

THE STRUGGLE FOR EQUALITY: FROM ACCESS TO POWER

James Jennings*

Introduction

To assist in the commemoration of the Civil Rights Act of 1964 I will provide a brief historical overview of the black and latino struggle for equality. In presenting this overview I will discuss how American law was approached and utilized throughout seven stages of political struggle, and how recent electoral developments in urban America have shaped new legislative strategies which promote civil rights for blacks, latinos, and other people of color.

Clearly, the thrust behind the civil rights movement of the early 1980s encompasses different objectives than those that existed in the 1950s and 1960s. The prior civil rights legislation, adopted as a result of the Civil Rights and Black Power Movements, focused on access and equal protection of the laws.¹ Recently, however, new approaches are addressing fundamental issues which move us beyond mere consideration of access or equal protection in the public and private arenas. Today, as a result of a new struggle for equality and full political participation within major American cities, activists are attempting to use civil rights legislation to challenge the structure of wealth in American society.

One view of American jurisprudence suggests that law is a neutral process which must be periodically fine-tuned to ensure that all citizens are treated equally.² Thus, in part, society is obligated to guarantee access to public decision making processes in order to ensure equality. But some legislative initiatives in the early 1980s suggest that the law cannot be neutral or approached as a "free market" process because the particular distribution of wealth, power, and information in our society does not permit neutrality or equality. Ultimately, structures

* Dean of the College of Public and Community Services at the University of Massachusetts, Boston.

1. See, e.g., Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964) (codified as amended in scattered sections of 42 U.S.C.); Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended in scattered sections of 42 U.S.C.).

2. E.g., N. GLAZER, AFFIRMATIVE DISCRIMINATION: ETHNIC INEQUALITY AND PUBLIC POLICY (1975); E. REDFORD, DEMOCRACY IN THE ADMINISTRATIVE STATE (1969); D. TRUMAN, THE GOVERNMENTAL PROCESS: POLITICAL INTERESTS AND PUBLIC OPINION (1967).

of wealth and private power must be challenged. Although the long struggle for access and equal protection continues, we must not forget that in making America an equal and just society for all of its people, the struggle described here has really just begun.

Certainly the guarantee of access provided in the civil rights legislative package of the 1950s and 1960s was a significant step in making America a just and equal nation, but it was only one step. After the passage of the Civil Rights Act of 1964 President Lyndon B. Johnson declared that the appearance of equality in America was not enough. In his June 4, 1965 address to Howard University graduates, he stated:

[I]t is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through those gates . . . This is the next and the more profound stage of the battle for civil rights. We seek not just legal equity but human ability, not just equality as a fact, but equality as a result.³

Blaustein and Zangrando in their documentary history, *Civil Rights and the Black American*, also repeated this belief, reporting in the late 1960s that:

In the past quarter century the Negro has achieved his legal rights, but he has yet to win a full role in the social and economic life of the nation. A vicious circle of residential segregation, job discrimination, inferior educational opportunities, limited mobility, and, in many cases, a crippled self-image are affixing upon a new generation of [blacks] the kind of economic and psychic damage that no executive order, court decision, or piece of federal legislation can readily correct.⁴

Today, we must ask how we can effectively use civil rights legislation not merely to guarantee rights of access and equal protection of the law, but also to eradicate, or at least to dampen, institutions and structures which have maintained powerful racial and economic hierarchies in our society. As long as we separate the issue of access from results, we will not be able to respond to the social and economic problems threatening political stability in the United States. While focusing on access, we must also seek ways to redistribute wealth and power more equitably. Only then can we arrest the rapid development of two societies, one black, one white, which the Kerner Commission warned us about in 1968.⁵

3. Remarks of President Lyndon B. Johnson, June 4, 1965, *quoted in* J. FRANKLIN & I. STARR, *THE NEGRO IN TWENTIETH CENTURY AMERICA* 225-31 (1967).

4. A. BLAUSTEIN & R. ZANGRANDO, *CIVIL RIGHTS AND THE BLACK AMERICAN* 470 (1970).

5. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 407-08 (1968).

