

## CHAPTER II

# A Critical Analysis of the Tactics and Programs of Minority Groups

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J.S. Mill in his fine treatise on *Representative Government* expressed the belief that it is virtually impossible to build up a democracy out of the intermingling of racially differentiated groups of men. It may be that historical experience has indicated the error of Mill's thesis insofar as different "racial" groups among the white peoples of the world are concerned, but there is apparently much evidence to substantiate it when related to the intermixture of white and black populations in the same society. Throughout the world today, wherever whites and blacks are present in any significant numbers in the same community, democracy becomes the tool of the dominant elements in the white population in their ruthless determination to keep the blacks suppressed. This is true, whether the blacks constitute the overwhelming majority of the population, as in South Africa and Algeria, or the minority, as in the United States.

The responsibility, however, rests not with the institution of democracy, *per se*, nor in the readily accepted belief that black and white simply cannot mix amicably on a common political and economic basis. Recent world history points out too clearly that modern democracy, conceived in the womb of middle-class revolutions, was early put out to work in support of those ruling middle-class interests

of capitalistic society which fathered it. It has remained their loyal child and has rendered profitable service for them. But when in modern European countries it came to be vigorously wooed by those mass interests of society whose lot under modern industrialism has been that of cruel oppression, democracy was quickly discredited and disowned, and fascism became the favored child of Big-Business-controlled governments. The significant fact is that democracy, while never offered in any large measure to the black populations of the world, has been extended to the great masses of the working-class population only so long as it was employed by them as a harmless device involving no real threat to the increasing control of the society by the ruling classes.

Minority populations, and particularly racial minorities, striving to exist in any theoretically democratic modern society, are compelled to struggle strenuously for even a moderate participation in the democratic game. Minority groups are always with us. They may be national minorities, *i.e.*, distinct ethnic groups with an individual national and cultural character living within a state which is dominated by some other nationality, as in German and Polish Upper Silesia; or they may come under the looser definition of minorities em-

ployed by the League of Nations, including any people in any state differing from the majority population in either race, language or religion, such as the Negro in the United States. But whatever the nature of the minority group, its special problems may always be translated in terms of political, economic, and social disadvantages. Group antagonisms develop, which are fed by mythical beliefs and attitudes of scorn, derision, hate and discrimination. These serve as effective social barriers and fix the social, and hence, the political and economic status of the minority population. The mental images or verbal characterizations generally accepted as descriptive of the members of the particular racial group,—the "pictures in our heads" so aptly discussed by Walter Lippmann,—give rise to stereotypes which are of the greatest significance in race relations.<sup>1</sup> These race distinctions, along with similar class and caste distinctions, are so thoroughly rooted in our social consciousness as to command serious attention in any consideration of programs whose objective is equitable treatment for minority racial groups.

Many are the non-scientific solutions for the problem of black-white race relations that have been offered. Racial equality and tolerance have been pled for far and wide. But these solutions ignore the seemingly basic fact that whenever two groups of peoples in daily contact with each other, and having readily identifiable cultural or racial differentiations, are likewise forced into economic com-

petition, group antagonisms must inevitably prevail.

#### THE NEGRO AS A MINORITY GROUP IN THE U.S.

The Negro group in the United States is characterized by the conditions of easy racial identification and severe economic competition with the dominant white population. In addition, the position of the Negro in this country is conditioned by the historical fact of his ancestral slavery. All of the present-day relations between the disadvantaged Negro group and the majority white group are influenced by this master-slave heritage, and the traditional competition between poor-white and Negro masses. The stamp of racial and social inferiority placed upon the Negro, the detached, condescending paternalism of the "better elements" of the Southern white population, the "missionary" enterprise of Northern philanthropy, the bitter antipathies between black and white laboring masses, "Uncle Tomism" in both its cruder and more polished modern forms, and the inferiority complex of the Negro group itself, may be directly traced to these historical roots.

The factors of race and the slavery tradition do not fully explain the perpetuation of the "race problem," however. Much of what is called prejudice against the Negro can be explained in economic terms, and in the peculiar culture of the Southern states, with their large "poor-white" populations. The determination of the ruling class of large land-holders in the South to perpetuate in law and custom the doctrine of the racial inferiority of the Negro was made

<sup>1</sup> Walter Lippmann, *Public Opinion*. New York: Macmillan Co., 1922, Ch. I, *passim*.

possible only because this numerically preponderant poor-white population feared the economic competition and the social and political power of the large black population. The cultural, political and economic degradation of the Negro also gave the poor-whites their sole chance for "status."

