Episode 681: Public Accommodation, Antidiscrimination, and How Minority Groups Really Advance

Guest: Ryan McMaken

WOODS: Your article "The Trouble with 'Public Accommodation'" just blew me away. So interesting, and I guess when you get to be our age — I don't want to speak to you; I don't know how old you are, but I'm 43, and I'm turning 44 very soon. And when you get to about this age, a lot of times when you read an article it's the same thing that you read 15 years ago. There's not a whole lot new that you can learn; unless you're reading journal articles, you're really digging deep, a lot of it's the same kind of stuff. And I love articles like yours, because I just learned — every paragraph I was learning something new. Let's start off, even though you didn't talk about it in this article, you did write an article that at least conceptually is similar to this one, dealing with, it was just a post about the guy, the blind man — is he blind? What was he —

MCMAKEN: That's right, yeah.

WOODS: He's suing McDonalds because he can't walk up to the drive-up window? You have to have a car?

MCMAKEN: Right, and of course that by extension — he said it discriminates against him because he can't drive.

WOODS: Right.

MCMAKEN: And as we actually knew in college, if you tried to walk up to — because we'd have too much to drink and then we'd try to walk up to the Taco Bell drive-through and they'd tell us to get lost because it was "unsafe." So yeah, I mean, it happens; it discriminates against anybody who can't drive, I guess. So that's — now, how could we possibly live in a world, Tom, where not everybody could just walk up to the drive-through, and people who can't drive, they're just second class citizens —

WOODS: Yeah, right.

MCMAKEN: — so something has to be done.

WOODS: Well, the things is I'm sure there are things that are out of reach to me because of my physical condition or whatever, occupations I can't have and activities I

can't pursue and whatever. I mean, throughout all of human history up to this very moment, people have concluded, well, you know, them's the breaks. (laughing) Didn't occur to them that there'd be a potential lawsuit here. Now, we look at that case because it's so ridiculous, but the fact that you could even plausibly advance that argument comes from this universally accepted doctrine of public accommodation. And of course public accommodation is the idea that when you have a private institution — I mean, obviously McDonald's is not a government institution — you have a private institution that opens up its doors to the public, the presumption is it serves the whole public without exception and without discrimination. I mean, that's my basic summary of the public accommodation doctrine.

Now, this is something that, as you well know, everybody believes in. Everybody: conservatives, even some libertarians, a lot of people believe in this to the point where it's very, very hard to make any progress arguing about it, and in fact — and here's a confession I'm going to make that I have not made before: even I, somebody who, I harp on this issue a lot because I think it's so important to get this right, even I feel slightly bad about it. So I mean, if *I* feel slightly bad about it, what hope is there? Is there any way to — don't you feel like writing an article about this subject is just totally hopeless?

MCMAKEN: (laughing) Well, of course, that's a big reason I wrote this article —

WOODS: (laughing) Yeah, there you go.

MCMAKEN: — is I need to clear my own thinking on it, was why is this such a dominant view, that you go on a talk show or something, and, oh, of course I'm a hardcore libertarian; I believe totally in private property. And then they ask you, well, then, should an owner of a lunch counter be allowed to deny people a cup of coffee? And then you're like, oh, no way, of course they should be forced to serve everyone a cup of coffee. So now we've established that, no, actually you don't believe in private property, and then it's all downhill from there.

WOODS: Let's go into the article itself, because as I say, it's just filled with stuff I didn't know about. So let's start with your section on — because you take two real life examples, the case of Mexican-Americans and the case of Japanese-Americans. Let's look at the Mexican-American one first, and tell me the story and how it might be different from what I would expect the story to be.

MCMAKEN: Well, one of the overriding theoretical pieces of this is that if you really are concerned about people being able to access goods and services, what you want to do is make sure that it's easy then to provide those goods and services, that it's easy for new startups to come in, it's easy for entrepreneurs to compete with the established firms, because so much of the underlying assumption behind the public accommodation theory is that there's only one person in town or maybe a cabal of people that supply these services, and if all those people happen to be racists, then they're not going to supply those services to people they look down upon. And so then it's often assumed that the solution is to then force those people to provide those

goods and services, whereas really the solution is to make it easier for other people to enter the market and compete with the racists or whatever.