The Struggle for Equality

The major political objective of blacks before the Civil War, of course, was to abolish slavery. The quest for freedom, equality, and full political participation involved, though in different ways, free blacks as well as slaves. It was relatively clear that American law was not neutral in the maintenance of the racial status quo. Free blacks, in addition to fighting for the abolition of slavery, also struggled to protect the status which they tenuously enjoyed as freedmen. Historian and Federal Judge A. Leon Higginbotham, Jr. acknowledged that "the first 200 years of black presence in America . . . demonstrate[d] how the entire legal apparatus was used by those with the power to do so to establish a solid legal tradition for the absolute enslavement of blacks."⁶ Even after the colonial period, powerful whites continued to use the law to perpetuate not only slavery, but also second-class citizenship for free persons of color.

After the Civil War and into the 1980s, the black struggle for equality and political participation developed in stages: the Reconstruction Period (1865-1877), the Post-Reconstruction Period (1877-1890), the Jim Crow Period (1890s-1920s), the New Negro Period (1920s-World War II), the Civil Rights Movement (World War II-1960s), the Black Power Movement (1960s-1970s), and the New Black Politics (1980s).

The Reconstruction Period

Black political participation highlighted the Reconstruction Period (1865-1877). Backed by the military power of the federal government, blacks in the South were not only granted rights of political access, but also were allowed to change long-standing social relations. Using civil rights legislation, such as the Enforcement Act of 1870 and the Civil Rights Act of 1875, blacks pushed for public education and political reform.⁷ Curiously, changes instituted by the Reconstruction governments benefited not only black slaves but also white workers and farmers exploited by the former slave aristocracy.

As would be expected, the Reconstruction Period ended rather quickly. In 1877, the federal government withdrew its military support from the Reconstruction state governments, and six years later

6. A.L. HIGGINBOTHAM, JR., *IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS* 14 (1978).

7. See D. BELL, JR., *RACE, RACISM, AND AMERICAN LAW* 122-23 (1973) (reviewing educational and political legislation); W.E.B. DUBOIS, *BLACK RECONSTRUCTION IN AMERICA* (1975) (reviewing reconstruction period of 1860-1880).

in a related event, the Supreme Court declared the Civil Rights Act of 1875 unconstitutional. The demise of the Reconstruction Period led to the next stage of black political participation (or nonparticipation) in American democracy.

The Post-Reconstruction Period

The Post-Reconstruction Period (1877-1890s) witnessed two important and related developments. First, blacks in the South were forcefully removed from the electoral arena. Second, wealthy, powerful whites used the law to keep blacks and poor whites divided on racial issues, which ensured the development of not only a racial hierarchy, but also an economic hierarchy.

The Jim Crow Period

The Jim Crow Period (1890s-1920s) represented, in part, a legal codification of social and power arrangements constructed during the Post-Reconstruction Period. Legislation and judicial decisions denied blacks both the rights and/or the means with which to participate in the political processes of local and state government.⁸ Building a foundation upon economic and social exploitation and systematic physical violence, whites used the law to terrorize blacks. In the 1880s and 1890s, for example, at least 100 blacks were lynched during each year.

Congress' repeal in 1894 of the Enforcement Act of 1870 and the Supreme Court's 1896 "separate but equal" decision in *Plessy v. Ferguson* exemplified the constrictive use of American jurisprudence.⁹ Legislative and judicial measures effectively prevented blacks from participating in the very political processes which determined their fate. Politically, blacks were devastated. In 1880, for instance, forty-four percent of the potential black electorate was registered to vote in Louisiana. But by 1920 less than one percent of that same group was registered. Likewise, in Mississippi, sixty-nine percent of the potential black electorate was registered in 1880. By 1892, however, as a result of Jim Crowism, registered voters within the potential black electorate declined to six percent.¹⁰

8. See M. WEINBERG, *A CHANCE TO LEARN: THE HISTORY OF RACE AND EDUCATION IN THE UNITED STATES* 40-80 (1977) (discussing educational experience of minorities in America); D. BELL, JR., *supra* note 7, at 119-79 (reviewing legislation and judicial decisions which denied blacks rights of political participation).