Intelligent elements in the white Southern population have in recent years begun to admit that other factors than mere "race" are involved in many of the abusive practices employed to intimidate the Negro in the South. For example, Mr. Arthur Raper, in his excellent study, *The Tragedy of Lynching*, explains that the bases of the lynching of Negroes in the South reside in the determination of the white South to exploit the Negro, culturally, politically and economically. Such "social pressures," as he calls them, are exemplified, for instance, when a planter assures the outsider that the propertyless Negroes in his community are wholly satisfied with their small pay, their one-teacher schools and plantation-unit churches, and their chronic economic and political dependency. "The query", writes Raper, "but are they really satisfied?", is answered quickly and firmly: "Well, if they're not they'd better be!"<sup>2</sup> In other words the large white land-holding and industrial groups in the South are determined to keep the Negro in a servile condition and as a profitable and almost indispensable labor supply. In so doing, black workers have been aligned against white, from slavery days on, and bitter antagonisms have developed between these groups. The resulting "racial"

situation has not been in any sense disadvantageous to the employing class, which is not insensitive to the merits of the policy of *divide et impera* in labor-employer relationships.

In reality the Negro population in the United States is a minority group only in the narrowly racial sense. In every other respect it is subject to the same divisive influences impinging upon the life of every other group in the nation. Economically, the Negro, in the vast majority, is identified with the peasant and proletarian classes of the country, which are certainly not in the minority. Politically, the Negro, until recent years under the spell of the "Lincolnian Legend," was almost completely identified with the Republican Party. He was aligned, therefore, with what constituted with monotonous regularity the majority political group. The Negro thus has been subjected to the same sectional, political and economic forces which have influenced the white population, with admitted additional aggravation due solely to the race equation.

Negro leadership, however, has traditionally put its stress on the element of race; it has attributed the plight of the Negro to a peculiar racial condition. Leaders and organizations alike have had but one end in view—the elimination of "discrimination against the race." This attitude has been reflected in the tactics which they have employed to correct abuses suffered by their group. They have not realized that so long as this basic conflict in the economic interests of the white and black groups persists, and it is a perfectly natural phenomenon in a modern industrial society, neither prayer, nor logic, nor emotional

<sup>2</sup> Arthur Raper, *The Tragedy of Lynching*. Chapel Hill: University North Carolina Press, 1933, p. 48.

or legal appeal can make much headway against the stereotyped racial attitudes and beliefs of the masses of the dominant population. The significance of this to the programs of the corrective and reform organizations working on behalf of the group should be obvious. The most that such organizations can hope to do is to devote themselves to the correction of the more flagrant specific cases of abuse, which because of their extreme nature may exceed even a prejudiced popular approval; and to a campaign of public enlightenment concerning the merits of the group they represent and the necessity for the establishment of a general community of interest among all groups in the population.

#### OBJECTIVES SOUGHT BY MINORITY GROUPS

In general, the objectives which minority groups traditionally struggle for are those tenets of social justice embraced by eighteenth-century liberalism, with its democratic creed of liberty, equality, and fraternity. This liberalism purported to guarantee the individual's economic and political freedom. Economic freedom for the individual assumed his right to the protection of the state in the acquisition and use of his property for his private benefit and profit. In fact, however, democratic liberalism did little to create those conditions which would facilitate the acquisition of property by any great numbers of the society. To the contrary, its principles were applied in countries whose economic structures were so ordered that the great masses of the populations were presupposed to be non-property-holding workingmen, whose opportu-

nities for obtaining property became progressively less easy, and whose economic status was increasingly less certain as a result of technological and financial developments within the economic structure,—resulting in periodic unemployment, loss of income and dissipation of meager savings. In the United States the presence of the frontier, with the free land it offered and its rich natural resources, vitalized the American Dream that every energetic and thrifty American could win economic independence. The American frontier, however, was never widely open to the Negro population, and this was one of the factors that forestalled the development of class stratification, and a consciousness of it, in the Negro population to the same degree as found in the white.

Political freedom for the individual assumed his right to equality before the law, the right to freedom of speech, press, religion, assemblage and movement, and to democratic participation in the government through the unabridged use of the ballot.

#### TACTICS OF MINORITY GROUPS

On this assumption that members of minority groups, like those of the majority populations in democratic countries, possess certain inalienable rights,—political, social and economic,—which they must struggle to preserve, leaders and organizations of minority groups map out programs and techniques of action designed to protect their people. Roughly, and rather arbitrarily, the tactics which such groups ordinarily employ in this struggle can be summarised as follows:

(1) *Violent*

- (a) Direct rebellion and secession by force.
- (b) Cooperation with other dissentient elements toward immediate or ultimate revolution.

