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## William Hastie: Grace Under Pressure

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WILLIAM HASTIE: GRACE UNDER PRESSURE. By *Gilbert Ware*. New York: Oxford University Press. 1984. Pp. x, 305. \$25.

William Henry Hastie was one of the leading civil rights activists of this century. As an NAACP lawyer in the 1930s and 1940s, Hastie litigated some of the first major challenges to segregation in education, employment, and public transportation.<sup>1</sup> In those cases Hastie, along with such other prominent black attorneys as Charles Hamilton Houston and Thurgood Marshall,<sup>2</sup> helped develop the legal doctrines eroding segregation and ultimately informing the Supreme Court's decision in *Brown v. Board of Education*.<sup>3</sup> In 1940, Hastie helped to secure the right to equal pay for black public school teachers in Virginia. Hastie and Marshall later argued the series of cases that led to the abolition of the white primary, a device long used by southern whites to deny black political participation.

Hastie's influence was not confined solely to the trial lawyer's role. He was a professor and later dean of Howard University Law School. He was a key participant in the drafting of the Organic Act of 1936, which established a framework for the development of self-government on the Virgin Islands and conferred basic constitutional rights upon Virgin Islanders.<sup>4</sup> In part because of his work on the Act, Hastie was selected as a United States District Court judge for the Islands, and in 1946 President Truman appointed him as the first black governor of the Virgin Islands. His legal career culminated with his appointment to the federal appellate bench in the Third Circuit. Performed by any individual these accomplishments would be impressive; they were unprecedented for a black man during the 1930s and 1940s.

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1. See *Hocutt v. Wilson* (N.C. Super. Ct. 1933) (unreported) (graduate education, discussed at pp. 46-53); *Morgan v. Virginia*, 328 U.S. 373 (1946) (public transportation, discussed at pp. 186-90); *Smith v. Allwright*, 321 U.S. 649 (1944) (voting, discussed at p. 190); *New Negro Alliance v. Sanitary Grocery Co., Inc.*, 303 U.S. 552 (1938) (employment, discussed at pp. 74-80). Thurgood Marshall's litigation for the NAACP and the NAACP Legal Defense and Educational Fund provides one illustration of Hastie's influence. Between 1939 and 1949, Marshall argued 19 cases before the Supreme Court, and Hastie served as a consultant or co-counsel in twelve. See, e.g., *Brown v. Board of Educ.*, 347 U.S. 483 (1954) (pp. 53-54, 189-90).

2. The author traces the change in civil rights leadership from Houston to Hastie to Marshall: "Two of the three principal lawyers who brought about Jim Crow's downfall, Charles Houston and William Hastie, were trained at Harvard, and at Howard they, in turn, trained the third, Thurgood Marshall." P. 32.

3. 347 U.S. 483 (1954).

4. The Organic Act ended the former system of government, under which the Virgin Islands had been directly controlled by the Navy and later by the Department of the Interior. Instead, the Act provided for a governor appointed by the President and two popularly elected local legislatures. The Act also granted Virgin Islanders basic rights including due process and equal protection of law, protection against double jeopardy, and provision of counsel in criminal prosecutions. Pp. 83-85.

In *William Hastie: Grace Under Pressure*, Professor Gilbert Ware<sup>5</sup> sympathetically describes these and other highlights of Hastie's career. Ware follows the conventional narrative form of biographies, recounting Hastie's career chronologically with each chapter organized around an important case or event. This essay addresses three of the book's recurrent themes.

First, Ware describes the development by Hastie and other NAACP lawyers of an effective legal strategy for ending segregation. In the 1930s and 1940s segregation pervaded American society. Blacks were required by law to attend separate and vastly inferior public schools. Public accommodations and transportation were segregated, and devices such as the white primary prevented blacks from altering this situation politically (p. 42). The greatest legal barrier facing blacks was *Plessy v. Ferguson*,<sup>6</sup> in which the Supreme Court had declared racial segregation constitutional (p. 43).

Hastie and other NAACP lawyers feared that if they challenged *Plessy* directly, the Court was more likely than not to affirm the decision.<sup>7</sup> They chose instead to undermine *Plessy* by stressing that the southern states had not maintained "equal" facilities for blacks. If states were forced to provide truly equal facilities, then the costs of segregation would greatly increase. Furthermore, the NAACP lawyers initially sought to attack segregation in the graduate schools. Since almost no separate graduate facilities existed for blacks, the only meaningful remedy would be for black students to attend the segregated schools (pp. 44-46). In 1933 Hastie served as lead counsel for Thomas R. Hocutt, a pharmacy student challenging the University of North Carolina's denial of his application for enrollment. Although the court denied relief in *Hocutt v. Wilson*<sup>8</sup> on technical grounds,<sup>9</sup> the case focused the attention of both whites and blacks on the issue.

In *Morgan v. Virginia*,<sup>10</sup> Hastie and Marshall persuaded the United States Supreme Court to strike down segregation on interstate carriers. They argued the case on commerce clause grounds, a tech-

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5. The author is a professor of political science at Drexel University. Ware served in the Program Division of the U.S. Commission on Civil Rights in 1964-67, and later joined the senior research staff of the Urban Institute. He is a member of the NAACP and the American Civil Liberties Union.

