsider status, nor was either group's understanding of constitutionalism at tension with the legal status quo as was the case with the other groups considered in the book.

All in all, *The Spirit of the Law* is an engaging work, offering a fresh thematic approach to viewing the development of church–state jurisprudence. It reminds us about the important interactions between the two realms, and about how disparate perspectives on the obligations of law and faith have often been at tension with the status quo, while affecting it at the same time.

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Dale Carpenter, *Flagrant Conduct: The Story of Lawrence v. Texas: How a Bedroom Arrest Decriminalized Gay Americans*, New York: W.W. Norton, 2012. Pp 345. \$29.95 (ISBN 978-0-393-06208- 3).
doi:10.1017/S0738248013000400

Flagrant Conduct explores the arrest of John Lawrence and Tyron Garner, on a muggy Houston night, in September of 1998. Upon arrest, the men were charged with violating a Texas statute prohibiting deviate sexual conduct. The legal challenge to that statute started in a justice of the peace's office in Houston, and ended with the United States Supreme Court finding invalid all existing state sodomy laws. In telling the story of this case, Dale Carpenter has written a book that is part social history, part investigative journalism, part legal analysis, and part a series of personal profiles. No book could be all of those things equally well, and *Flagrant Conduct* does some better than others. On the whole, however, it tells an important civil rights story.

The book is primarily organized chronologically. Part I introduces the law, the city in which it was enforced, the men charged with violating it, and the police officers who charged them. The textured description of the gay community and gay politics in Houston in the latter part of the twentieth century is excellent. Smart, creative, and dedicated gay and lesbian activists in Houston worked tirelessly throughout the 1970s and 1980s to build political coalitions that protected gays and lesbians, notwithstanding random violence and police harassment, only to see those coalitions crumble with the rise of social conservatives in Texas. In light of this history, Carpenter could have been more heavy-handed in describing the importance of the *Lawrence* litigation. That which makes the story of gay Houston in the 1970s and 80s so compelling is that which makes constitutional protection necessary. Until the sexual activity that