And so I thought, well, do we have historical examples of this? Can we find cases where, yes, some group was being denied products and services and they went out and founded their own business to compete then with those people? And it turns out I didn't have to look all that hard. There's a lot of good new scholarship, even, that's really over the last 20 years that finally starts to look at racial minorities and ethnic minorities as entrepreneurs and rather than as these victimized labor groups, which has so much been traditionally what we look at in terms of history, and it's assumed that Mexican-Americans supply nothing to the economy other than low-level labor. Whereas over the last 20 years, we've found a lot of new good research looking at, well, what did they do in terms of founding businesses and what sort of entrepreneurs are they.

And if you start to look at that scholarship, what you find is there are lots of cases of the white Texans saying, okay, we're not going to provide you people with this or that, you can't use our restaurants, we don't want to sell you stuff. And then it just turns out that a lot of Mexican-Americans in South Texas went out and just founded their own businesses and started their own media companies even in many cases. And so they decided they weren't going to sit back and just beg some Anglo restaurateur to allow them to purchase a lunch there; they were going to go out and found their own restaurants. And so we look at that, and in the case of that ethnic group, both in South Texas and in Southern California to get an idea of how did that group respond to discrimination in those cases. And it turns out they competed and they provided other stuff.

And what we also found is that clearly it cannot be demonstrated that everybody was denying services, because what we found were in cases of very large, successful businesses that even went national, so obviously there were at least some Anglos that were more than happy to sell these Mexican-American businesses supplies and buildings and whatever else it was they needed for these businesses. And there are also apparently financial institutions willing to loan them money also. So we cannot say that this assumption that so many people enter it with that, okay, I'm not part of the dominant ethnic group, so therefore nobody's going to sell me food or supplies or housing. That just simply doesn't seem to be the historical case, at least in what I looked at.

WOODS: I'm interested in your section, again, because it makes sense when you hear about it, but yet at first it's — you know, we're not really sure if we're supposed to support this or not. But you have a subheading: "The Key Role of Ethnic Enclaves." Now, progressives today can't decide whether they favor ethnic enclaves or not, because on the one hand, diversity and everybody should be integrated everywhere, but at the same time if a minority wants to live by itself they think that's okay too. So we're not really sure — it depends on what day of the week it is, apparently, whether we're allowed to talk about this. But I'm interested; every day of the week is Freedom

Day on *The Tom Woods Show*, so talk about ethnic enclaves and how that helped contribute to capital accumulation.

MCMAKEN: Sure, well, this is its own section of scholarship itself, looking at new groups of immigrants or other separated groups of ethnic minorities and how did they behave. And what it turns out is these groups of people would come together on their own for a variety of reasons. And what you're not supposed to point out is that people who are culturally similar and ethnically similar, they like to hang out with other people like them. And this is true for everybody, and certainly true in my own family's case, which I point out in this article, is that I come from myself a family that was Mexican-American originally in South Texas and then moved to Southern California, due in many — one big rationale for that was discrimination, was it was easier, it was said to be easier in Southern California to found new businesses and such, so a lot of people moved from the El Paso area to Southern California.

But when they got there, they also then tended to associate with other people like them. And so what did that mean? It meant that they loaned money to each other; it meant that they worked for each other; it meant that they patronized each other's businesses. And what that led to over time was a building up of concentrated capital within these ethnic groups, and so they would help each other, essentially. And what that allowed for was if you were a small business, you could then go to a money lender — you wouldn't say a banker, really, because it was more informal lending at these income levels. You would go to someone who was in your own ethnic group, and then they would lend you money. They would come to your restaurant.

And so you could then build up that business from this small kernel originally, but over time — and the example of this was Goya Foods, which originally was essentially a Puerto Rican ethnic enclave-type business but expanded over time to a national business. And this was also found to be true of many businesses among Cuban Americans and Southern California Mexican-Americans, is they start out just as kind of this specialized ethnic business, but expand out from there. And we did find examples here in the research of financial institutions especially and that moneylenders, even within the Latino community, Mexican-American moneylenders preferred to lend money only to other Mexican-Americans, or perhaps it was Cuban Americans preferred their own little ethnic group. And that is just how people prefer to behave.