6. 163 U.S. 537 (1896). The "separate but equal" doctrine approved by the Court in *Plessy* sanctioned the de jure segregation that then pervaded much of the nation.

7. NAACP lawyer Spottswood W. Robinson III, former Chief Judge, now Judge, of the District of Columbia Circuit, noted that the indirect attack on *Plessy* was necessary because "[w]e did not want to make bad law." P. 189.

8. The North Carolina Superior Court, Durham County, decided *Hocutt* in 1933. The decision was not appealed, nor was it officially reported. P. 254 n.56.

9. The judge apparently viewed his authority to issue the requested relief, a writ of mandamus, as quite limited. Holding that he could not order the University to enroll Hocutt, the judge denied the writ. P. 50.

10. 328 U.S. 373 (1946).

nique that would be effective during the 1960s. During oral argument Justice Rutledge asked Hastie if *Morgan* could also be decided under the fourteenth amendment. Despite his eagerness to attack *Plessy* directly, Hastie remained faithful to the overall NAACP strategy. *Morgan* was not the proper factual case in which to oppose *Plessy*, so Hastie “pretended not to hear him,” and then gave the Justice “fifteen minutes of irrelevancies” (p. 189).

Indeed, Ware’s treatment of cases like *Hocutt* and *Morgan* strongly suggests that *Brown v. Board of Education*, the case that ultimately repudiated *Plessy*, was the end product of a legal evolution shaped by leaders like Hastie and Marshall.

A second theme of the book centers around Hastie’s appreciation of the need for blacks to promote civil rights reform both by creating their own effective organizations and by transforming existing organizations and institutions. Describing Hastie’s early support for the National Negro Congress, Ware remarks that Hastie “gave that support because he was an institutionalist. He did not think that any single emphasis — civil, political, or economic — should be adopted to the exclusion of the others in fighting Jim Crow, which, after all, was hydraheaded” (p. 41). Hastie viewed most other black organizations as complementary rather than antagonistic to the NAACP. For example, in 1933 he helped found the New Negro Alliance, which combated discrimination in the District of Columbia. The Alliance demanded that retail stores in black neighborhoods hire blacks in numbers proportionate to their patronage, and used picketing and boycotts to promote that message (pp. 67-68). When storeowners resisted these tactics, Hastie served as advisor to the Alliance in the first Supreme Court case to obtain the right for people outside of labor unions to picket pursuant to the Norris-LaGuardia Act.<sup>11</sup>

While working within existing institutions dominated by whites Hastie was confronted by a different type of dilemma. As a leader in the black community, Hastie was one of the first blacks to enter these institutions, where he was typically given little power. He was often forced to balance the need for blacks to maintain some foothold in the white institutions against the desire to avoid the appearance or actuality of tokenism.

Hastie’s military experience illustrates this tension. In 1940, he was appointed as civilian aide to Secretary of War Henry L. Stimson (p. 97). Like many institutions in this period, the armed services were segregated (p. 98). Indeed, even blood banks used for battlefield transfusions were segregated, and “black” blood could not be used in a

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11. Pp. 78-80. See *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552 (1938). Ware notes that Hastie’s work with the Alliance displayed “the typical Hastie approach, namely, simultaneous representation of more than one organization, usually including, as in this instance, the NAACP.” P. 72.

white soldier (p. 107). Within the nation itself community interference with violence against black military personnel was not uncommon (pp. 112-13).

Viewed as an advisor by the War Department, Hastie was given little formal power,<sup>12</sup> but nonetheless pressed for several reforms. He fought against the spread of segregation to integrated installations (p. 106). He also advocated protection of black soldiers from domestic civilian violence (pp. 112-19) and an increase in the number of blacks to receive officer training (pp. 110-11). At the core of Hastie's approach was an appeal to American ideals and the irony of American racism during World War II: "I believe that while training an army to fight Hitler, we should not let up one bit in our effort to prevent discrimination in the army right here."<sup>13</sup>

The War Department repeatedly rejected Hastie's appeals. For example, the Adjutant General's Department noted that the "Army is not a sociological laboratory" appropriate for experiments in integration (p. 101). In a vein disturbingly similar to *Plessy*, the Army argued that segregation was best for race relations and that blacks actually preferred segregation.<sup>14</sup> Constant frustration led even Hastie, a staunch believer in the value of existing institutional structures, to resign from the War Department. Ware adds that Hastie's resignation perhaps did more to spur integration in the armed services than did his activities as an aid to Stimson (pp. 130-33).

A third theme of the book focuses on the commitment of Hastie and other leaders to improving conditions for blacks, and their determination and courage in achieving that goal. Hastie's many "firsts" attest to his proficiency as an attorney, advocate, and activist. Hastie might well be viewed as a member of what W.E.B. Du Bois termed the "Talented Tenth,"<sup>15</sup> whose duty it was to lead the rest of blacks toward improved conditions.<sup>16</sup>

12. As Ware comments, "Hastie was competent but impotent" within the military structure. P. 102. It even became common practice to keep important information about black troops from Hastie by circulating it with the cover note, "Not to be shown to Judge Hastie." P. 103.

