the security and privacy of telephone communications while meeting the legitimate needs of law enforcement." This was practically the last time that the word "voluntary" was mentioned.

Clipper Chip advocates presumed that it should be a crime for anyone to use technology that frustrates curious government agents. The ACLU noted, "The Clipper Chip proposal would have required every encryption user (that is, every individual or business using a digital telephone system, fax machine, the Internet, etc.) to hand over their decryption keys to the government, giving it access to both stored data and real-time communications. This is the equivalent of the government requiring all home-builders to embed microphones in the walls of homes and apartments."

Not surprisingly, the agency most hungry to spy on Americans was the Federal Bureau of Investigation. FBI Director Louis Freeh told a Senate committee in March 1994 that Americans "want to have a cop on the digital information highway." Unfortunately, what Freeh demanded and Congress enacted was the equivalent of not just having a cop on the digital information highway, but also having a cop potentially listening to every phone call and reading every e-mail.

Levy offers insights into how easily most congressmen were persuaded to put a knife in the back of Americans' privacy. He notes, "NSA briefings were notorious in Congress. They involved a dramatic presentation by the NSA on why our international eavesdropping abilities were so vital. . . . They initiated legislators into the society of Top Security, implicitly shifting their alliance from the citizenry to the intelligence agencies." Unfortunately, few congressmen were either knowledgeable or confident enough to challenge the claims made in secret hearings. However, the public uproar—from geeks, to talk show hosts, to civil liberties groups—had a huge impact.

Crypto is rich in personal and technical detail. However, the style is often verbose and tedious. The book is also frustrating because it implicitly portrays the defeats of federal power grabs in the 1990s as a final victory for freedom. The book's subtitle, *How the Code Rebels Beat the Government—Saving Privacy in the Digital Age*—seems ironic in the wake of 9/11 and the passage of the USA Patriot Act—which greatly increases government surveillance.

For instance, the FBI is increasingly installing keystroke monitoring software on people's computers. This software allows the government to record every keystroke anyone makes while using that computer. The feds will not need to ask your passwords because they can capture whatever you type into the computer. This will allow the feds to thwart anyone who attempts to keep prying eyes out of his work.

As long as politicians and bureaucrats lust for power, the battle for privacy must continue. *Crypto* is a reminder of how courage and ingenuity triumphed in the past and why the friends of freedom must be wary and ready in the future. □

Jim Bovard is the author of Lost Rights *(St. Martin's, 1994) and* Freedom in Chains *(St. Martin's, 1998).*

Civil Rights and Public Accommodations: The Heart of Atlanta Motel and McClung Cases

by Richard C. Cortner

University Press of Kansas • 2001 • 240 pages • $29.95

Reviewed by David E. Bernstein

Title II of the 1964 Civil Rights Act bans discrimination on the basis of race, color, religion, or national origin in public accommodations. The law reflected a growing belief that any establishment that holds itself out as open to the public should not be permitted to discriminate. The Act had broad public support, except in the South.

There were some, however, who advanced principled objections to Title II. Ayn Rand, for example, wrote that "[j]ust as we have to protect a communist's freedom of speech, even though his doctrines are evil, so we

have to protect a racist's right to the use and disposal of his own property." Philosophical objections to Title II's regulation of public accommodations, however, were largely drowned out by the argument that it violated "states' rights."

Several southern businessmen challenged the constitutionality of Title II as exceeding congressional power. Political science professor Richard Cortner's *Civil Rights and Public Accommodations* is a workmanlike description of that litigation and reminds us how much is at stake when politics and property rights collide.

Cortner provides many interesting details about the litigation and the litigants. One interesting aspect of the litigation was the Justice Department's reliance on the Commerce Clause to justify the constitutionality of the law, rather than on the Fourteenth Amendment. That amendment forbids states to deny equal protection of the law, and section 5 suggests that Congress has the primary responsibility of enforcing that prohibition. Arguably, then, Congress also gets to decide what "equal protection of the law" means, including whether states must prohibit discrimination in public accommodations. The 1875 Civil Rights Act contained such a provision, but it was struck down by the Supreme Court eight years later in the *Civil Rights Cases*. The Court there held that the Fourteenth Amendment didn't grant Congress the authority to regulate private businesses.

Many scholars believe that the *Civil Rights Cases* were ripe for reversal in the 1960s had the Justice Department chosen to take that approach. Instead, the government, fearing that the Court might not reverse a long-standing precedent, played it safe by arguing that Congress's authority to enact Title II arose out of its power to regulate interstate commerce. (Allegedly, interstate commerce was "burdened" if businesses like McClung's Barbecue could choose whom to serve.)