And of course in this research, this wasn't seen as a bad thing. This was simply seen as community solidarity. That was the word that kept coming up repeatedly, was "ethnic solidarity," and this has real business advantages for these groups, and over time it leads to helping these groups of people then compete outside their own ethnic group and even on a national scale in some cases.

WOODS: Now, could I just say, yeah, yeah, yeah, that's all sweet and nice and everything, but wouldn't it have been better if we had just used the federal steamroller to force people to like them and so business with them, and they wouldn't have had to go to all this trouble?

MCMAKEN: Well, theoretically that would be great if it were just that easy, but of course you have to look at the downside of all that sort of thing. So we're going to come in, and we're going to start regulating everybody's businesses, and what nobody mentions is that, gee, it's non-white people who like to discriminate also. And so now you're essentially rendering a lot of these Mexican-American businesses that like to hire only Mexican-Americans or like to lend money only to Mexican-Americans — now what they're doing is all in violation of people's civil rights, by definition. And so really what should be respected is the ethnic enclave, is the private property, is the ability of people to favor groups that they want.

And what I make abundantly clear in this article is I'm not one of these people who thinks that, oh, well, discrimination has been exaggerated and if we just had free markets it'll disappear. I don't think any of that's true. I think discrimination will continue, regardless of what the federal government does or does not do. But really what you want to do, if you want to have people have a lot of choice, have the ability to travel around, to interact with whom they want, what you want is decentralized economies, economies that are allowing for lots of startup businesses, lots of entrepreneurship, and those people are going to step in and serve groups that are underserved. This was a point that a lot of the sources I looked at made. And by the way, all the sources I use here are not from some right-wing website or something like that —

WOODS: Yeah, that's what made it so interesting to me.

MCMAKEN: Right, these are mainstream scholars. A lot of the time they're the, you know, hated Latino scholar, right, who's putting together a lot of this stuff, and they're pointing out, yeah, in South Texas where the Anglos are denying service, well, entrepreneurs stepped in to provide that service. Now, you have to admit, oh, well, okay, yes, those Mexican businesses, they were poorer, they were less capitalized than the white businesses. That was true originally, but over time, a lot of those businesses certainly came to compete with those Anglo businesses. And then also, just another thing that I've never understood is why would you go to these white businesses and beg them to take your money? I just never understood why this was what you're supposed to do as an ethnic minority. Now, certainly the Mexican-Americans I have known have never really gone in for that. Mexican-Americans, by the way, do not think they're inferior to Anglos and do not wish that they were Anglos and do not feel warm and fuzzy if an Anglo will stoop to do business with them. And so they were just happy to found their own businesses and separate themselves out. Why would they want to do business with someone who hates them? What a waste of time, what a waste of money.

WOODS: Yeah, I mean, I've thought that too, but then at the same time, I can understand why somebody would say, look, I'm black and I'm traveling through the South, and I can't find a hotel that I can stay in; I've got to sleep in my car. You know, I mean, in that situation it's not like I can instantly open my own competing hotel.

MCMAKEN: Yes.

WOODS: There are certain indignities that people were subjected to.

MCMAKEN: That is absolutely true, and so what you want to make sure is to provide for situations where the barriers to entry for entrepreneurs in those areas are as low as possible. And you can say, well, it's just the problem was solved; why would I want to do that? Okay, yes, that takes time to found new businesses for travelers and that sort of thing. Why not just then mandate that everybody serves everybody? The problem is that that affects everybody if it's enforced. As I point out in the article is what really happens is that those sorts of discrimination are really only enforced against certain —

WOODS: Exactly, right.

MCMAKEN: And so if you really enforced all those rules against non-whites, what you would be doing then is making the cost of opening those new businesses, of opening competing businesses, of really decentralizing and creating diversity within the marketplace would actually be killed by public accommodation laws. But the thing is they really kind of selectively enforce it, and so it hasn't had quite the negative effect you would expect it to have.