(2) *Non-Violent*

- (a) Zionism and Garveyism, involving migration to new and foreign soil.
- (b) Economic, including passive resistance (the Gandhi movement) and economic separatism.
- (c) Conciliation, including interracial organizations.
- (d) Political, including a determined fight for the ballot and justice through laws, lobbying, picketing, mass demonstrations and the courts.

While each of these methods has been employed at one time or another by some minority group, those listed under the non-violent heading have been the tactics most seriously advocated by American Negro leadership in its efforts to free the group from political and economic inequality.

**VIOLENT TACTICS**

Numerically, the American Negro is so overwhelmed by the white population, and in addition the members of the group are so scattered throughout this vast country, that serious consideration need not be afforded the tactic of direct secession and rebellion by force. Likewise, the Negro masses are so lacking in radical class consciousness; they are so conservative and deeply imbued with a peasant psychology and the lingering illusion of the American Dream, that any possibility of large-scale identification of the Negro population with revolutionary groups can be projected only

in the future. The Communist Party has seriously proselyted among the Negro group but with only indifferent success. The immediate task of such movements in this country is to develop radical class-consciousness among the working-class masses of both white and Negro populations, with a view to the ultimate recognition of an identity of interest and consequent black and white solidarity in a militant labor movement.

**NON-VIOLENT TACTICS**

*Racial Separatism.*—Because of the seeming hopelessness of the fight to win equal rights for many minority racial groups, some of the leadership of such groups has often espoused a "defeatist" philosophy, which takes the form of racial separatism. This defeatism in its most extreme form follows the general design of the Zionist movement. For the American Negro the Garvey program may be characterized as the black counterpart of the Zionist movement. Thousands of American Negroes came to believe that the racial barriers to equality in this country could never be surmounted, and they flocked to the support of the Garvey "back-to-Africa" movement which flourished after the last war. Like all programs of this character, Garveyism offered the Negro an emotional escape from oppressive conditions. Also like other such programs it was impractical, for attractive land for such venture was no longer available, due to the consuming greed and the inexorable demands of imperialist nations. The Garvey movement could offer only Liberia to the American Negro,—one of the most backward and unhealthy

territories of an altogether uninviting West Africa. Moreover, the Liberians themselves did not want the American Negroes.

*Economic Passive Resistance.*—There are many variations of the non-violent economic tactics, but the most significant are those which advocate economic passive resistance and economic separatism. Supporters of economic passive resistance usually look to Gandhi for their guidance. They see powerful weapons available to the oppressed group in the employment of the economic boycott and in fearless self-sacrifice. Through such tactics they propose to wring economic and political justice from the dominant group by striking at its most sensitive spot, its markets, and by shaming its Christian conscience. In the first place, the Gandhi movement has not succeeded in India, despite the fact that it was attempted in the one country offering it its greatest possibilities of success. The natives of India are overwhelmingly preponderant in the population and are capable of self-immolation on behalf of a cause to a degree unknown to Western peoples. Moreover, their country is not industrialized and their low standard of living is such that it cannot be materially affected by the inevitable reprisals of the controlling groups. Even so, however, the movement could not break down the military and financial buttresses of the relative handful of Englishmen allied with the native ruling interests which control the country.

In a highly industrialized country the possibilities from the employment of this method of resistance are much less. It means, of necessity, that the

members of the group in the mass must be willing at the outset to accept an even lower standard of living than that which they already enjoy. But more important still is the fact that it is unlikely that any such movement could long withstand the unyielding and inevitable resistance which would be launched against it by the business rulers of the country. Presumably, in industrial societies this tactic would involve the organization of group cooperatives for the production of industrial and agricultural products. As soon as such a movement assumed threatening proportions, it would be obliged to withstand severe counter-boycotts which would deprive the members of the group of many necessary commodities which they could not produce themselves. Moreover, they would be denied essential credit and capital. The legal and police forces of the state would inevitably be aligned against them, and, in addition, they would be subjected to the characteristic gangster attacks which have recently proved so helpful to employers in labor disputes.

