

**VANITIES, LAW, AND IDENTITY:
SOME REFLECTIONS ON RACE AND CULTURE IN AMERICAN
LIFE**

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CULTURE'S VANITIES: THE PARADOX OF CULTURAL DIVERSITY IN A GLOBALIZED WORLD. By *David Steigerwald*. Lanham: Rowan and Littlefield, 2004. pp. 276. \$75.00 (cloth).

DEMOCRACY'S CONSTITUTION: CLAIMING THE PRIVILEGES OF AMERICAN CITIZENSHIP. By *John Denvir*. Univ. of Ill. Press, 2001. pp. 145. \$24.95 (cloth).

INTRODUCTION

The world is spinning too fast for me. I am flooded by countless ideas and conflicting images of world events. I live with old men. Nary a new idea stirs among them. Events on the planet march by like soldiers on parade. I am roped off from this spectacle by celebrity pundits, network news, CNN, and institutional routine. I have shucked old ideas to survive and keep pace with change. Occasionally I have an epiphany. But the glow of discovery soon turns to black. My suspicion is that I have succumbed to a dream (perhaps a madness) that undid Don Quixote. Right now I see the world as a good and wondrous place. I am convinced that the mission of man is to live fully, husband life (not take it), work the body, reclaim health, and police one's words and deeds. Of course these ideas might be at odds with reality, as most know it, and explain my estranged state. I have decided to drop out of society for a while, become a beach bum, and read some worthwhile books, with the hope that I will discover something. At this writing I have latched onto a book review to explain myself. The insights and observations tumbling from *Culture's Vanities*¹ and *Democracy's Constitution*² are the sources for my remarks.

DROPPING OUT

Going to sea, allowing big ocean waves to wash over your feet, stumbling through a northwest redwood forest, walking a pristine beach, picking up pebbles near the beach house late at night, gazing at the stars, coping with beggars in rustic settings that you never expected to meet, watching small town characters prattle and clown on empty streets, listening to your wife coo about things, taking in the banter and the laughter of family members at dinner, eating fresh fish, watching an orange sunset—all cause big time epiphanies. Clarity supplants confusion. One sees life for *what it is*. Life tries on worldly garments

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1. DAVID STEIGERWALD, *CULTURE'S VANITIES: THE PARADOX OF CULTURAL DIVERSITY IN A GLOBALIZED WORLD*. (Lanham: Rowan and Littlefield, 2004) [hereinafter, *VANITIES*].

2. JOHN DENVIR, *DEMOCRACY'S CONSTITUTION: CLAIMING THE PRIVILEGES OF AMERICAN CITIZENSHIP*. (Univ. of Ill. Press, 2001) [hereinafter, *CONSTITUTION*].

(i.e., microbes, plants, and animals) for comfort, fit, and endurance. Man (a garment of sorts) narrows his horizons to fit the life given to him. Mother Nature levels everybody. Men and women must accede to its demands or die. At worst men, and sometimes women, are low grade animals. They are fit for bickering, feuds, making wars, eating things, and reproducing their own kind. They are dopy ruffians—given to building monuments to themselves and rationalizing their value. Their goals are to plunder their surroundings, diversify their holdings, and (where possible) capitalize upon a neighbor's failures.³

National and regional cultures can tame all that. Husbandry of the land (to sate need), value systems (to check human impulses), and crafts (to shape the environment) soften things.⁴ As corporations “without borders” gobble up the globe's *so-called* culture, being an American, Brit, or Canadian loses its hold on people. Social norms about life, simple living, assumptions about folk peculiar to bits of ground around the world give way to corporate demands, industrialization of developing nations, uniform business standards, homogenization of taste, and global ethics.⁵ In the end people are left with weak ideas about important things in life and wispy ideals about their culture.⁶ David Steigerwald wrote a book about this. He calls it *Cultural Vanities*.⁷ John Denvir wrote a prescription for dealing with ruptured cultures. His book is entitled *Democracy's Constitution*.⁸