WOODS: Not directly related, but tangentially related: I was talking to my just about 13-year-old daughter the other day. I mean, I just love that she's at this age and we can now — she's curious about everything now. She says, wait a minute, hold on; what's the real story about X, Y, or Z. She goes to Dad; she finds out; it's a lot of fun.

But I don't know how this came up, but we were talking about — maybe we were talking about Brown v. Board of Education decision, because as of now we live in Topeka, Kansas, and there's a whole museum dedicated to that. So we were talking about that, education, desegregation, and stuff like that, and I pointed out to her that there was an attempt to, as you know, bus students great distances if that was what was necessary to achieve some kind of racial balance in the schools. And sometimes we're talking up to 90 minutes one way.

And I just asked her to think about what the consequences of that would be. Do you think the students would be not resentful of this, that they wouldn't wind up blaming the other group for feeling like aliens in their own school, and the fact that you would destroy local patriotisms because now your kid doesn't go to the other school so you can't go and cheer for the team? And whatever, all these different things. And what do you think would happen? Well, probably people would just move away, and what wound up happening was that white parents moved so far away that they couldn't possibly bus the kids anymore, and now the schools in the major cities in America are as de facto segregated as they ever were after years and years and years of the federal government attempting to help. And I gave this as an example of how often it is that the federal government attempts to so-called help. And, guess what: it winds up making the situation either worse or stay the same after who knows how much money was spent.

MCMAKEN: Well, and that's an important distinction to make, too, when we're talking about schools or we're talking about government businesses and so on, is that you and I for the most part have been talking about private institutions and how we don't want those regulated. Now, in the case of schools, that was its own horrible different animal. The same thing happened in Denver, is what it led to was an impoverishment of the city center, because any white who had money and could move out to the suburbs left the city so they could avoid the busing. And that led to an economic collapse, then, in the city center. So if you couldn't afford to move out of the city center, you were now left in a decaying community, because the tax base collapsed —

WOODS: Right.

MCMAKEN: — thanks to the forced busing issue. So yeah, great, that sure helped everybody. And now of course since the 1990s they abolished the forced schooling, and people have moved back into the cities, so now everybody talks about walkable neighborhoods in the city center, and now there's a whole, like, government subsidy aspect of that. But a big reason that a lot of people with money are now willing to move back into the city is that their kids can go to diversified charter schools and things like that. It's just a totally different situation. But at least in the case of schools, you're forced to pay for those, and so you could see there's more of a justification for making a government agency serve all sorts of different groups, because if you are, say, a Mexican-American, you've got to pay for those schools if you live in that city, whether you want to go to them or not.

And that was something I pointed out here in the article, was in the 1940s for example, when my mother was a little girl in Los Angeles, this was the time of the "Sleepy Lagoon murder" case, which most people of course don't know about. But this was a situation where there was a murder in L.A., and the Anglo community freaked out, and they rounded up dozens of Mexican-American youths, and they all put them on this huge show trial in Los Angeles. And it was this big, horrible disaster, where they convicted people of murder, and where the sheriff, the L.A. County sheriff at the time put a bunch of people to testify on the stand, pointing out how Mexican-Americans being descended from Aztecs have a natural predilection toward murder, because we all know Aztecs like human sacrifice, and so all Mexican-Americans have this, like, in their blood, and so they like to murder people more than Anglos do. (laughing) And so you can just imagine —

WOODS: Oh my.

MCMAKEN: — you can just imagine being on trial then under those conditions, where the state's expert witness says that you have a natural predilection toward murder. So you of course are being forced to submit to this legal system, and you can't go out and found a competing legal system, of course. And so it's very different when you're talking about a state agency, because that's a full-blown monopoly. That is a monopoly you cannot go out and compete with; that is a monopoly you cannot escape unless you move to another place. And so it's very important to not confuse then the imposed monopoly of a state organization and when talking about public accommodation with

something like that and then just talking about a financial institution or a restaurant, because that's a totally different animal, because you can go out and compete with those institutions or found your own ethnic organization that can deal with that and serve your need in that. So it's very important to not conflate the public institution accommodation issue with the private organization thing.

