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Robert J. Cottrol, Raymond T. Diamond, Leland B. Ware. *Brown v. Board of Education: Caste, Culture, and the Constitution.* Lawrence: University Press of Kansas, 2003. xi + 292 pp. $15.95 (paper), ISBN 978-0-7006-1289-5; $25.00 (cloth), ISBN 978-0-7006-1288-8.

Richard Kluger. *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality.* New York: Knopf Publishing Group, 2004. xii + 865 pp. $45.00 (cloth), ISBN 978-0-375-41477-0.

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A Classic and Its Progeny

Richard Kluger's *Simple Justice* is a classic of legal history. Few (if any) books in the field can match its balance of gripping, page-turning, inspiring narrative with thorough scholarship and wide-ranging influence. Ever since its publication in 1976, generations of legal scholars and historians have referenced Kluger's book as the necessary starting point for understanding the story behind *Brown v. Board of Education.*

Simple Justice is not, however, without flaws. Its readability is largely the product of the author's tendency to put story ahead of historical analysis. (Prior to writing *Simple Justice* Kluger's background was in journalism and fiction writing). Although at the time of its publication *Simple Justice* was the most detailed account of the Supreme Court's decision-making process in *Brown*, the papers of most of the justices involved in *Brown* were not accessible when Kluger wrote his book, and legal scholars have since revised our understanding of the internal Court dynamics in the case. Kluger also seemed to fall under the spell of Felix Frankfurter, relying considerably on Frankfurter's papers and interviews with the justice's clerks. Subsequent scholarship has challenged the Frankfurter-centric story that Kluger tells.[1]

To mark the fiftieth anniversary of the decision, Kluger has reissued *Simple Justice* with an updated epilogue. The new epilogue neither revises any shortcomings of his original text nor integrates new historical scholarship. Rather, it is a piece of contemporary social criticism. And on these grounds it is a fascinating document. If nothing else it offers insight into what someone who has been so influential in telling the story of the legal battle against school segregation thinks about the last thirty years of American race relations. Like much of what has been written in recognition of the decision's fiftieth anniversary, a sense of gloom and, at times, anger pervades its pages. The hopefulness for school desegregation Kluger expressed in the original edition has been seriously qualified. In 1976 he concluded, "Despite all the bends in the road, school desegregation overall has not retreated."[2] In this new edition Kluger notes that frustration over the failures of desegregation has led to a "widely prevalent mood of disappointment" among blacks (p. 751). "Like a will-o'-the-wisp," he writes, "the closer the nation drew to racial reconciliation, the more its attainment seemed to shrink from reach" (p. 753).

Yet Kluger refuses to give up on *Brown* and the principle of federally mandated integration. While the decision's failures have led some to question integration as the necessary path for reform or to embrace local initiatives as the most effective way to improve educational opportunity, Kluger still embraces the idea that government social policy can substantially alleviate the racial inequities that plague American society. "It is not that America cannot do so; it *will not* do so–or, at any rate, has not yet seriously considered the matter," he argues. "By the government it has put in place and the leaders it has chosen since *Brown*, the nation has not acted in good faith–except for a short season all but forgotten now–to better educate, house, and employ those whom it has long abused" (p. 787). Kluger remains a *Brown* liberal through and through. Although ideologues who insist on limiting federal involvement in school desegregation are his primary target of criticism, he also criticizes African American separatists, and he approvingly quotes conservative African American scholar John McWhorter on the dangers of "victimology" among blacks. Kluger also finds merit in the ideal of assimilation. "Why," he asks, "should a proudly practiced African American subculture

be thought of as fatally diminished by flowing into the mainstream instead of being regarded as a powerful tributary that adds great life force to the national current?" (p. 788). In his view, the nation desperately needs a renewed commitment to federal social policy, justified in terms of national unity and aimed toward the promotion and protection of economic and civil rights for African Americans.

It is surprising that a book as popular and engaging as *Simple Justice* has never been abridged for classroom use (or for readers who might not want eight-hundred-plus pages of *Brown*). A recent publication that attempts to fill the need for a short, readable history of the decision is *Brown v. Board of Education: Caste, Culture, and the Constitution* by Robert J. Cottrol, Raymond T. Diamond, and Leland B. Ware. This contribution to the University of Kansas Press's Landmark Law Cases and American Society series tells much the same story that Kluger does, but in about 250 pages. The writing is not as strong as Kluger's and the text lacks the narrative drive of *Simple Justice*, but the key issues surrounding the history of *Brown* are well covered.

Yet at times this work seems too intent on following Kluger's lead. The authors begin their narrative with an overview of race and the courts from the middle of the nineteenth century, just as Kluger did in his opening chapters. While this opening worked well in Kluger's epic, it risks becoming overly digressive in a short history of *Brown*. If the advisability of delving into such deep background material in a short history is debatable, other choices are more clearly problematic. Most notably, the authors often make little effort to address the scholarly shortcomings of Kluger's text. They consult the papers of only two of the *Brown* justices, Harold Burton and Frankfurter–the same papers that were available to Kluger in the early 1970s. As a result, the book mirrors the pro-Frankfurter bias of *Simple Justice*. While the book references the recent scholarship on the Cold War's influence on civil rights, it fails to cite or discuss Michael J. Klarman's "backlash thesis," the most innovative, provocative scholarship on *Brown* of the last generation.[3]

Although their project is more synthetic than interpretive, the authors do attempt to contribute their own distinctive vision of the history of *Brown*. The results of this effort are mixed. They occasionally pick up the theme of "caste" as a way of understanding the position of blacks in American society, but they never seem fully comfortable with it. The authors do not adequately define the term for their purposes, and they wonder whether it implies too much black acceptance of oppression. More successful is their insightful discussion of the historiography of the *Brown* era as a key component of the ideology of the time, and their final chapter, an exploration of *Brown*'s status as an icon of constitutional law.

The Cottrol, et al. text is clearly designed for classroom use, and for this purpose it serves as a viable alternative to the other recently published short history of *Brown*, James Patterson's *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (2001).[4] The Patterson book is strongest in its account of the challenges of implementation in the fifty years since *Brown*. The Cottrol, et al. book offers more on the decision's place within constitutional law and the debates it engendered within the legal community.

Notes

[1]. See, e.g., Dennis J. Hutchinson, "Unanimity and Desegregation: Decisionmaking in the Supreme Court, 1948-1958," *Georgetown Law Journal* 68 (1979): pp. 1-96; Mark Tushnet and Katya Lezin, "What Really Happened in *Brown v. Board of Education*," *Columbia Law Review* 91 (Dec. 1991): pp. 1867-1930; Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004), pp. 292-320.

[2]. Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Knopf, 1976), p. 774.

[3]. Michael J. Klarman, "How *Brown* Changed Race Relations: The Backlash Thesis," *Journal of American History* 81 (June 1994): pp. 81-118; Michael J. Klarman, "*Brown*, Racial Change, and the Civil Rights Movement," *Virginia Law Review* 80 (February 1994): pp. 7-150.

[4]. James T. Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (New York: Oxford University Press, 2001).

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