Law, Cultural Diversity, and Criminal Defense

Craig L. Carr and Lisa Johnson



1126475

First published 2019 by Routledge 2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN and by Routledge

and by Routledge 711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2019 Craig L. Carr and Lisa Johnson

The right of Craig L. Carr and Lisa Johnson to be identified as authors of this work has been asserted by them in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

British Library Cataloguing-in-Publication Data A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data A catalog record for this book has been requested

ISBN: 978-1-138-58117-3 (hbk) ISBN: 978-0-429-50686-4 (ebk)

Typeset in Galliard by Florence Production Ltd, Stoodleigh, Devon, UK

Contents

	Introduction	1
1	Law, politics, and social justice	11
	Déjà vu all over again 13 Law and social homogeneity 17 The great American compromise 22 In defense of social justice 25	
2	The question of culture	31
	Culture and being human 31 Conceptions of culture 34 Norm systems and sharing 39 Culture and action-guiding norms 42 Culture and morality 46	
3	Social justice and legal practice	51
	Social justice: the freedom factor 52 The right to cultural autonomy 55 Freedom and cultural autonomy 58 Law, crime, and justice 62 Government and sovereignty 66	
4	Criminal defense and cultural autonomy 69	
	Culture and crime: a classification scheme 70	
	Category 1: Intra-cultural controversies 70 Category 2: Inter-cultural controversies 72 Category 3: Culturally variable controversies 74	
	Category 1: Intra-cultural controversies 76	
	Kargar: Innocence and cultural practice 77 Crow Dog: Internal cultural jurisdiction 79	

vi Contents

	Moua: Internal cultural politics 83 Assad: Intra-cultural abuse 88	
	The cultural defense and inter-cultural affairs 90	
	Butler: Inter-cultural violence 90 Le: Inter-cultural threats 92	
	Cultural autonomy and the cultural defense 93	
5	Culture and the Constitution	95
	Immunity rights 95 Cultural autonomy and civil liberty 99	
	The free exercise of religion and cultural autonomy 101 Cultural autonomy and freedom of association 103 Due process of law and cultural autonomy 103	
	A cultural defense apology 107	
	The absolutist objection 108 The arbitrariness objection 110 The equal protection objection 112 The intolerable practice objection 114 Conflict and cultural change 118	
6	Culture and criminal responsibility	123
	Cultural variation and criminal law 123 Cultural variables and the cultural defense 128 Cultural meanings and criminal wrongdoing 133 Culture and justice 137	
	Bibliography	141
	Index	149