WOODS: Yeah, indeed; indeed. I want to talk about obviously the Japanese-American case, but before we do that, let me read a little something from Thomas Sowell, who's so good on this general subject of ethnic groups and markets and all that. He's just an encyclopedia. And one of the points he made about the 1960s is that in large part we're dealing with a case of the federal government taking credit for already existing trends. And that has been the case, as I've tried to show in some of my own work, in many other situations, so when it came to the Occupational Safety and Health Administration, they said look at how many fewer workplace injuries there have been since we started this. But that was a trend that already existed before they started it. It was actually already going faster than after they started it. Or the National Highway Traffic Safety Administration, look at how many fewer traffic fatalities there are. This was also a previously existing trend before they had that agency.

And Sowell says this is really the kind of phenomenon we're seeing here, that we see blacks, for example, the rise in the number of blacks in professional and technical occupations in the two years from '64 to '66 was actually less than in the one year from '61 to '62. And then he goes and he says we don't see any acceleration in the long trend of rising black representation a great many occupations. And then he goes on and on and on and gives a lot of evidence of that, from before the Civil Rights Act, after civil rights; the trend is just ongoing. And he says, but likewise, this is true for Asians and Hispanics as well. He says, "Mexican-Americans' incomes rose in relation to those of whites between 1959 and 1969" — it's true — "but not at a greater rate than between 1949 and 1959. And then he goes on to say, Chinese and Japanese-American households had matched their white American counterparts in income by 1959 and were earning one-third more by 1969.

So it's important not to get caught up in, the government did something, then things happened, therefore all those things are attributable to what the government did. These trends are existing in case after case already. So can we talk then about the Japanese-American example? Are there any differences in how they went about their own advancement as compared to the Mexican-American case you gave?

MCMAKEN: Well, in some cases, especially in California — in southern Texas there's a long history of Mexican-Americans kind of getting the shaft and having their land stolen from them and stuff, and this was all after the Mexican War. In California, the Mexicans didn't have it quite so bad. The Japanese-Americans had it very, very bad, and of course we all know about the exclusion laws and so on in California in the late 19th century as they were trying to keep the Chinese-Americanss from staying there and from, you know, "taking over," which was often the fear of the Anglos there over time.

But Japanese-Americans also fell under similar laws, where the California legislature actually passed a law saying, well, Japanese-Americans can't own property; they can't own businesses. There were explicit government restrictions and prohibitions on what Japanese-Americans could do there. Now, the courts had intervened and had declared that, well, if you're actually an American citizen of Japanese descent, you cannot actually prevent those people from owning private property. And so what they would do is then they would have children and put properties in the names of their children and things like that.

Now, this of course is a very different situation. This is discrimination backed up with the force of law. This is saying that, hey, we're not even going to leave you alone. We're going to come in and we're going to tell you whether you can own something or not, and we're going to actually try and force you out of business by enforcing law. So you can see how then that's an even worse situation.

And what the Japanese-Americans did then was they actually worked around those laws as best they could. They did it of course by putting things in the names of other people. But they would simply — this is similar to what happened in South Texas — where the whites would get together and they'd all agree we're not going to hire Japanese-Americans for XYZ, and so Japanese-American entrepreneurs immediately started to found their own businesses, even their own financial institutions. The first non-white-owned financial institution in California was founded in 1899 by Japanese-Americans. And they started to find little niches in the marketplace where there were low barriers to entry and where the Anglos weren't really saturating those markets. And so within just a few years, they had already begun to surpass the whites in a lot of businesses, especially in certain types of farming and gardening supplies and things like that.

So what happened of course is the whites came back and said, hey, we need new laws to restrict these people, because they're being too successful; they're driving us out of business. And this was a source of constant conflict throughout the '20s and '30s. And then fortunately for the whites in the 1940s, Roosevelt just rounded them all up and put them in concentration camps for a while, and that caused a lot of their businesses to go under and ruined a lot of their economic progress. But then as you just pointed out, right, by 1959 already they had already then matched the whites again in their median income levels (laughing).

