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Lauren Robel

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BELONGING TO AMERICA. By Kenneth Karst.[1] New Haven, Conn.: Yale University Press. 1989. Pp. xi, 329. Cloth, $29.95.

Lauren Robel[2]

When I was thirteen, my family moved to Montgomery, Alabama. Nothing had prepared us for the South of 1965, and nothing in my childhood to that point had prepared me for the rigid hierarchies of life in a resentfully integrated school. On my first day at school, I violated a crucial part of the racial code I had not yet learned by eating lunch at a table with an empty seat. After lunch, a boy I had never met pulled me aside to tell me that "we" did not eat with "them." I was bewildered: who were "we"? I didn't know this boy. I was embarrassed: how could I have made a mistake on my *first day*?

The point of the boy's warning, of course, was to tell me that black students didn't belong, and that I wouldn't belong either if I didn't learn the rules. I soon found there were many situations like this one, and that my white skin did not always make me presumptively an insider. My school still started the day's classes with the Lord's Prayer, for instance, but this prayer kept going after my Catholic training taught me to stop. Should I just go along with my classmates' religious practice, or hope that no one noticed if I stopped "early"? I was part of the "we" as compared to the few black students in my school, but not as compared to my mostly Protestant classmates.

Most Americans have stories like these, and I share mine only because they illustrate a central point in Professor Kenneth Karst's book, *Belonging to America*. For children, group membership is an integral part of self-definition. The boy who issued my first-day warning was incredulous that I didn't know the rules that were second nature to him; my embarrassment came from the fear of exclusion. Our group memberships define our places in society; they tell us where we belong. Professor Karst argues that such experiences are part of an acculturation that results, for most of us, in a way of thinking about groups and their members that is so deeply a part of our understandings of who we are that we cannot really comprehend how it affects our ordinary decisionmaking. When the decisionmakers are judges, or legislators, these beliefs often subconsciously affect decisions about burdens of proof in constitu-

1. Professor of Law, University of California, Los Angeles.
2. Associate Professor of Law, Indiana University School of Law, Bloomington.

tional cases or the allocation of societal resources that slight the interests of members of racial and religious minorities and women in being treated as equal citizens.

In asking who "belongs to America," Karst limns the psychological borders of our country to describe citizenship from the point of view of the outsiders, those citizens historically excluded from the country's public life because they belong to disfavored racial, ethnic, or religious groups. Karst's project has several parts. The first, directed at everyone who thinks seriously about such things as race and gender, is an attempt to describe and explain the meaning and power of acculturation in America. The second, directed more specifically at lawyers and judges, is an argument about what the effects of our history and our acculturation should mean for both the process of reaching decisions, and the decisions that ought to be reached in cases under the fourteenth amendment. The book is both an exhortation to our best instincts as a nation and a reminder of our worst. It serves as an antidote to the parsimoniousness of our public life in the post-Reagan years, and an invitation to share in a generosity of spirit that Karst doggedly sees slumbering in America.

Absent a common religion, devotion to a monarchy, or an ethnically homogeneous population, what glue holds this country together? Professor Karst argues that our national bond is adherence to a common "civic culture," a uniquely American blend of political beliefs stressing "individualism, egalitarianism, democracy, nationalism, and tolerance of diversity." At the core of this national ideology is equality: a rejection of "caste, of rigid social hierarchy that traps people in a system that holds them down."

Americans have always lived with substantial contradictions between egalitarian ideals on the one hand and conduct that systematically denies the equality of members of certain groups on the other. We have done so, Karst argues, by narrowly defining the groups to whom our ideals apply. Historically, few groups have "belonged to America" in the sense of viewing themselves as "fully participating member[s] in the national community." We started out, in fact, with only one group with full insider status: white, male, Anglo-Saxon Protestants—and they argued among themselves about whose brand of Protestantism should prevail. Race, ethnicity, language, and religion have all been used to relegate entire groups to subordinate status, which in turn means excluding them from political and economic participation in American life.

The central problem of American constitutional law, given our history, is the problem of subordination of groups. As a constitutional theorist, Karst attempts to breathe new life into two con-

cepts, equality and citizenship, often left for dead in modern constitutional theory. Central to Karst's argument is the principle of "equal citizenship": "Each individual is presumptively entitled to be treated by the organized society as a respected, responsible, and participating member. Stated negatively, the principle forbids the organized society to treat an individual as a member of an inferior or dependent caste or as a nonparticipant."

Karst uses the facts of five familiar cases, such as *Jefferson v. Hackney*,[3] which reached the Supreme Court during the 1970s and 80s, to underscore the tenacity and power of our acculturated understandings of the meaning of race and gender and the need for a principle such as the one he suggests. In each, a member of a disfavored group has been burdened by government action in a way that seems directly attributable either to stereotypical thinking about these groups by the relevant government decisionmakers, or by a desire to show these people their "place." Nevertheless, their claims are rejected by the Supreme Court. How did the Justices manage to ignore or find inconsequential the effects of race, religion, or gender on what happened to these individuals? And how might these effects be profitably explored?