CRUISING

There is a saying worthy of repetition uttered by modern day capitalists around the world. Money is power; and those who amass some have power; but those who control the instruments of production have more. These folk create life styles for everybody.⁹ They put into play social status,¹⁰ myths about class, snobbery,¹¹ and status climbing (a chimera for culture) to prevent status climbers from threatening them.¹² These capitalists ooze confidence. Everybody's ideals, fantasies, and prejudices are conflated to benefit them.¹³ Insular minorities (new immigrant groups, Blacks, Chicanos, Koreans, and so on) select items from the capitalist's concoctions (e.g., clothing, vehicles, funky shoes, appliances, and entertainment) to sustain themselves.¹⁴ Some folk buy goods to mimic the rich.¹⁵ Others buy stuff to express rebellion.¹⁶ In both cases nobody

3. DORIS LESSING, *THE GRASS IS SINGING*. 169-70 (Thomas Y. Cromwell Co. 1950).

4. *VANITIES* *supra* note 1, at 19-20.

5. *Id.* at 22-3.

6. *Id.* at 23.

7. *Id.* at 1-248.

8. *CONSTITUTION*, *supra* note 2, at 1-127.

9. *VANITIES*, *supra* note 1, at 36.

10. *Id.* at 35.

11. *Id.* at 32-3, 35-36.

12. *Id.* at 41.

13. *Id.* at 27-8.

14. *Id.* at 37.

15. *Id.* at 38-9.

16. *Id.* at 43.

upsets the economic status quo.¹⁷

Underneath this frenzy of activity the world's markets hum along undisturbed and, in the end, spur what people do. Losers (slower witted capitalists) carp about winners and, where possible, rig the rules to prevent the winners from winning. The capitalists with the most power are supremely confident. Their mantras are personal integrity, value, giving value for value, skill, achievement, reliability, profit, and merit. Capitalists try to win every contest outright; some use strategic alliances to win contests; others rig the rules to reap profits. Behind a veil of culture—national mythologies, ethnic preferences, group biases, social visions, moral values, lifestyles, and ideals—so-called capitalists grind down the planet's markets and labor systems to hold on to their wealth.¹⁸

America's modern day immigrants, pouring in from all over the world have upset the status quo. Acculturation¹⁹ like some alien virus has overtaken the place. Today's ethnic and racial mixing have eroded, if not checked, the prerogatives of older insular minorities²⁰ and the social mechanisms devised by capitalists to hold the line against change.²¹ What are we to do? We could prop up old communities held together by culture, language, and history and, thereafter, leave individuals with the option to join them;²² or put everybody into familiar categories to force folk to confer with each other from their community's perspective.²³ The former is what some nations like Canada are trying to do.²⁴ The latter is a gentrification of apartheid.²⁵ Both are wispy ideals about what the world should be like. David Steigerwald, for one, has no faith in them as solutions to our cultural problems and does not believe that there is a benign mechanism (yet devised by man) to bring them into existence.²⁶

In the end we could paint over the differences between people (as the author suggests); impose heavy taxes on citizens; urge folk to work hard and

17. *Id.* at 43-4.

18. *Id.* at 73, 93.

19. *Id.* at 53.

20. *Id.* at 56.

21. *Id.* at 37, 54. America is a wondrous place. The east coast preaches tolerance. The west coast champions what's possible. The middle of the country tells us what to conserve when the nation is awash with chaos. Coastal dwellers camp on the cliffs of social turmoil. The people in the middle hold the nation together. They assure everybody, as best they can, that no one will wander over the precipices. Modern day Americans are wanderers. They speak in pithy terms, brook humor, and take words literally. They brim with initiative and curiosity. Some are prone to self inventions. A few are duped by the conviction that believing in an ideal makes it real. For a century the presence of blacks reminded whites of the mess they made of some people's lives. Their (black) group vigor and garish behavior in an otherwise lugubrious environment made whites feel guilty. A wave of new immigrants have swept the guilt away. Their demand for cultural respect and economic opportunity have left modern day leaders baffled. We are on the cusp of a revolution and a new civil rights movement in the United States.

22. *Id.* at 60-62.

23. *Id.* at 59.

