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## Book Review of Richard C. Cortner's Civil Rights and Public Accommodations: The Heart of Atlanta Motel and McClung Cases

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mid-1960s turned out to be too grand to achieve" (p. xxi). The other problem is the familiar one of causation. While, as Patterson amply demonstrates, the pre-*Brown* official racial caste system has been dismantled and American race relations have in many respects profoundly changed, it is impossible to prove either that *Brown* was or was not the causal agent of change. One can only exercise one's best judgment, in light of understanding of the facts.

Patterson recounts a history of the Warren Court's initial decision-making, feedback from the public and other branches of government, insistence on compliance, and failure to define precisely the requirements of desegregation. He then describes the Burger Court's imposition of strict standards of desegregation in the South and its failure to impose such requirements on most northern school districts or on metropolitan areas with multiple school systems. He provides a good overview of the changes on the Court, the change from Lyndon B. Johnson to Richard M. Nixon, and the considerable progress in the South in the 1970s. He gives a balanced view of the problems that accompanied desegregation in the South, as well as the ad hoc nature of northern desegregation. Ten years after the 1964 act, "Jim Crow was dead in the South, as was *de jure* segregation. These were huge changes that few people could have imagined in 1960 . . . Twenty years following *Brown*, much had been accomplished, and much remained to be done" (p. 169). Patterson concludes that it is unclear whether the tremendous increase in desegregation in the South brought with it improvements in interracial understanding or in academic achievement (p. 187).

Bringing the story up to date, Patterson examines the issue of the 1990s: resegregation. Given recent decisions of the Rehnquist Court, should we expect the enormous increase in integrated schools to reverse in coming years? If so, what will have been the net impact of *Brown* on American society? Patterson notes that formal equality will have been secured but suggests that progress toward the larger goals of social and economic equality and true integration has been stalled by the recent Court decisions (pp. 204–205).

Finally, Patterson examines the legacies and lessons of *Brown*, both negative and positive. Although sympathetic to the pessimism of some advocates of racial justice, he closes by agreeing with Jack Greenberg: "Altogether, school desegregation has been a story of conspicuous achievements, flawed by marked failures, the causes of which lie beyond the capacity of lawyers to correct . . . The rest of the job is up to society" (p. 223).

Generally balanced and factual, the book is occasionally marred by misstatement or hyperbole. For example: "Rarely in American history has the membership of the Supreme Court changed as rapidly as it did in the next three years to the end of 1971" (p. 147). (Five justices changed from 1862–1864; four from 1888–1890; five from 1909–1910; five from 1939–1941; and four from 1968–1971.) Patterson cites Hugh Davis

Graham (*The Civil Rights Era: Origins and Development of National Policies 1960–1972*), for the proposition that "corporate leaders were stunned and irate at the unanimously decided pro-affirmative action decision, *Griggs v. Duke Power Co*" (p. 153). However, the cited pages say nothing about stunned and irate corporate leaders. Nor was the issue in *Griggs* affirmative action. Patterson incorrectly identifies Judge Harold Cox as being a judge in 1960 (p. 91). Overall, however, Patterson has added to our understanding of the place of *Brown* in American society.

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RICHARD C. CORTNER. *Civil Rights and Public Accommodations: The Heart of Atlanta Motel and McClung Cases*. Lawrence: University Press of Kansas. 2001. Pp. xi, 225. \$29.95.

In 1964, Congress passed the first major civil rights statute enacted since Reconstruction. Its effort was the result of multiplying public protests, changing attitudes toward race, the growing political power of African Americans, the Warren Court's commitment to racial equality, a political upsurge that followed the assassination of President John F. Kennedy, and the determined leadership of his successor, Lyndon B. Johnson. The act's centerpiece was a prohibition on discrimination based on race, color, religion, or national origin in places providing "public accommodations," a term defined broadly to include hotels and motels, places of public exhibition, and facilities that sold food for on-premises consumption. The provision was not only socially divisive but constitutionally questionable.

Richard C. Cortner tells the important story of the litigations that established the constitutionality of the act's public accommodations section and thereby secured one of the great triumphs of the civil rights movement. Cortner lays out the constitutional issues lucidly, highlighting the differences between the two principal grounds advanced to support the legislation, the Commerce Clause and Section 5 of the Fourteenth Amendment. While the latter was clearly designed to allow Congress to combat racial discrimination, prior decisions of the Supreme Court rendered in the racist climate of the late nineteenth century presented grave obstacles. Indeed, in the ill-named *Civil Rights Cases* (1883) the Court had invalidated a similar "public accommodations" provision that Congress had adopted in the Civil Rights Act of 1875. Section 5, the Court had there ruled, did not grant Congress power to ban discrimination by "private"—that is, nongovernmental—actors, regardless of the "public" nature of the facilities involved. Thus, in 1964 the Commerce Clause seemed the more promising basis on which to defend the new statute. Though hardly intended as a tool to combat racial discrimination, the clause had been expanded so broadly since the 1930s that it

seemed capable of providing a logic that could be used to serve the cause of racial justice. That, at least, was the position Solicitor General Archibald Cox took in shaping the government's litigation strategy, and in two dispositive decisions in 1964—*Heart of Atlanta Motel v. United States* and *Katzenbach vs. McClung*—the Supreme Court proved him right. Only two justices, William O. Douglas and Arthur J. Goldberg, urged the Court to rely on Section 5. The others upheld the act under the commerce power.

