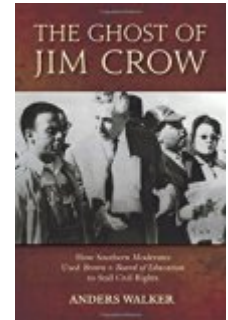


Anders Walker. *The Ghost of Jim Crow: How Southern Moderates Used Brown v. Board of Education to Stall Civil Rights.* New York: Oxford University Press, 2009. 256 pp. \$34.95, cloth, ISBN 978-0-19-518174-6.



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Published on H-Law (April, 2010)

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The standard story of the battle to implement *Brown v. Board of Education* (1954) in the South is one of drama and courage, protest and violence. Played out on television screens across the nation and in the national media, the conventional account pits peaceful civil rights demonstrators against repressive southern police and reactionary, racist, white vigilantes. Southern governors and political leaders engage in massive resistance and take dramatic actions to block even token integration. It is an epic tale, with heroes and villains.

Anders Walker's fascinating and compelling account shows that this standard story overlooks the more complex ways in which "moderate" southern political leaders worked to preserve segregation without defying the Supreme Court and, importantly, without provoking violence. Concerned about attracting industry to their states, Walker argues, moderate southern governors "rejected massive resistance and worked hard to assemble a response to *Brown v. Board of Education* that was peaceful, legal, and attuned to northern

sensibilities" (p. 3). Walker's study examines in some detail how this was done by three southern governors, why it was successful, and how each of the governors moved on to national positions in which they continued to undercut the movement for racial equality. While massive resistance and white violence captured the headlines, Walker argues that segregation and white privilege were more effectively protected and preserved by the quieter actions of so-called moderates. As Walker writes, "the real struggle over civil rights in the 1950s and 1960s might therefore be said to have taken place not between black activists and white extremists, but between black activists and white moderates" (p. 7).

Walker compactly organizes the book into an introduction, four substantive chapters, and a conclusion. The first three substantive chapters are devoted to each of three southern governors, J. P. Coleman of Mississippi (chapter 1), Luther Hodges of North Carolina (chapter 2), and Leroy Collins of Florida (chapter 3). In chapter 4, Walker traces the national careers of the three men sub-

sequent to their serving as governors. Governor Coleman was appointed by President Johnson to the United States Court of Appeals for the Fifth Circuit, becoming its chief judge. President Kennedy chose Governor Hodges as his secretary of commerce. And Governor Collins became the first director of the "Community Relations Service," created by Section 10 of the 1964 Civil Rights Act, and designed to mediate local disputes about civil rights. Walker argues that each of these former governors used their national positions to moderate demands for change.

The theoretical framework of Walker's argument is what he calls, in several places, "strategic constitutionalism" (pp. 51, 72, 111). By this term he means an approach to Supreme Court decisions that seeks to subvert them from within rather than defy them from without. Employing this framework, he understands "moderate resistance to *Brown* as a distinct type of constitutional politics" which "sought not simply to resist the Supreme Court, but to provide it with a series of opportunities to bow out of the political thicket ... by modifying its *Brown* holding, thereby influencing its civil rights jurisprudence" (p. ix). In terms of resistance, the argument appears to be twofold. First, moderate governors fully understood the difference between the announcement of abstract constitutional principles by the Supreme Court and the implementation of concrete programs and plans by state and local bureaucracies. For example, Walker finds that Governor Coleman understood that "'all the Supreme Court can do'... is lay down a rule' [sic] from within the interpretation of a case, something that did not lend itself to particularly aggressive enforcement" (p. 25). Second, the three governors also believed that without public support, judicial decisions were unlikely to change behavior, and that the white public supported segregation. For example, in a speech in August 1955, Governor Hodges stated that, "when the law runs up against human nature and the popular will, something has got to give, and not infrequently it is the law which is changed or

modified" (p. 83). Governor Collins made a similar point, writing that acceptance of "non-segregation" must be "developed in the hearts and minds of the people, and, in spite of the Supreme Court's great power, these hearts and minds are beyond its reach and control" (p. 95). The governors understood that unless there were changes in white public opinion, segregation could be preserved.