Karst answers the first question by writing a psychological history of the relations between insiders and outsiders in America. Stigmatizing, the fear of the unknown, and the projection of a negative identity onto the outgroup, are common to the experience of each group Karst discusses. Much of this account, such as the chapters on Jim Crow or gender relations, is (or ought to be) familiar terrain for those of us who teach constitutional law.[4]

Less often tackled by legal scholars is the story of the legal barriers to belonging faced by ethnic immigrants. Karst's chapter on "nativism"—the legal and social exclusion of the foreign born—is particularly interesting for the light it sheds on such current issues as movements to legislate English as the national language. Similar attempts succeeded during the great waves of immigration during the 1800s, when America was at its most xenophobic: Iowa, in fact, forbade the use of foreign languages in public and private schools, in church services, in conversations in public places, and even over the telephone. Karst makes a powerful case for the parallels between that sort of "intercultural domination" and the system of Jim Crow, noting that housing and employment discrimination

3. 406 U.S. 535 (1972).

4. I think these chapters, in fact, would be enormously useful in the classroom for many students unfamiliar with the history of group subordination in this country. I was astonished recently when one student expressed in class the view that slavery was a "social system," apparently enforced through the good manners of the slaves.

against ethnic and religious minorities was common during the latter part of the last century and the first part of this one.

Ethnic immigrants fought to belong through the political process, bloc voting, and political machines that assured their followers of a piece of the economic pie. As many writers have noted, American politics has been much more resistant to the claims of black citizens, who turned instead to the judiciary.

Woven into Karst's history are various Supreme Court decisions that involve race, gender and ethnicity. The Court's performance, overall, has not been impressive. While Karst begins with the stunning case of *Brown v. Board of Education*, and finds good words for the Warren court's state action cases, the more frequent examples are of the Court's failures, from *Dred Scott* through *Washington v. Davis*. Would Karst's equal citizenship principle help judges take better account of the effects of racist and sexist acculturation?

Well, it would if judges could be convinced to follow Karst's methodology. Karst joins a chorus of voices[5] encouraging judges to think about the meaning an outsider would place on a government actor's behavior. Karst is particularly effective in demonstrating how changing perspective can open new avenues for thinking about familiar cases. For instance, he encourages us to think about what meaning Ruth Jefferson, a black woman on welfare and the named plaintiff in *Jefferson v. Hackney*, would attribute to the Texas legislature's decision to economize by cutting her benefits to half of the state's own assessment of what she needed to survive, while leaving untouched the benefits of the elderly poor—most of whom were white.

Karst also encourages judges to think about the historical and institutional contexts of the cases they decide. In writing about the illegitimacy cases, for example, Karst notes that in Louisiana, where the first of the illegitimacy cases considered by the Court began,[6] "the legal disabilities associated with illegitimacy grew out of that society's history of race relations." The legal status of illegitimacy not only allowed men's wealth and status to attach to women and their children only when men chose to recognize the union or the children, but also allowed white men to perpetuate the stigma associated with race without having to be tainted by the existence of their own black children. By placing legitimacy laws in their histor-

5. *See, e.g.*, Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574 (1987); Lawrence, *The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism*, 30 STAN. L. REV. 317 (1987); Minow, *The Supreme Court, 1986 Term—Foreword: Justice Engendered*, 101 HARV. L. REV. 10 (1987).

6. Levy v. Louisiana, 391 U.S. 68 (1968).

ical context, Karst illuminates their connection to the creation of a system of caste.

Having given judges the tools to work with, Karst renews the argument for the centrality of the federal judiciary, and particularly the Supreme Court, in remedying the hurt of exclusion. Judicial enforcement of the equal citizenship principle vindicates the central tenets of the American civic culture, invites outsiders into the national community, and promotes the national good by assuring that no group is a permanent loser in the political process.

As we begin the 1990s, this prescription seems hauntingly sad. A court that could tell Native Americans that their religious practices (and everyone else's, for that matter) were the proper subject of political brokering[7] is an unlikely candidate for spiritual leader in the quest for constitutional equality. But as Karst himself points out, the strength of the judicial commitment to equality has never been the measure of its pull on American consciousness—else how could *Brown v. Board* ever have come about? Perhaps, then, we should view *Belonging to America* as an eloquent reminder of the importance of thinking seriously about equality, even if our judges will not.

GAYS/JUSTICE: A STUDY OF ETHICS, SOCIETY, AND LAW. By Richard D. Mohr.[1] New York, NY: Columbia University Press. 1988. Pp. 357. Cloth $39.00; paper $14.00.

Harry V. Jaffa[2]

The author is—we are told by the dust jacket— an "openly gay professor" who has turned his attention

> to the lives of gay people in America and to the ethical issues raised by society's perception and treatment of gays.

This "timely book," it is said,

> will prompt Americans to consider whether they have consistently applied their basic values to lesbians and gays.

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7. Employment Div., Dep't of Human Resources v. Smith, 110 S. Ct. 1595, 1606 (1990).

1. Associate Professor of Philosophy, University of Illinois-Urbana.

2. Henry Salvatori Research Professor Emeritus of Political Philosophy, Claremont McKenna College and Claremont Graduate School, Director, Center for the Study of the Natural Law, The Claremont Institute.