



In Defense of American Liberties--a History of the ACLU

Review Author[s]:
Lee Epstein

The American Political Science Review, Vol. 85, No. 1 (Mar., 1991), 251-252.

Stable URL:

<http://links.jstor.org/sici?sici=0003-0554%28199103%2985%3A1%3C251%3AIDOALH%3E2.0.CO%3B2-C>

The American Political Science Review is currently published by American Political Science Association.

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/about/terms.html>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/journals/apsa.html>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

JSTOR is an independent not-for-profit organization dedicated to creating and preserving a digital archive of scholarly journals. For more information regarding JSTOR, please contact support@jstor.org.

DEFENDERS OF THE CONSTITUTION

In Defense of American Liberties—a History of the ACLU. By Samuel Walker. New York: Oxford University Press, 1990. 479p. \$24.95.

That scholars find the American Civil Liberties Union (ACLU) a useful vehicle by which to explore a range of political phenomena is an understatement. Examinations of its activities have told us a great deal about how, why, and to what ends groups use litigation; the evolution of legal doctrine; political tolerance for “unpopular” causes, views, and symbols; and pluralism in all its manifestations.

It may, then, come as a surprise to some that there is a relative paucity of work on the ACLU *per se*. The number of treatises could virtually be counted on two hands, those of serious scholarly merit on one. Hence, almost any account would be a welcome addition to the literature. Happily, Walker's *In Defense of American Liberties* is not just *any account* but a first-rate treatment of the ACLU's long, complex, and at times stormy history.

Indeed, this book is light-years ahead of any other on the topic for several reasons. One concerns its coverage: it is a most comprehensive examination of the subject. Few of its predecessors sought to chronicle the ACLU's history from its preformative years through the present day; and those that did are now hopelessly out of date or too ideological to be of much value. Yet taking such a longitudinal approach has its obvious benefits. On the one hand, it can provide scholars with insight into how organizations evolve, develop, mature, and change as a result of external and internal pressures. Here, Walker takes us through the ACLU's long odyssey, from its humble origins as an opponent to America's entry into World War I to its role in the 1988 presidential elections as a symbol used by Bush to undermine Dukakis (“My opponent is a card-carrying member of the ACLU”). On the other hand, it can help us to see that organizations often remain true to the values that form the primacy of their missions. The ACLU has been—and probably always will be—at its core dedicated to the defense of

liberties, however unpopular be that activity.

Another of the book's assets is Walker's sources: he mines, with great expertise, a vast array of papers and manuscript collections on the group and its members. This was, most assuredly, not an easy task. The records of the ACLU are enormous, as are those of its leaders and attorneys. (Undoubtedly, this is a major, if not *the* major, reason why scholars previously shied away from comprehensive examinations of the group.) He also conducted interviews with those possessing intimate knowledge of the organization and its activities.

Walker's efforts certainly pay off: he treats readers to behind-the-scenes looks into many facets of the group's unique history. Of particular interest is his documentation of the decision-making processes of the ACLU's often less-than-consensual leadership. He provides, in the most painstaking detail, account of the ins and outs of its litigation strategy: how and why it entered some of the most significant cases of the decade, its internal structural decisions (particularly the nationalization of the organization) and its dealings with the political environment—an environment often hostile to it and its aims. Walker makes no attempt to generalize his findings to the deliberations of other organizations; after all, this was not his purpose. Nonetheless, scholars of interest group processes will find this aspect of his work most useful and, I suspect, applicable to similarly configured groups.

Having praised the work, let me note a few cavils or (perhaps more appropriately) *buyer beware*s. In the preface, Walker writes, “Readers have a right to know that I am an active member of the American Civil Liberties Union” and that he could “be fairly described as committed to the goals of the organization.” This affinity comes through in spots: sometimes his language is a bit hyperbolic and overly enthusiastic, reading more like an ACLU annual report than a scholarly treatise. Still, on balance, his affiliation with the ACLU does not detract from the merits of the book; nor is he unwilling to critically analyze some of its less attractive historical episodes.

A second quibble is that in his heavy usage of primary sources, Walker sometimes relegates or neglects important secondary sources, which might (or might not) throw a different light on the subject. This tendency seems somewhat greater in his descriptions of the "new civil liberties" (e.g., abortion, women's rights) and less so in earlier parts of the book. But again, it is Walker's use of unique primary sources that constitutes one of the book's greater virtues.

Finally, as with any historical account, one can take issue with what subjects the author chose to stress and what subjects he gave less emphasis to. More than half the book is devoted to the ACLU's formative years through the 1950s. And though these obviously were important ones, they constitute the period best documented by others. I would have preferred just a bit more on some of the newer areas, particularly those in which the ACLU has been a major player and over which internal tensions have *apparently* arisen (e.g., conflicts over the alleged inconsistency between state laws regulating a "minor's" right to abortion and those allowing for the execution of "juveniles").

Overall, though, the book's assets greatly outweigh these relatively minor problems. It is an important work, a "must" purchase for all students of interest group and judicial processes, public law, and U.S. government, more generally. Its utility as a reference tool alone is worth the price: since reading it, not a week has gone by that I have not consulted it for substantive information on the ACLU's history, litigation campaigns, and personnel. I am sure others will find it equally invaluable.

LEE EPSTEIN

Southern Methodist University

The Christ Child Goes to Court. By Wayne R. Swanson. Philadelphia: Temple University Press, 1990. 242p. \$27.95.

This study of a Supreme Court case, *Lynch v. Donnelly*, follows in the tradition set by Anthony Lewis's *Gideon's Trumpet* (1964), Richard Kluger's *Simple Justice* (1975), and Barbara Craig's *Chadha* (1988). Lewis popularized the genre in 1964 when the Supreme Court was still a fairly mysterious institution. The United States was just becoming familiar with the liberal activism of the Warren period as

Lewis wrapped the Marble Temple in the biblical image of Gideon's trumpeting. He also presented institutional life in great detail for the first time.

A decade later, Kluger drew attention to the flow of a case to the High Court in Washington. Although the book was very detailed, we could feel outrage over the degrading reality of segregation, and our attention was directed to the Supreme Court's capacity to set the injustice straight. Craig's book about *Chadha*, turns to the ideological and professional development of the separation-of-powers argument. We are introduced to the constitutional bar, its strategists and its litigators. *Chadha* gets to stay in the United States, but in comparison with the earlier work we are losing the old confidence that the Court will do what is right.

Swanson tells the story of federal litigation over the church-and-state clause of the First Amendment that "goes all the way to the Supreme Court." The issue is a municipally sponsored nativity scene in Pawtucket, Rhode Island; and the town is the focal point of a struggle between religious forces and the civil liberties community. The author believes that "with the possible exception of the [founding], at no other time in our history has the relationship between government and religion occupied a more important position on our political agenda" (p. ix). Thus, Swanson chose a religion case to write a book for students who told him they had not found enough case study materials available. He succeeds quite ably by richly documenting this case.

In Swanson's framework, the church people are on one side of the controversy and the liberals are on the other. The author admits to a "liberal" position on church-state matters. His analysis is colored by an academic identification with the federal courts that emerged during the Warren period. Through Tocqueville we hear that issues in the United States always get to the law. However, for a decade now, social research on the proverbial litigation explosion has belied Tocqueville's old truism. More often than not, conflicts do not go to court. Tocqueville is a convenient authority for public law scholars, but he is wrong.

Still, we should wonder what it means that *Lynch v. Donnelly* garnered the attention of a court that takes only 150 of the countless disagreements arising in the United States each year. And we need to ask what this sort of con-