13. P. 104. This irony created tremendous resentment on the part of many blacks who felt that "Hitler and Tojo and the governor of Georgia are on the same damn team." P. 104.

14. Pp. 101-02. The Army's insensitivity to racial issues extended to its highest echelons. While discussing the problem of racism within the military, Secretary Stimson remarked, "Mr. Hastie, is it not true that your people are basically agriculturalists?" P. 123.

15. Du Bois was primarily interested in the development of a Talented Tenth, the best of the race, whose task it would be to lead the black masses from bondage to freedom, from barbarity to civilization. He declared that the creation of the Talented Tenth was the foremost problem in the education of blacks. P. 24 (footnote omitted).

In this regard, Du Bois differed with another prominent black leader, Booker T. Washington, who argued that rather than trying to focus on a Talented Tenth, black education should be geared to industrial training, which would be more practical and less likely to arouse the white community. P. 25.

16. Pp. 24-25. Hastie was ambivalent about this view. At one point he commented that "[t]his notion that Negroes have got to be better than other people is about as disgusting as the

Not only was Hastie a skilled lawyer, he possessed other qualities necessary to attaining his goals. Describing the ideal civil rights plaintiff, Hastie once commented that in addition to being of "*outstanding* scholarship," the person had to be "courageous, poised, quick of mind, neat, [and] personable . . ." (p. 52). These were the qualities of Hastie himself, which no doubt explain Ware's subtitle for the book, "Grace Under Pressure."

Moreover, Hastie and his fellow civil rights lawyers felt duty-bound to contribute their skills and qualities to public service. Charles Hamilton Houston, Hastie's and Marshall's mentor, believed that a black lawyer's sole legitimate purpose was to act as a "social engineer" promoting the cause of civil rights (p. 143). Since white lawyers profited from the intolerable racist system, they could not truly represent blacks in civil rights cases; blacks would have to represent themselves.<sup>17</sup> To this end, as successive deans of Howard Law School, Houston and Hastie sought to develop a "black cadre of superlative lawyers" (p. 154).

While Ware's book is for the most part very readable and enjoyable, it has several limitations. The book ends with Hastie's appointment to the Third Circuit in 1950, even though Hastie lived until 1976. Ware does not address any of the decisions that Hastie rendered while on the appellate court, which would be interesting in light of the preceding material. It would also have been interesting to learn what Hastie's reactions were to the great changes that took place in civil rights and civil rights leadership between 1950 and 1976, such as the tactics and goals of leaders like Malcolm X, or the emotional style of leadership of Dr. Martin Luther King, Jr.

The treatment of the cases by Ware is straightforward but unsophisticated. He confines himself to brief descriptions of the facts and holdings by the courts. His footnotes reveal that he frequently relies on secondary accounts of the cases rather than the texts themselves. However, since Ware apparently sought to present a historical perspective of Hastie and his era, the handling of the cases is appropriate; those seeking detailed legal analysis will have to consult other sources.

While Ware does an admirable job in presenting Hastie's public life and achievements, he is far less successful in his few attempts to shed light on Hastie's personal life. For example, early in the book Ware introduces Alma Scurlock as Hastie's wife (p. 91). Later, when Hastie becomes governor of the Virgin Islands, Ware refers to Beryl Hastie as Hastie's wife (p. 194). Ware does not mention whether Hastie was a

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notion that Negroes are inferior. As a matter of fact, I very much fear that they are rationalizations of the same thing." P. 28.

17. Pp. 143-44. Black leaders often paid large personal costs for their achievements. Ware notes that "[e]ndangerment of life and limb was widespread for civil rights lawyers." P. 172. He recounts one of the numerous instances in which Thurgood Marshall had to sneak in and out of town in the trunk of a car in order to argue a case. Pp. 173-74.

widower or divorced his first wife. Certainly discussion of either event would offer another perspective on this cool, reserved man.

Ware's style is generally clear and easy to read. Perhaps because of his obvious admiration for Hastie, however, Ware tends to bias certain passages, sometimes exaggerating Hastie's role in a given case or event. For example, Ware devotes a chapter to Hastie's efforts on behalf of President Truman in the 1948 presidential election campaign (pp. 213-24). Ware concludes that one of the many reasons behind Truman's overall victory was the support of Hastie and other black leaders, which diminished rival candidate Henry Wallace's standing with blacks in the Democratic primary. Yet, notwithstanding this narrow conclusion, Ware terms the chapter "Truman's Rescuer" and seems to overstate Hastie's role in the campaign.

Despite these limitations, *William Hastie: Grace Under Pressure* provides an informative account of Hastie's career. Ware's book represents welcome reading for those seeking further perspective both on Hastie himself and on the foundations of the civil rights movement.

— Mark S. Cohen