9. *Plessy v. Ferguson*, 163 U.S. 537 (1896); Enforcement Act of May 31, 1870, ch. 114, 16 Stat. 140 (1870) (*repealed by* Act of Feb. 8, 1894, ch. 25, 28 Stat. 36 (1894)).

10. See M. WEINBERG, *A CHANCE TO LEARN: THE HISTORY OF RACE AND EDUCATION IN*

The Jim Crow Period also witnessed one of the great black migrations to the industrial cities of the North. Three major factors contributed to this migration: the need for cheap and non-unionized labor in northern cities, the increase in the mechanization and monopolization of southern agriculture, and physical violence against blacks in the South. Scores of migrating blacks expanded their presence considerably in cities like Chicago, Philadelphia, Gary, New York, and even Boston. Although the majority of blacks still resided in the South, the northern migration gave birth to large, black urban concentrations which were founded upon older but much smaller, developed black urban communities.¹¹

The New Negro Period

By the 1920s the concentration of blacks in some northern cities began to look like today's large ghettos. The New Negro Period, as referred to by some Harlem Renaissance writers,¹² witnessed three important developments which have shaped black politics today. First, blacks developed an awakened sense of being black in white America. Second, black nationalism, as defined and expressed by Booker T. Washington, began to take a more urbanized form, symbolized by Marcus Garvey and Elijah Muhammad. Finally, blacks increasingly debated appropriate political strategies for full equality; these strategies included communism, left wing radicalism, separatism, labor organizing, and traditional party politics.

The Civil Rights and Black Power Movements

Out of the New Negro Period, the Civil Rights Movement emerged at the start of World War II. More than one writer has observed that the spark which gave birth to the Civil Rights Movement was actually Philip Asa Randolph's threatened march on Washington in

THE UNITED STATES (1977) (discussing race and education and its political effects on blacks); C. WOODWARD, *THE STRANGE CAREER OF JIM CROW* (1974) (discussing Jim Crowism and its political effects on blacks); *VOTING IN MISSISSIPPI: A REPORT OF THE U.S. CIVIL RIGHTS COMMISSION* (1965) (discussing legal and political obstacles to full black political participation).

11. See J. COLON, *A PUERTO RICAN IN NEW YORK* (1961) (discussing life of Jesus Colon, a Puerto Rican labor activist in New York City, 1940-1950); C. IGLESIAS, *MEMORIAS DE BERNARDO VEGA* (1980) (discussing life of Bernardo Vega, a Puerto Rican political activist in New York City, 1915-1940). In places like New York City, Miami, and New Orleans, blacks also began to interact with budding latino settlements. Blacks and Puerto Ricans in New York City began working together to seek equality, albeit in elementary and inconsistent ways. *Id.*

12. See A. LOCKE, *THE NEW NEGRO* (1968) (using as title "The New Negro" for his edited work on the Harlem Renaissance); H. PLOSKI & W. MARR, *THE NEGRO ALMANAC: THE AFRO AMERICAN* 732 (1976) (listing Harlem Renaissance writers).

1941.¹³ The Civil Rights Movement was dominated by a series of events: the legal battles of the NAACP; a focus on desegregation in education and public facilities, especially after the two *Brown* decisions; a Southern-based orientation and leadership; and, of course, the passage of the first civil rights legislation since the 1870s.

The Civil Rights Movement also considerably internationalized the struggle for equality after World War II. Following earlier efforts by Marcus Garvey, W.E.B. Dubois, George Padmore, and Paul Robeson, many began to see civil rights in America as part of a larger picture where people of color around the world could seek freedom from colonial domination. The international implications of America's struggle for black equality and political rights became most clear in the succeeding stage, the Black Power Movement. Under the influence of thinkers like Kwamie Nkrumah, Frantz Fanon, Malcolm X, and Angela Davis, an increasing number of blacks around the world viewed themselves as oppressed people of color dominated by European colonial powers.