Along with resistance based on the difficulty of implementation and the white public's belief in racial segregation, moderate governors worked hard to craft laws that would both preserve segregation and pass constitutional muster. As Governor Coleman put it in December 1955, "We can't preserve segregation by defying the federal government. We must do it by legal means" (p. 12). It turns out that this was a lot easier than it might at first appear. Each of the governors established legal advisory committees to help craft these laws. The Mississippi Sovereignty Commission, established in 1956, was charged with using "any lawful, peaceful and constitutional means" to prevent implementation of *Brown* (p. 29). Governor Hodges, who "took notes" on what Coleman was doing in Mississippi, "worked with the Pearsall Committee, a committee of legal experts charged with devising legalist strategies for circumventing *Brown*" (pp. 49, 8). And in Florida, Governor Collins "organized a committee of lawyers and judges to recommend 'any legally sound steps or any lawful means which may be utilized at any level of government for the maintenance of segregation in the state of Florida [the Fabisinski Committee]'" (p. 99). In all three states, the governors acted on committee recommendations to introduce legislation designed to preserve segregation.

In terms of legislation, governors did two things. First, they encouraged their states to adopt facially neutral laws that would both withstand constitutional challenge and result in the maintenance of segregation. Second, they used the "threat" of integration to strengthen state control over local law enforcement.

Pupil placement laws were among the first legislative acts adopted to preserve segregation. Under these acts, students were assigned to attend schools based on “neutral classifications that could be used as substitutes for race, such as academic performance and moral background” (p. 13). Because black children had been systematically undereducated, and because segregation kept most southern blacks in poverty, these race “neutral” requirements could be relied on to maintain racial segregation. In addition, since the laws never mentioned race, presumably they could meet constitutional requirements. As Governor Hodges explained, the student assignment plan he introduced in January 1955 was a way to prevent “the mixing of the races” and, at the same time, “‘meet the requirements’ of *Brown*” (p. 49).

All three governors combined this approach with a focus on what they argued were moral deficiencies in the black community that made integration unacceptable. On the one hand, they enacted legislation incorporating the moral standards on which pupil placements laws were based. For example, Mississippi abolished common law marriage hoping it “would bolster the state’s attempt to keep black children out of white schools based on questions of moral background” (p. 41). On the other hand, all three governors worked to change the focus of civil rights from white repression to black inadequacies, “particularly illegitimacy rates” in the case of Governor Hodges (pp. 8, 50). In Florida, Governor Collins advocated “shifting attention away from decades of white repression and onto detailed accounts of black shortcomings, or low ‘standards’” (p. 87). He “framed the problem of integration as a fundamentally black problem [of low standards, morality, etc.], not a symptom of white discrimination or noncompliance with constitutional rules” (p. 95). In sum, Walker argues that in “transforming the legal criteria for segregating students from overt racial classifications to facially neutral, standards-based criteria,... Collins, Coleman, and Hodges all sought to lay the foundations for a new legal id-

iom through which racial inequality could be maintained in the post-*Brown* era” (p. 7).

Moderate southern governors believed that the image of the South held in the rest of the country mattered critically to the extent of federal action on civil rights, be it Supreme Court interpretations of southern laws or potential federal legislation. Violence generated by civil rights disputes, either from civil rights protesters or racist white vigilantes, increased the likelihood of northern intervention. Thus, all three governors took steps, sometimes extraordinary, to reduce the likelihood of violence. For example, in North Carolina, Governor Hodges “worked hard to rein in white extremism, particularly the Ku Klux Klan” (p. 51). In both Mississippi and Florida, Governors Coleman and Collins used informers and infiltrators in both black and white groups to keep them informed and lessen the chances of violence (p. 105). While preventing violence is a good thing, Walker stresses that moderate governors were most interested in protecting segregation.

Violence also threatened the success of an important goal of moderate southern governors to improve their states’ economies by attracting industry to them. For example, in 1958 the Mississippi Sovereignty Commission “mailed more than 200,000 letters outside the state to advertise Mississippi as an attractive frontier for business investment” (p. 37). Governor Coleman also “invited a group of newspaper editors and publishers from New England to tour Mississippi in hopes of changing their opinions about the state” (p. 36). Similarly, Governor Hodges believed that “industrialization was the South’s best chance for improving the lots of its [North Carolina] citizens, black and white” (p. 53). As Walker notes, both governors were “deeply interested in drawing northern investment to the South” (p. 83). And in Florida, Governor Collins had “risen to power largely with the support of voters interested in modernizing Florida and attracting business to the state” (p. 113).