24. *Id.* at 60. In Canada cultural pluralism and minority rights are written into the constitution. If people are moral equals (says Kymlicka) minority rights need the vigor to sustain different cultures and the individual's option to become a member. WILL KYMLICKA, *LIBERALISM, COMMUNITY AND CULTURE*. 184, 190 (Oxford: Clarendon Press 1989) [hereinafter, *LIBERALISM*].

25. *LIBERALISM*, *supra* note 24, at 144.

26. *VANITIES*, *supra* note 1, at 59, 62-3.

sacrifice for a welfare state and full employment.²⁷ This would produce an economically egalitarian middle class society fit for producing things.²⁸ Though everybody would be better off under this arrangement globalization would (says Steigerwald) sweep this arrangement away.²⁹

EPIPHANY

These days the core of the human condition lay in the clash between human desire and social order.³⁰ On a fertile planet where global impulses have ground down fixed ways of life, *identity* provides people with a sense of where they stand in the world.³¹ This means (argues Steigerwald) that individuals must assimilate desire and conformity as best as they can at each stage of life; master the environment; and fulfill expected roles.³² The goal is to find folk wisdom, knowledge, balance, and perspective inside sensible social constructs to give meaning to life.³³ If identity helps a person come to terms with himself it has a right to exist.³⁴ Having said all that: identity formation can go wrong.³⁵ Modern civilization (says Steigerwald), with its heroes and villains, automated machines, stratification and specialization, force, in the end, too many people to base their *ego models* on shifting, sectional, and contradictory prototypes.³⁶ Competition between identities—where the hucksters for the contending identities tug at a child’s soul—makes matters worst.³⁷ Latter-day multiculturalists pounding out their warning “to be loyal to one’s ancestry” and “to resist, indeed, resist at all costs, assimilation” have added unwanted fuel to the fire.³⁸

In the face of such up-evil the first order of business is to defend different languages (ethnic slang, colloquialisms, and so on) to preserve a person’s option and capacity to describe his situation and surroundings in unique ways.³⁹ The second is to prop-up religious rituals, small scale civic life, and family and kinship structures so individuals can make sense of their surroundings.⁴⁰ Doing nothing about these things condemns a way forward for individuals searching for an anecdote to alienation and may, in the end, makes conditions worst.

Race figures into this process.⁴¹ It is linked with modern day politics⁴²

27. *Id.* at 77.

28. *Id.*

29. *Id.* at 78.

30. *Id.* at 113.

31. *Id.* at 112.

32. *Id.* at 116.

33. *Id.* at 116-17.

34. *Id.* at 140.

35. *Id.* at 118.

36. *Id.* at 118-19.

37. *Id.* at 118.

38. *Id.* at 120. See Kimberly Jade Norwood, *The Virulence of Blackthink and How Its Threat of Ostracism Shackles Those Deemed Not Black Enough*, 93 KY. L.J. 143, 147-49 (2005).

39. VANITIES, *supra* note 1, at 125, 130.

40. *Id.* at 130.

41. *Id.* at 151, 174.

42. *Id.* at 187-89.

and people's spiritual and psychological differences.⁴³ It is a concept forged in the furnaces of history; a group's place on the planet; common laws and everyday religious expressions, habits of thought and tools⁴⁴ people use to make sense of their environment.⁴⁵ It is a matter of how one behaves and acts.⁴⁶ Today it is street theater. It, like culture, trumps a foe's or a would-be ally's attempts to economically and political dominate somebody.⁴⁷ Steigerwald claims that race is doomed in the 21st century.⁴⁸ Its demise (he says) can be laid at the feet of racial integration in the 1960's;⁴⁹ racial assimilation in the 1970's;⁵⁰ what's happened to the crossover generation of African Americans in the 20th century;⁵¹ mass culture and consumerism;⁵² and the insatiable pressures, appetite, and demands of globalism.⁵³

Nevertheless, I would argue (as the author does) that there is a glimmer to race worth watching. When a person cannot attend to his own affairs because of a systematic denial of due process, and the only explanations for the situation is a person of color's presence in a sea of white people, race matters.⁵⁴

