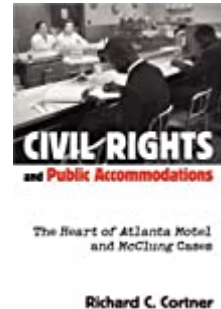


H-Net Reviews

in the Humanities & Social Sciences

Richard C. Cortner. *Civil Rights and Public Accommodations: The Heart of Atlanta Motel and McClung Cases.* Lawrence: University Press of Kansas, 2001. xi + 225 pp. \$29.95 (cloth), ISBN 978-0-7006-1077-8.



Reviewed by Stephen Lowe (Department of History, Presbyterian College)

Published on H-South (October, 2001)

Commerce or Justice?

Commerce or Justice?

Richard C. Cortner, professor of Political Science at the University of Arizona, has in *Civil Rights and Public Accommodations* given the reader as complete a picture of the process of litigating a constitutional case as it is possible to achieve. While Cortner's title leads one to believe the work deals primarily with civil rights, the book is really about the Commerce Clause of the U.S. Constitution and its use by Congress and the courts as a justification for the Civil Rights Act of 1964. As such, the book explores the history of the Commerce Clause both before and after the two cases referred to in the title much more than it explores the history of civil rights for African Americans.

Cortner, using court transcripts, including transcripts of oral arguments in the Supreme Court; F.B.I. files; and the papers of several Supreme Court justices, ably takes the reader through the entire process of the litigation. After an introduction that wanders through a wide range of territory, including background on the Civil Rights Act of 1875, the sit-in movement, the Kennedy Justice Department, the personalities of the Justices, and a discussion

of the case of *Bell v. Maryland*, a key sit-in case, Cortner turns to a chapter dealing extensively with the history of the Commerce Clause.

The extensive background turns out to be important to the story, but the segues are sometimes abrupt. Even though the book only sets out to deal with two key Supreme Court cases, Cortner tries to do a lot in a short span of pages. One gets the sense at times that this really could have been a much longer book. However, since the Commerce Clause was the safer choice as a basis for litigation when compared to the Fourteenth Amendment (held to be invalid against private action in the *Civil Rights Cases* in 1883), the background is helpful.

After an exploration of the background, Cortner is prepared to begin exploring the genesis of the two cases. *Heart of Atlanta Motel v. United States* was the first case. Filed only a couple of hours after the Civil Rights Act of 1964 became law (the plaintiffs' attorney, himself a party in the case as co-owner of the motel, went to the home of the district court clerk in order to be first to challenge the new law), *Heart of Atlanta Motel* challenged the constitutionality of the Act on the ground that Congress had

overreached itself by relying on the Commerce Clause to justify eradicating racial discrimination. Atlanta, though well known as “the city too busy to hate,” nevertheless became a symbol of resistance to federal efforts to ensure civil rights for African Americans.

An interesting sidebar to the main story of *Heart of Atlanta Motel* is the story of Lester Maddox’s Pickrick restaurant. Maddox, an ardent segregationist, refused on several occasions to desegregate, even after passage of the Civil Rights Act. He, like the owners of the Heart of Atlanta Motel, took the government to court. However, while the Justice Department would dearly have liked to face Maddox’s attorneys in the Supreme Court, Maddox decided after losing at the district court level not to appeal. His stand in the restaurant door, even after the Supreme Court decided *Heart of Atlanta* and *McClung*, catapulted him to national prominence and his subsequent election as governor of Georgia.

Maddox’s decision not to appeal his district court case to the Supreme Court meant that, at least as far as restaurants were concerned, the challenge to the Civil Rights Act would have to come from somewhere else. That challenge came from the most unlikely of sources: the intensely religious Ollie McClung, owner and proprietor of Ollie’s Barbecue in Birmingham, Alabama. Ollie’s was not much of a threat to interstate commerce, since it never advertised, had little to no interstate business, and was located far away from any major thoroughfare. McClung did, however, buy most of his meat from Hormel, and most of that meat came from outside Alabama.

There could be little doubt that the Heart of Atlanta Motel was engaged in interstate commerce. However, the case against Ollie’s Barbecue was more troubling. Cortner explores how McClung, who won an injunction against enforcement of the Civil Rights Act in district court (later stayed by Justice Black), came as close as anyone to successfully challenging the government’s efforts to end discrimination. Even though the Supreme Court eventually ruled unanimously in both cases (with three concurring opinions exploring the Fourteenth Amendment issues that never were central to the case), there

was some debate within the Court as to whether Ollie’s Barbecue and similar establishments really met the criteria needed to bring about enforcement of the Civil Rights Act. Cortner does a very thorough job in dealing with the internal debates among the justices.

There are a few problems with this book. First, the occasionally rambling nature of the discussion detracts from the focus on the two cases. While the background on the Commerce Clause, or a discussion of the nature of Supreme Court conferences might be necessary, especially for readers not steeped in legal history, these and other instances tend to interrupt the flow of the text.

More importantly, the lack of analysis reduces the impact of the book. Cortner does a very good job handling the events, trials, Supreme Court hearings, and details of the aftermath, but ultimately there is not enough discussion of the meaning of these two cases for civil rights history.

Cortner’s work is a fine detailed look at how important cases originate and make their way to the Supreme Court, how the Court deals with such cases, and what happens after the Supreme Court makes its decisions. As such, the book goes a lot further into the cases than most legal histories, with their analyses of judicial opinions. As Richard Kluger and Mark Tushnet, among others, have demonstrated, much of the important work of the civil rights movement took place in and out of court, rather than in the chambers of judges and justices.[1] Cortner’s work is an able, though occasionally flawed, contribution in this respect.

Notes

[1]. See Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America’s Struggle for Equality*. New York: Random House, 1975; Vintage Books, 1977; and Mark V. Tushnet, *The NAACP’s Legal Strategy Against Segregated Education, 1925-1950*. Chapel Hill: University of North Carolina Press, 1988 and *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961*. New York: Oxford University Press, 1994.

If there is additional discussion of this review, you may access it through the network, at:

<https://networks.h-net.org/h-south>

Citation: Stephen Lowe. Review of Cortner, Richard C., *Civil Rights and Public Accommodations: The Heart of Atlanta Motel and McClung Cases*. H-South, H-Net Reviews. October, 2001.

URL: <http://www.h-net.org/reviews/showrev.php?id=5577>

Copyright © 2001 by H-Net, all rights reserved. H-Net permits the redistribution and reprinting of this work for nonprofit, educational purposes, with full and accurate attribution to the author, web location, date of publication, originating list, and H-Net: Humanities & Social Sciences Online. For any other proposed use, contact the Reviews editorial staff at hbooks@mail.h-net.org.