What does this have to do with segregation and *Brown*? A great deal because violence generated by civil rights disputes, either from civil rights protesters or racist white vigilantes, threatened to undermine attempts to attract industry to the South. To make matters worse, local officials, particularly sheriffs and police, had a great deal of autonomy. Thus, all three governors worked to increase central state control at the expense of localities. In other words, Walker argues that “*Brown* contributed to a modernization and expansion of state power in the South” (p. 4). In Mississippi, for example, Governor Coleman wanted to “leave no doubt” that Mississippi was “an outstanding, safe, place,” where outside investors would feel comfortable “to locate and operate” (p. 27). Believing that one of the “weakest links in Mississippi’s law enforcement machinery was the local discretion of elected sheriffs,” Coleman made “reforming the state’s criminal justice system a central part of his administration” (p. 27). Thus, among other changes, Mississippi reduced the power of local sheriffs, expanded the power of the state highway patrol, and made “innovations in the state’s law enforcement and criminal justice system” (p. 27). Similarly, in Florida, Governor Collins “sought to control unrest by centralizing the state’s police power, coordinating law enforcement agencies, and tracking potential agitators, both white and black” (p. 88).

In sum, moderate southern governors adopted a multi-prong strategy to maintain segregation. The three governors Walker studies “used popular anxiety over integration to expand their executive influence over the state legislative process ... to centralize, and perhaps even modernize, certain aspect of their states’ governmental structure” (p. 160). Along with pupil placement laws, the changes they made in “welfare law, adoption law, marriage law, police jurisdiction, and judicial administration formed interlocking pieces of a complex puzzle aimed at preventing violence, preserving as much segregation as possible, and complying, formally, with the Supreme Court” (p. 4).

With an eye to history, Walker concludes that “even as white extremists brought down a Second Reconstruction on the American South, white moderates helped cobble together a Second Redemption” (p.157). In “taking a legalist, moderate path of resistance to the Supreme Court,” moderate southern governors “saw the South as guiding constitutional jurisprudence in favor of a new era of segregation, animated not so much by Jim Crow’s legal body as by its ghost” (p. 15).

The Ghost of Jim Crow makes a contribution on multiple levels. On one level, it tells the story of the implementation of Supreme Court decisions, particularly, of course, *Brown v. Board of Education*. On another level, it chronicles the political response to the civil rights movement in the South. On a third level, it presents a political history of three smart and sophisticated politicians. Overall, the great strength of Walker’s argument is its focus on the quieter, bureaucratic attempts to preserve segregation in contrast to the massive resistance of white extremists and their political allies. It is well written, extensively documented, and very interesting.

A main thrust of the book is how judicial decisions can be interpreted and given meaning by the larger political process. In great detail Walker shows that Governors Coleman, Hodges, and Collins understood that the meaning of the Constitution is not so much determined in the Supreme Court of the United States as it is in voting booths, legislative and executive offices, and institutions and practices of everyday life. These governors understood that Supreme Court opinions are always malleable and that the Supreme Court has little, if any, ability to change public opinion, to win the hearts and minds of citizens who are opposed to its rulings. Indeed, one lesson of the book is how easy it was to evade the Court’s ruling and preserve segregation, at least until the Congress and the president stepped in with the legislation of the mid-1960s.

Another main argument focuses on politics and three shrewd elected officials who understood much better than the extremists the connections between state and national affairs. They understood that violence was the enemy of segregation, not its supporter. They also understood that while a rhetoric of resistance was doomed to fail, a rhetoric of black inadequacy would resonate with a national white population only weakly committed to civil rights. Finally, all three governors saw the civil rights crisis as an opportunity to expand and consolidate state power. One of Walker's more interesting findings is how they used the challenge civil rights brought to segregation as a fulcrum for legislation in areas seemingly remote from school segregation and racial equality. Overall, *The Ghost of Jim Crow* is a very good book.