Cortner devotes the bulk of this study to detailed discussions of the social origins of the two cases and to the constitutional positions the adversaries developed, including particularly thorough accounts of the various oral arguments. His book has many virtues. It is especially good in explaining the critical factual and legal differences between the two cases, highlighting the added difficulties the Court confronted in *McClung*, where it dealt with a restaurant relatively far removed from "interstate commerce." Similarly, it illuminates the role and character of Justice John M. Harlan, a "conservative" wary of centralization and committed to traditional values. Sensitive to both the practical needs of the nation and the cause of racial justice, Harlan responded to the social and legal issues the cases presented with care, integrity, and wisdom. After extensive reflection and much tinkering with the majority's opinion, he ultimately voted to uphold the act in both cases. Further, Cortner reminds us forcefully of both the vast gulf that exists between 1964 and the present as well as the vaulting capacity of the legal mind to render words, history, and even reality meaningless. Among the arguments that segregationists advanced, he notes, was the claim that—by denying owners of public accommodations the right to exclude blacks from their premises—the act subjected those owners to "involuntary servitude" in violation of the Thirteenth Amendment. Finally, in a brief concluding section the book documents the surprisingly widespread and relatively swift compliance with the act that followed the Court's definitive rulings.

A relatively short book intended for a general audience, this is a thoughtful and thorough account of a key episode in twentieth-century American legal history.

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DAVID R. COLBURN and JEFFREY S. ADLER, editors.  
*African-American Mayors: Race, Politics, and the American City*. Urbana and Chicago: University of Illinois Press. 2001. Pp. viii, 266. \$32.50.

Historians have given surprisingly little attention to the election of African-American mayors in major American cities in the generation since Carl Stokes was narrowly elected to lead Cleveland in 1967. This edited collection is an excellent effort to begin the process of incorporating this trend into our under-

standing of how the American political economy erated in the last half of the twentieth century.

Each of the ten essays takes a biographical approach. The singular strength of this collection is skill with which each scholar uses the tool of political biography to cast light on larger trends and issues. Our haste to dismiss the Great Society as a force with continuing political relevance, we have forgotten the millions of urban voters elected and reelected may whose programmatic vision owed much to the Great Society. At the same time, each author also documents how large movements of people and capital made such victories could be won very difficult to preserve.

The litigation and political activism of the Great Society era insured that the allocation of political power and patronage was performed more publicly and more fairly than in the past. Arnold R. Hirs shows how important the Voting Middle Rights Act was to breaking the three-year deadlock in Chicago during the 1980s between reform Mayor Harold Washington and the Democratic Party machine. Hirsch's discussion of Ernest Morial's tenure in New Orleans makes an especially important contribution to the volume by highlighting the ways in which the structure of local government can thwart any mayor's desire to exert strong reformist leadership. Ronald H. Bayl demonstrates how litigation and skilled political leadership brought similar changes to Atlanta beginning with Maynard Jackson's first election in 1973. This essay shares an additional strength with several others: Baylor demonstrates how class created divisions and other complications within the African-American coalitions, which helped to elect African-American mayors.

Although white flight, industrial decline, and Coleman Young's leadership style made winning a war on poverty in Detroit impossible, Heather Aron Thompson delineates how Young's determination to combat long-standing institutional racism succeeded in those areas where he exercised most direct control. Howard Gillette, Jr.'s essay illustrates how Maric Barry effectively fused idealism and political necessity until hubris and substance abuse distorted his calculation of both. David Biles's portrait of David Dinkins in one turbulent term in Gracie Mansion reveals how quickly the attributes that win one election can hinder governance and deny reelection in the next.

Although the federal programs of the Great Society (especially Model Cities) did bring some short-term assistance to Stokes's Cleveland and Richard Hatcher's Gary, James B. Lane and Leonard N. Moore both show how these infusions were dwarfed by the far larger outflow of private capital to surrounding suburbs. Of course, as editor Jeffrey S. Adler documents in his introductory essay, the 1980s saw the economic abandonment of the cities by the federal government as well.

Another flaw in conventional wisdom is the belief that the Great Society Community Action program and the civil rights movement produced the first