Realizing the potential of concerted action, in the late 1960s black and latino youths rebelled in ghettos across the nation. In the summer of 1967 America experienced more than 150 major racial uprisings. From a political point of view the uprisings could only be described as spontaneous and disjointed. But from a sociological perspective they could be viewed as a patterned response to the effects of racism in housing, employment, and education. Occurring after passage of major civil rights legislation, the uprisings exemplified the alienation and disillusionment in black and latino communities which the civil rights laws of the 1950s and 1960s did not address.

As a by-product of the struggle for equality and full political access in the 1950s and 1960s, a number of black activists sought and gained electoral positions. For the first time ever blacks in major cities like Detroit, Gary, and Newark were elected mayors. Blacks were also elected to the United States Congress and to various state legislatures in record numbers.

While it is difficult to separate the Black Power Period from the Civil Rights Movement, the former was as much a reaction to as a natural extension of the latter. Based on data available from the 1970s through the early 1980s, it now seems that civil rights legislation, important as it was and still is for minorities, could not adequately respond to the immediate socio-economic needs of the majority of blacks

13. M. MARBLE, *FROM THE GRASSROOTS* (1980); A. MEIER & E. RUDWICK, *FROM PLANTATION TO GHETTO* (1970).

and latinos, especially those living in America's urban ghettos. Understandably, neither the appointment of a Civil Rights Commission in 1957 nor the passage of the Civil Rights Act of 1964 excited a significant number of blacks mired and trapped in America's ghettos. Although such legislation provided important rights, many blacks realized that the civil rights laws were ultimately useless to them if they were to continue to live socially and economically confined within structures built upon a rigid racial hierarchy. In some ways, the orientation of the Black Power Movement emphasized access. But in other ways, it began to focus on changing the wealth and the power relationships in American society.

Before I describe the latest stage of the struggle for equality and political participation, or what I refer to as the New Black Politics of the 1980s, let me draw some preliminary conclusions from this brief historical overview. First, progress made by blacks and latinos was not institutionalized within the social and economic fabric of America. In other words, progress in one period did not necessarily lead to political or economic progress in a subsequent period. As political scientist Hanes Walton explained, blacks have experienced various stages of political participation, including "nonparticipation," "limited or moderate participation," and "full participation."¹⁴ But unlike white ethnic groups, blacks have not experienced linear progression in achieving political participation. Enjoying full participation in one period, blacks reverted to "limited" or even "nonparticipation" in succeeding periods.

Second, black political behavior primarily represented a response to racism. Regardless of the region, city, or historical period, black political strategies and tactics responded to and reacted against the physical and social limitations placed upon blacks as blacks.

Finally, the black struggle for political participation has historically concentrated on gaining access and a "piece of the pie" rather than on challenging the ownership and organization of wealth and power. For the most part black leadership has sought not to change the game, so to speak, but rather to make the game more accessible and fair.

The New Black Politics

Following the Black Power Movement, which included strong latino groups like the Young Lords and La Raza, communities of color ex-

14. H. WALTON, BLACK POLITICS: A THEORETICAL AND STRUCTURAL ANALYSIS 14 (1972).

perienced what historian Vincent Harding and poet Gil-Scot Heron referred to as "Winter In America."¹⁵ During the mid-1970s and early 1980s, persons of color have suffered a continual setback of even the relatively minor political and economic gains realized since World War II. The worsening socio-economic conditions of blacks in America evidences this backward movement. By the late 1970s, segregation in housing and public schools in major American cities had intensified and unemployment in black and latino communities had reached its highest level in forty years. Beginning in 1980, under the regime of Ronald Reagan, the Department of Justice attempted to cripple the very ideals and practices which had quietly prevented the United States from completely becoming another South Africa.

But as in earlier periods blacks, latinos, and concerned whites are again challenging the ugly side of America. People around the country are once again mobilizing to prevent America from developing into the two societies foreseen by members of the Kerner Commission.¹⁶ We are now experiencing different forms of political participation which developed from the successes and failures of earlier political struggles.¹⁷

The present stage of the struggle for equality could be referred to as the New Face of Black Politics.¹⁸ The black and latino struggle for equality and full political participation has focused increasingly on structural change, not merely on access or patronage. The new face of black politics has appeared in the campaigns and the administration of Harold Washington in Chicago, Mel King in Boston, Gus Newport in Berkeley, California, and even Eddie James Carthan in the small town of Tchula, Mississippi. An increasing number of people no longer consider the law a neutral process. Rather, it is a powerful tool in the political and economic democratization of this society.