Despite its many strengths, there are a few areas where Walker is less successful. For example, Walker's emphasis on strategic constitutionalism is both underdeveloped and overstated. The argument is not fully developed because Walker does not make clear what the boundaries are of strategic constitutionalism. For example, what is the distinction between politics and "constitutional politics"? Is any political action responsive to civil rights considered strategic constitutionalism? What if the governors were responding to political demands generated by the civil rights movement rather than legal ones generated by the Supreme Court? In other words, what kinds of political behavior aimed at maintaining or changing law are an aspect of strategic constitutionalism? In the case of civil rights, to the extent that southern legislators and governors were reacting to the civil rights movement and not the Supreme Court, why were they engaged in strategic constitutionalism rather than good old-fashioned conservative politics? To take a more recent example, are politicians who support or oppose marriage equality in 2010 engaged in constitutional politics or in conservative morality politics? Without fur-

ther development the category "strategic constitutionalism" lacks critical bite.

Walker's argument about strategic constitutionalism is also overstated because there was nothing new about using laws neutral on their face to enforce racial discrimination. From so-called grandfather clauses (limiting voting to those who could prove that their grandfathers had the right to vote) to literacy tests to the infamous separate-but-equal laws, adopting neutral laws was a long-established and effective tool of southern legislatures intent on preserving racial segregation in the face of hostile Supreme Court decisions. Southern governors had a well-stocked bag of tools from which to choose. While it is interesting and important to learn which tools they chose, they were acting less creatively than Walker suggests.

By labeling Governors Coleman, Hodges, and Collins "moderates," Walker, perhaps inadvertently, gives credit where none is due. He runs the risk of downplaying the lengths to which they went to maintain segregation and deny African Americans equality. There was nothing moderate about the legislation they supported and the actions they took. They only looked moderate because they were nonviolent and because they were compared to violent groups like the KKK and governors who supported massive resistance. A more accurate description might have been "nonviolent segregationists." So, while Walker's claim that some governors were "animated not so much by Jim Crow's legal body as by its ghost" is eloquently written, it is substantively overstated. Jim Crow's ghost was pretty frightening and quite effective at maintaining segregation. Southern "moderate" governors, such as Coleman, were clearly enamored by Jim Crow in all his evil glory.

This concern is more than one of labeling. It goes to the heart of a tension in Walker's work between viewing moderates as racists or as paternalists who sincerely believed in black progress. Walker never fully reconciles this tension and his

argument too often lacks critical distance from what can fairly be called, at best, the governors' apologist position. For example, in describing the views of the three governors, Walker writes that "they did not perceive Jim Crow to be repressive so much as protective, a bulwark against social ills endemic to black communities" (p. 6). This is a blindness on the governors' part that is best understood as a deeply ingrained racism that is the product of slavery and the apartheid system of the South. What they were "protective" of was white privilege and deep inequality. Similarly, Walker writes that to understand "southern moderates, and arguably southern resistance to integration generally," one must understand that "opposition to *Brown* was not simply based on hate, but also, ironically, on hope—hope that the races could continue to grow, side by side, in a separate, synergistic manner" (p. 6). This is an evil hope, a belief in inherent separateness and difference. It denies African Americans their dignity and humanity and falls back on the belief that somehow apartheid is good for those excluded. If the governors were committed to equality, then they would have worked hard to improve opportunities for African Americans. They did not. As far as Walker documents, the only steps a few of the governors took was to try to co-opt middle-class blacks. And when they, too, demanded, equality, the overtures typically ended. Indeed, Walker documents how the moderate governors placed legal barriers in the way of black advancement. He notes that in addition to all the steps the governors took to maintain segregation, Governors Coleman and Hodges "endorsed relatively punitive legal measures" against the black community as well (p. 111). As for Governor Collins, "not only did he demolish black homes [slum clearance] but also he endorsed a general tightening of welfare restrictions on unwed mothers" (p. 111). These three moderate governors worked hard to maintain segregation and the centuries-old denial of basic rights and humanity to African Americans. The only differences between the actions of these

moderate governors and their reactionary brethren was in their condemnation of violence and their less inflammatory rhetoric. If this was the belief of moderates then they were both racist and deeply insensitive. Walker sometimes gives them much too much credit.