THE PROBLEM

There is a problem. How do you make this work? The modern world is sinister and turned upside down. The political terrain is different. We, as a people, have lost our sense of peace, neighborliness, security, and privacy. The old way of doing things (something I learned in the last century) has given way to something alien. It is an eerie, conformist, unsafe, unforgiving, and dangerous place.⁵⁵ People are surprisingly comfortable with their environment.⁵⁶ Consumerism, and its propensity to blur social boundaries, has erased the havens where people could practice autonomy.⁵⁷ Bureaucracies congeal around modern day society.⁵⁸ Rulers (capitalists) use them and teachers, preachers and pundits, over and over again to threaten, woo, and cajole folks into believing that "they control their lives" and more importantly that "they can make their destiny"

43. *Id.* at 160.

44. *Id.* at 188-89.

45. *Id.* at 160.

46. *Id.* at 152.

47. *Id.* at 153, 162.

48. *Id.* at 180-81.

49. *Id.* at 153, 177.

50. *Id.* at 12.

51. *Id.* at 182-83.

52. *Id.* at 165.

53. *Id.* at 87-88.

54. *Id.* at 162. See John O. Calamore, *Racialized Space and the Culture of Segregation: "Hewing a Stone of Hope from a Mountain of Despair."* 143 U. PA. L. REV. 1233, 1236-37 (1995). When a positive use of race debunks a stereotype, corrects the effect of a past discrimination, promotes understanding between people, sparks and enriches educational experience, and last, but not least, produces diverse leaders whose legitimacy is recognized by the citizenry, race matters. *Grutter v. Bollinger*, 539 U.S. 306 (2003).

55. VANITIES, *supra* note 1, at 200-01.

56. *Id.* at 68-70.

57. *Id.* at 200.

58. *Id.* at 203.

within the existing system.⁵⁹ The goal, writes Steigerwald, is to woo people away from this illusion to a higher and a feasible conception of life rooted in what marginalized people need to survive⁶⁰—a first rate education for children;⁶¹ school breakfast programs for hungry youngsters;⁶² a job for young people to do; a disability law of some kind⁶³ for skilled men and women thrown out of work by globalism;⁶⁴ a higher minimum wage to lift the bottom of the labor pool;⁶⁵ and last, but not least, a law of some kind to stave off attacks of GM (genetically modified food) advocates, to preserve local ways of production, bio-diversity, bonds of family, community and a web of business relationships.⁶⁶

Can we reach these goals with cultural claims? Steigerwald says no. Broad based cultural claims—that is, a reference to diasporas of despair, hopelessness, frustration, and twisted development—will not change anything and won't get us where we want to go.⁶⁷ The author trashes culture as a political tool.⁶⁸ Culture, he says, is a vapid term.⁶⁹ Its ruin comes from overuse. Today's social progressives can't use the term to get their way in the world because there are no foes opposing them.⁷⁰ Cultural claims (he says) are obsolete and irrelevant things.⁷¹ They aren't supported by good scholarship.⁷² In the end (he says) when culture claims scrum with the claims of politics and economics, culture loses.⁷³

What about identity? The author does not attack that concept. He claims that it is different from culture and has residual utility in society.⁷⁴ What about race? He says that it has social value to the extent that it *in law* rescues subordinated people subject to hostile majorities, legislation, and administrative practices.⁷⁵ He is a cheerleader for cosmopolitanism.⁷⁶ He believes that we can

59. *Id.* at 202-03.

60. *Id.* at 204.

61. *Id.* at 228.

62. *Id.* at 212.

63. *Id.* The Trade Adjustment Assistance Act of 2002 gives health care coverage, wage benefits, and job retraining programs to workers displaced by foreign trade. Trade Adjustment Assistance Act of 2002, 19 U.S.C. § 2318 (2005). See also C. FRED BERGSTEN, *THE UNITED STATES AND THE WORLD ECONOMY*, 319-320 (Institute for International Economics 2000).

64. VANITIES, *supra* note 1, at 238-239. See THOMAS L. FRIEDMAN, *THE LEXUS AND THE OLIVE TREE*, 359 (Ferrar, Straus and Giroux, New York, 1999).

65. VANITIES, *supra* note 1, at 212. Raising the minimum wage, and returning sums under the earned income tax credit program, would guarantee workers a life above poverty. CONSTITUTION, *supra* note 2, at 47.