Once that issue of strategy was resolved, the details of the briefs presented by the government, discussed in detail by Cortner, seem a bit superfluous because the litigation had a foreordained conclusion. It was inconceivable that the "liberal" Warren Court would hold Title II unconstitutional. First, the Court almost never ruled against civil-rights litigants. Second, the Commerce Clause, a bête noire of statists for generations, had already been eviscerated by FDR's Supreme Court in the 1942 case *Wickard v. Filburn*. In that case the Court held in part that Congress's power to regulate "interstate commerce" included the power to prohibit a farmer from growing wheat on his own farm for his family's private consumption, activity that in the normal sense of things is neither "interstate" nor "commerce." The Court had no interest in reviving the limitations on congressional power inherent in the clause, especially not in a case where its political sympathies clearly lay with the government.

While Cortner discusses the constitutional implications of the Title II litigation, he unfortunately does not consider the broader ramifications of Congress's decision to regulate public accommodations and seems to accept the idea that the government must regulate private property so as to ensure nondiscrimination in public accommodations. Title II itself was relatively narrow in scope—it doesn't apply to private clubs, for example. Over the last two decades, however, various states and localities, inspired by Title II, have passed their own public-accommodations laws, with almost no limitations. In New Jersey, for instance, Little League baseball, a cat fancier's association, private social clubs, and the Boy Scouts have all been deemed "places of public accommodation" that may not discriminate in any way against a wide range of groups. Alas, Cortner never mentions the way that public accommodations laws have, as the early opponents predicted, broadly impinged on civil society.

After state laws mandating segregation were invalidated, most businessmen desegregated quickly and willingly. Today, the battle in public-accommodations law is primarily over whether private social organizations should be left alone or whether their membership policies should be dictated by the government. Given the importance of

autonomous private organizations as a check on the government and as a means of discovering new social and political ideas, the answer should be obvious.

Civil Rights and Public Accommodations provides a sound, if not especially exciting, description of the constitutional litigation over the federal government's initial foray into the regulation of public accommodations. But if the reader wants to understand the continuing controversy over the effects of that foray, he will have to look elsewhere. □

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The New Americans: How the Melting Pot Can Work Again

by Michael Barone

Regnery Publishing • 2001 • 338 pages • $27.95

Reviewed by Fred Foldvary

During the past decade there has been a large inflow of immigrants into the United States, especially from Latin America and Asia, raising fears that the new immigrants may not merge as easily or swiftly into the American culture and economy as previous waves of immigrants. There have also been concerns that the black migrants from the south during and after World War II have not been sufficiently advancing economically.

Michael Barone's study reveals startling similarities between the old and new ethnic waves. Barone pairs the Irish with the blacks, Italians with Latinos, and Jews with Asians to demonstrate that "we've been here before." Recent immigration is a déjà vu of the earlier folks who came to America, repeating previous cultural and economic patterns. While acknowledging differences between the linked pairs and variation within groups such as Latinos, there are nevertheless common patterns of culture and history.

The New Americans has a chapter for each ethnic group, all structured similarly. Barone applies his extensive experience as a political historian, senior writer at *U.S. News & World Report*, and coauthor of the biannual *Almanac of American Politics* to describe the old country, journey to America, life in the new country, work patterns, family orientation, religious practice, education, prevalence of crime, political participation, distinctiveness as a group, emergence in sports and entertainment, and convergence into the American mainstream for each group.

Describing the Irish, Barone depicts the massive discrimination that they faced, their initial poverty and lack of entrepreneurship, the high degree of fatherless families, the importance of religion, and high rates of crime. These largely forgotten characteristics are surprisingly similar to those associated with black Americans. While we think of Irish today as no different in appearance from other Caucasians, Barone shows that attitudes 100 to 150 years ago were much like prejudices against blacks recently and presently. The Irish were regarded by many Americans as an inferior race. Some Irish rose to prominence in sports and entertainment, just as blacks did later. Both looked to government to obtain power and employment opportunities. But now the Irish have converged into America, although many have retained their ethnic identity.

Like the Irish, black Americans had an "old country," the old South, where most still resided until the 1930s. Like the Irish, blacks have had a lower rate of married couples, but they too made economic gains. Barone notes a key difference in government policy: racial quotas and preferences for blacks, which reduce their incentive to high achievement. Still, Barone observes that the racial divide is fading rapidly, just as ethnic divisions did for earlier immigrants. It took 120 years for the Irish to become fully assimilated, and Barone thinks it may not take as long for blacks, whose mass migration began 60 years ago.

The "uncanny resemblance," as Barone puts it, between Italian immigrants and the current wave of Latino newcomers shows that the Spanish-speaking arrivals too will