So that's just a long, sordid, horrible history of certain interest groups using the state legislature to actually prohibit you from opening a business. And that's of course a different issue from the public accommodation issue — although of course private discrimination also existed, and they, similar to the Mexican-Americans, then, just went out and founded their own businesses to get around the private discrimination. And they did it very, very successfully.

WOODS: I want to, with your permission, read a passage from your article, because I really do want people to read it —

MCMAKEN: Oh sure.

WOODS: It's at TomWoods.com/681. And here it is: "[T]here is little reason to believe that public accommodation has done much to actually make ethnic groups wealthier. And then you quote I guess a historian, that "the end of ethnic segregation did not greatly affect the poverty that poorer Mexican-Americans and Mexican immigrants experienced."

And then you say, "And why should it have? The problem of poverty is not solved by waving a magic anti-discrimination wand that will somehow make marginalized ethnic groups wealthier. Moreover, poor populations are no more likely to secure bank loans if they remain poor, and it has always remained legal to refuse service to customers who cannot afford to buy any of one's products or services.

"On the contrary, there are compelling reasons to believe that real economic growth and real capital accumulation within ethnic groups is pursued best by a fostering of entrepreneurial activity at the local level and expanding outward, which result in true increases in incomes and standards of living. Additionally, growth in entrepreneurial activity ensures that consumers within those ethnic groups will have more choices when it comes to seeking loans, services, and a variety of products from owners within that community — all without imposing mandates on businesses and attempting to punish business owners based on speculation about one's allegedly bigoted motivations."

All right, that's very good. That is just very interesting. I had had a series of arguments that I would make on this subject, but to actually look at it from the point of view of the aggrieved group and to show that actually advancement — there is no shortcut to prosperity and to capital accumulation. One way or another, you're going to have to start businesses anyway, and you've already got a whole — this was S.B. Fuller's view. He was a black entrepreneur. He said we already have a built-in market. I have all my fellow blacks, and I can create businesses catering to them, and then we can go to the white community from a position of strength and say, look, look at us; we are consumers who will buy your products; we're businessmen who create; we're entrepreneurs who are creative. That's the position where we want to be. We don't want to be begging; we don't want to lose our dignity; we want to be in a position of strength.

MCMAKEN: Right, and that is so much a problem from the conventional standpoint, is that the conventional standpoint is, how do we make more consumers among this persecuted ethnic group. How do we make it so they can just buy more stuff? There's never any emphasis on, how do we make it so that they can found more businesses? How do we make it so they can accumulate capital? The whole idea is, well, let's just make it easier for them to buy stuff, and it's humiliating if someone denies them the ability to buy stuff.

And so with so little emphasis on the ethnic enclave issue, with so little emphasis on the fact that if you really want to build wealth it's important to actually found

businesses and engage in entrepreneurial activity, all that stuff has kind of gone out the window. And just remember all the history you were taught in school that kind of backed up the conventional view, is who cares about entrepreneurial activity among these groups. What we really need to be looking at is Cesar Chavez and the labor struggle, and it's completely ignored the fact that there were tons of small business people working in these issues and a whole community there of people who did the hard work of actually making that group more successful, making those parts of the city more successful.

And we just forget all about that, and we never ask ourselves what sort of policy or — the policy of course is laissez-faire — but how does that help groups then accumulate capital. And nobody looks at the detail there. Also nobody looks at, what are the real details of the discrimination. Are people really not being able to buy food, or is somebody selling them this food? And how are those businesses doing? What we saw in the case of South Texas was, yes, somebody stepped in to create those businesses and to sell those people goods and services, and they became successful for just the reason you pointed out, is they've got a ready-made market. They've got people from their own group who are happy to buy from that new entrepreneur who stepped in to provide the goods and services. But that sort of stuff is just generally ignored.

WOODS: All right, we're going to leave it there. The article is "The Trouble with 'Public Accommodation.'" You can read it at TomWoods.com/681. And once you do that, you will probably want to spend a lot of time over at the Mises Institute website. And look, I can't make any promises, people, that your life will ever be the same, but it'll be different in a really, really good way once you've spent those three blear-eyed nights reading Mises Institute articles all night; you'll never be the same. Thanks so much, Ryan; really appreciate it.

MCMAKEN: Thank you very much.