Throughout the book Walker stresses the creative stance taken by moderate governors. Rather than resorting to demagogic appeals to interposition, massive resistance, and "never-say-die" segregation, moderate governors worked to lower the political temperature and head off violence. In addition, he documents how they took actions to modernize state criminal justice systems and further develop state power. What difference did any of this make? In terms of preserving segregation, in the short run, moderate governors were about as effective as reactionary segregationist governors. For example, in "moderate" Florida during the 1963-64 school year, approximately 1.5 percent of black school children were in a public school with white students, compared to approximately 1.6 percent of black students in "massive resistance" Virginia. In North Carolina, substantially fewer than 1 percent of black school children were in a public school with white students in the 1963-64 school year, similar to the percentage in violent Georgia. In "moderate" Mississippi, there were no black students in public school with whites that year, in comparison to a whopping nine black students in public school with whites in South Carolina with its call to interposition (Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* [1991; repr. 2008], appendix 1, pp. 433-435). These data suggest that in the short run moderate governors were successful at preserving segregation without the violence found in states with extreme governors.

However, in the long run, none of this mattered. By the 1972-73 school year, 80 percent or more of black children in the public schools in the eleven southern states of the old confederacy

were in a school with whites. In the three states in Walker's study, North Carolina (99.4 percent), Mississippi (91.5 percent) and Florida (96.4 percent), the percentages were over 90 percent. In contrast, the percentages in massive resistance Virginia, violent Georgia, and recalcitrant South Carolina, were similar, 99.3 percent, 86.8 percent, and 93.9 percent respectively (See Rosenberg, *Hollow Hope*, appendix 1, pp. 433-435). Thus, the strategic constitutionalism of moderate governors made little difference in the end.

What about the state-centered reforms of the moderate governors? Here it would be useful to know what was happening in non-southern states at roughly the same time. I suspect that modernization of the criminal justice system, expansion of state power, and reform in general was a nationwide trend. The commitment of all three governors to attract outside industry to their states alone might have provided the impetus for reform.

Finally, the last chapter of the book is the least persuasive. Walker gives too much credit to Collins and Coleman in particular for influencing future events and interpretations of law rather than reflecting a growing reluctance on the part of white America to confront systematic discrimination and inequality. He qualifies his position in places but falls back on it at the end. For example, Walker shows how Collins in effect "sabotaged" Dr. Martin Luther King Jr.'s planned Selma to Montgomery march for voting rights (pp. 137-140). However, it did not much matter because just a week after Collins engineered King's "turnaround" on the Edmund Pettus Bridge, President Johnson committed his administration to the passage of what became the Voting Rights Act of 1965 (p. 140). Similarly, the course of civil rights was much more deeply influenced by the election of Richard Nixon, his Supreme Court appointments, and anti-bussing events in northern locations, like South Boston and Michigan, than it was by Judge Coleman's decisions on the Fifth Circuit.

In the concluding pages of his book, Walker reflects on why the conventional history of the civil rights movement in the South overlooks the crucial role played by so-called moderates in maintaining segregation. It does so, Walker suggests, because that serves to bury their segregationist role. "By pushing for a dramatic, almost fictional account of civil rights—one in which non-manipulative black leaders led a crusade against violent racists," Walker writes, "moderate whites in the post-civil rights era could endorse the symbolic moral victory of the movement, while erasing their own role in the larger story of resistance to integration" (p. 156). Similarly, the conventional history can also be read as telling a story that celebrates judicial victories while ignoring the difficulty of implementing them. Governors Coleman, Hodges, and Collins understood that they could effectively preserve segregation not by vociferously opposing *Brown* but by simply interpreting it in such a way that the laws, institutions, and culture of the white South reduced it to little more than a symbolic statement of political theory. In an era in which symbolism too often triumphs over substance, these are lessons worth repeating. Few have done it as well as Walker.

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Citation: Gerald N. Rosenberg. Review of Walker, Anders. *The Ghost of Jim Crow: How Southern Moderates Used Brown v. Board of Education to Stall Civil Rights*. H-Law, H-Net Reviews. April, 2010.

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