The present struggle for equality encompasses more fully than ever before the aspirations and struggles of other historically disenfranchised groups in American society. Latinos, in particular, are now

15. Harding, *A Long Hard Winter To Endure*, in *BLACK COLLEGIAN* (1980); G. Heron, "Winter in America" (Arista Records 1974).

16. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDER 407-08 (1968).

17. In Boston, the new mood and strategies were reflected in the 1979 and 1983 mayoral campaigns of Mel King. On a national level, they were reflected in the presidential campaign of the Reverend Jesse Jackson.

18. See R. BUSCH, *THE NEW BLACK VOTE* (1983) (discussing differences between traditional and progressive black politics); J. Jennings & M. King, *Black Politics in Boston* (publication forthcoming) (discussing black political development in Boston).

demanding equality and justice in forceful ways, and are beginning to focus on changing long-standing wealth and power arrangements rather than on gaining mere "traditional" access or assimilating into the status quo. Increasingly, blacks and latinos are using the political process to challenge fundamental and established social relations, values, and even the political processes themselves.¹⁹

Until now, civil rights legislation has sought to uphold the United States Constitution by guaranteeing equality and access to political processes. While the latest stage of the struggle for equality incorporates such legislation, it also seeks to change the effects of social and economic relationships which favor the dominant rather than the weaker groups in America. Arguably, the earlier civil rights legislation merely maintained the economic and social status quo, despite providing groups with important political tools with which to seek change. Although the Civil Rights Act of 1964 confronted *de jure* segregation and racial discrimination, it did not eliminate segregation and discrimination based on wealth and power. Blacks and latinos received the right to register and to vote, and to sit with whites at lunch counters. But a rigid racial/economic hierarchy has kept, and continues to keep, massive numbers of blacks and latinos mis- or uneducated, unemployed, and hungry.

Activists are now calling for new civil rights legislation, different from the traditional genre, which will challenge society's racial and economic hierarchies. Plant closing legislation, economic linkage bills, and corporate-social taxation packages are legislative initiatives which build upon and strengthen the gains realized under laws like the Civil Rights Act of 1964. Examples of this new kind of civil rights legislation are beginning to emerge across the nation. In Chicago, city officials are suing the Playstool Lay Co. in order to prevent it from relocating outside the city. In New Bedford, Massachusetts, government officials threatened to take over the Morse Cutlery Tool Co. if it attempted to relocate. Recently, in Los Angeles, voters passed "Proposition X" by sixty-one percent; this binding resolution directed the Los Angeles City Council to urge the President to reduce military expenditures in order to create public jobs. As President Johnson stated almost twenty years ago, civil rights legislation must make it possible

19. See J. JENNINGS & M. RIVERA, *PUERTO RICAN POLITICS IN URBAN AMERICA* (1984) (discussing Puerto Rican use of political processes to challenge established social relations); C. RODRIGUEZ, V. SANCHEZ-KOLL, & J. ALERS, *THE PUERTO RICAN STRUGGLE* (1980) (discussing Puerto Rican politics in New York City); *supra* note 18 (citing sources discussing recent black political developments).

to allow all citizens to walk through the gates of opportunity. Building the gates, and proclaiming that they are there for all Americans, is simply not enough in 1984.

Viewed historically and politically, the Civil Rights Act of 1964 opened the door of equality and helped to ensure that it will remain open for all citizens. But we must not allow the 1880s to be repeated in the 1980s. We must move the civil rights agenda toward the empowerment of people of color and toward challenging the particular distribution of wealth in America. In the 1980s we must not allow overt or covert attacks on the civil rights package of the 1950s and 1960s to be successful. By broadening our social and political agendas we can ultimately ensure that the intentions and efforts of those who fought and died for civil rights in this country will be realized.