66. VANITIES, *supra* note 1, at 240. MICHAEL POLLAN, *THE BOTANY OF DESIRE* 232 (Random House 2001). They make servants out of nature's domains. *Id.* at 208. They bend the will of tillers to corporations. *Id.* at 225, 234. They poison the soil, kill helpful insects, and ruin domesticated plants unsuited to live in the wild. *Id.* at 210-15.

67. VANITIES, *supra* note 1, at 211.

68. *Id.* at 217-18.

69. *Id.* at 231.

70. *Id.* at 233.

71. *Id.* at 209, 231.

72. *Id.* at 225-26.

73. *Id.* at 196.

74. *Id.* at 244.

75. *Id.* at 228. If race matters, in the sense that, countless injustices block the path of minority advancement, that condition should be labeled by leaders for what it is—class-based isolation—and removed from American life. *Id.* at 228-29.

use that concept to barrow the best from every way of life to build a good society.⁷⁷ We should use a person's ancestry, and the memories of grandparents, to locate social bits of life to make society better for everybody.⁷⁸

PRESCRIPTION

You can fold cosmopolitanism into the American experiment. John Denvir recommends a novel reading of the Constitution to get at this end and, more importantly, the option afforded citizens to pursue happiness in ways they define for themselves.⁷⁹ He hangs his prescription on the privileges and immunities clause in the Fourteenth Amendment.⁸⁰ Privileges, he says, are affirmative claims to government action.⁸¹ Immunities are negative freedoms (liberty) from government regulations.⁸² While the Fourteenth Amendment does not provide a list of privileges and immunities we know (he says) that the drafters incorporated basic civil rights that distinguished citizens from slaves and serfs. He takes his inspiration from the blood sacrifices of the 1860's, the crucible of the civil war, the emotional devastation of that war, and the utterances of Abraham Lincoln.⁸³ He claims that the Declaration of Independence is our founding document,⁸⁴ that lawyers should look to its text for legal inspiration,⁸⁵ that all men are created equal,⁸⁶ that national sovereignty trumps state autonomy,⁸⁷ and that the Fourteenth Amendment provides everybody with an instrument to transform the Nation's political ideals into realities.⁸⁸ As members of America's polity, he says, folks have perks.⁸⁹ Public deliberations (due process) should determine a person's fate.⁹⁰ Equal protection, he says, clamps down upon unfriendly legislation and discrimination.⁹¹ Privileges and Immunities (he hints) are lock boxes bearing rights accorded federal citizens⁹²—the Civil Rights Act of 1866;⁹³ Civil Rights Acts promulgated by Congress under the 5 Section of the Fourteenth Amendment;⁹⁴ a

76. *Id.* at 245-46.

77. *Id.* at 246.

78. *Id.* at 245.

79. CONSTITUTION, *supra* note 2, at 125-26.

80. *Id.* at 125.

81. *Id.* at 126.

82. *Id.*

83. *Id.* at 3-4.

84. *Id.* at 2.

85. *Id.*

86. *Id.* at 4.

87. *Id.*

88. *Id.* at 5. *But see* City of Boerne, Texas v. Flores, 521 U.S. 507, 527-29 (1997).

89. CONSTITUTION, *supra* note 2, at 5.

90. *Id.*

91. *Id.*

92. *Id.* at 7. Privileges and immunities are in their nature fundamental. They belong of right to citizens of all free governments. They are prerogatives and accommodations enjoyed by the citizens of the several states that compose the union. *Corfield v. Coryell*, 6 F. Cas. 546, 551-52 (Pa. Cir. 1823). *Cf. Slaughterhouse Cases*, 83 U.S. 36 (1873).

93. CONSTITUTION, *supra* note 2, at 7.

94. *Id.*

right to a vote that counts in elections,⁹⁵ a right to a voice that is heard,⁹⁶ a right to a first rate education,⁹⁷ and last, but not least, an opportunity to earn a decent living (that is, a job that produces a paycheck sufficient for housing and medical care.)⁹⁸

National elections, he says, are ways for voters to throw out biased, corrupt, incompetent, and unwanted governments. When people cast their ballots for candidates *ballot counters* should count every vote.⁹⁹ People are entitled to be heard. Proportionate representation would insure that¹⁰⁰ and preserve the doctrine of one-man-one vote.¹⁰¹ If a person holds down a worthwhile government job, and has taken constructive steps to save it (e.g., methadone to arrest drug addiction),¹⁰² the government should help the employee.¹⁰³ It shouldn't for ethical, economic, and statistical reasons hide behind a veil of economic rationalizations to abandon a conscientious employee who's trying to rescue himself.¹⁰⁴ If there is a correlation between money thrown at education and high achievement, school districts should get comparable sums of money to insure that all contests between youngsters (soon to become adults) are even matches.¹⁰⁵ If there is a clash between a regulator's regulation protecting federal park land, and homeless folk asserting the first amendment (in this instance camping in a park) to protest their homelessness,¹⁰⁶ the first amendment should win.¹⁰⁷ A regulator (he says) can rescue his regulation with schemes that are both practical and unlikely to bruise the First Amendment or bruises the First Amendment the least.¹⁰⁸

Sadly these prescriptions are unlikely to change things immediately. The judiciary, for one, won't overturn its precedent on privileges and immunities willy nilly.¹⁰⁹ In a cynical age like this one, with globalism and its champions bearing down on everybody, the United States Congress is unlikely to promulgate new laws or tinker with ones that inflate the value of privileges and immunities.¹¹⁰ Assuming, however, proportionate representation catches on as

95. *Id.* at 8.

96. *Id.*

97. *Id.*

98. *Id.* at 9.

99. *Id.* at 91. *But see* Bush v. Gore, 121 S. Ct. 525 (2000).

100. CONSTITUTION, *supra* note 2, at 104-06.

101. *Id.* at 106.

102. *Id.* at 16-17.

103. *Id.* at 39-40.

104. *Id.* at 18-20.

105. *Id.* at 20-22, 56-57.

106. *Id.* at 24-26.

107. *Id.* at 79-80. *But see* Clark v. Community for Creative Non-Violence, 468 U.S. 288 (1984).

108. CONSTITUTION, *supra* note 2, at 76-80.

109. *Id.* at 41. Courts are lethargic institutions. Judicial review—determining whether a law is constitutional or not—limits what they can do. *Id.* For the moment, Justice Thomas is willing to revisit the *Slaughterhouse Cases*, 83 U.S. 36 (1873), and the privileges and immunities morass, but he is just one of nine high court judges to make that declaration. *See* Saenz v. Roe, 526 U.S. 489, 521-28 (1999) (Thomas, J., dissenting). His view of the clause, *id.* at 522-23, is entangled with conflicting historical strands about what the clause means. *See* William J. Rich, *Lessons of Charleston Harbor: The Rise, Fall and Revival of Pro-Slavery Federalism*, 36 MCGEORGE L. REV. 569, 600-08 (2005).

110. CONSTITUTION, *supra* note 2, at 48-49.

an idea, there is a fifty-fifty chance that we can create a climate where cosmopolitanism can take root; where social havens can be reclaimed for people to practice autonomy; where local ways of doing things in farming communities will flourish; and a society where, in the end, “being somebody” and “holding down a job that’s nourishes the soul” means something to everybody. But we are a long way from that.

CONCLUSION

These books are accessible, gripping, and scholarly works. They are written in conversational English. They contain evocative language, illuminating observations about culture, and uncomfortable ideas.¹¹¹ Browsers aren’t weighted down by arcane citations. The authors seldom drift off their points. The works force readers to think through 21st century social concerns that are on the tip of every sensitive youngster’s tongue. I, for one, think Steigerwald is right about some things. Becoming cosmopolitan, for example, is a worthwhile undertaking for everybody. It opens the mind to new ideas, fights stodginess, and helps youngsters find an identity for themselves. It promotes social tolerance and checks bigotry. A novel reading of the Constitution that creates a climate that’s hospitable to this notion may be in our Nation’s best interest. Time will tell.

111. VANITIES, *supra* note 1, at 177-80.