A mild version of this form of economic passive resistance has been from time to time advocated by Negro leaders in this country as one means of obtaining economic justice under the existing system. Particularly during the depression has this doctrine gained circulation in the guise of the "don't-buy-where-you-can't-work" movement. The fallacy of this method is obviously discovered in its assumption that it can offer any real relief to the great masses of Negroes. Its outlook is narrowly racial, and it fails to realize that it can create no new jobs but that it can only gain

jobs for Negroes by displacement of whites. Since there is already a woefully inadequate number of jobs, whenever a Negro is thus forced into a job in a Negro community a white man is forced out and must seek employment elsewhere. And, since the Negro communities do not offer sufficient economic activity to absorb even the number of Negroes now employed, this can only mean that Negroes employed in white communities are endangered of losing their jobs in proportion to the success of the movement. At best, it could create only a vicious cycle of job displacement. Moreover, the proponents of the doctrine fail to grasp the fact that the Negro is not out of a job simply because he is a Negro, but, rather because the economic system finds itself incapable of affording an adequate number of jobs for all,—in fact, its productive system is so organized that it must have a marginal labor supply. But the most serious defect in the rationalization of this tactic is in the fact that it widens still further the already deplorable gap between the white and black working-classes of the nation, by boldly placing the competition for jobs on a strictly racial basis. If the doctrine were carried out to its logical conclusion, it would necessarily advocate that Negro workers be organized as a great strike-breaking group.

*Economic Separatism.*—As a result of the highly segregated life which racial minority groups are often compelled to live, there is a strong tendency for the doctrine of economic separatism to take root as a promising palliative for both political and economic oppression. This has been a

particularly virulent creed among American Negroes, chiefly due to the impetus given the movement by Booker T. Washington and his successor, Major Moton. Negro businesses are almost entirely the product of segregation and can be characterized as "defensive enterprises." The promise of this hope of constructing an independent and segregated black economy within the walls of the white capitalist economy is excellently discussed by Spero and Harris in the following words:

Yet how such an independent economy is to rise and function when the white world outside controls credit, basic industry, and the state is something which the sponsors of the movement prefer to ignore. If such an economy is to rise it will have to do so with the aid of white philanthropy and will have to live upon white sufferance. If the great white banks and insurance companies decide that they want Negro business it is hard to see how the little black institutions can compete successfully against them. The same holds for the chain stores and various retail establishments. They will be able to undersell their Negro competitors if they want to, and the Negro world will not continue indefinitely to pay higher prices for its goods merely out of pride of race. Basic industry will continue to remain in the hands of the white world, for even the most ardent supporters of an independent black economy will admit that there is no prospect of the Negro capitalists amassing enough wealth to establish steel mills, build railroads and pipe lines, and gain control of essential raw materials.<sup>3</sup>

*Political Tactics: Civil Libertarianism.*—Perhaps the favorite method of struggle for rights employed by minority groups is the political. Through the use of the ballot and the courts strenuous efforts are put forth to gain

<sup>3</sup> Sterling D. Spero and Abram L. Harris, *The Black Worker*. New York: Columbia University Press, 1931, p. 466.

social justice for the group. Extreme faith is placed in the ability of these instruments of democratic government to free the minority from social proscription and civic inequality. The inherent fallacy of this belief rests in the failure to appreciate the fact that the instruments of the state are merely the reflections of the political and economic ideology of the dominant group, that the political arm of the state cannot be divorced from its prevailing economic structure, whose servant it must inevitably be.

Leaders of the American Negro like Dr. Du Bois, and organizations such as the National Association for the Advancement of Colored People, which he helped to found in 1909, have conducted a militant fight under this illusory banner. They have demanded full equality for the Negro, involving the eradication of all social, legal, and political restrictions tending to draw a line of distinction between the black citizen and the white. The Negro, like the white American, is to quaff the full draught of eighteenth-century democratic liberalism. The Negro individual citizen must have every right boasted by the individual white citizen, including the franchise, freedom of economic opportunity (consisting chiefly of the right to employment without discrimination), the right to accommodations in public places and on common carriers, the right to voluntary choice of his place of residence without involuntary segregation, the right to jury service, and equal expenditures of public funds for education and other public services. In pursuing this struggle the Negro has been seriously handicapped, because he has never yet been able to

win any large measure of participation in the franchise. It is estimated that today at least 90 per cent of the adult Negroes in the Southern states are excluded from the suffrage, and it is here that the great masses of the Negro population are concentrated. Consequently the group leadership has had to lean heavily upon sympathetic white supporters, lobbying, picketing, written and verbal protests, and appeals, mass demonstrations, and the courts.

The confidence of the proponents of the political method of alleviation is based on the protection which they feel is offered all groups in the society by that sacred document the Constitution. Particularly do they swear by the Bill of Rights and its three supplements, the Thirteenth, Fourteenth and Fifteenth amendments, as a special charter of the black man's liberties. The Constitution is thus detached from the political and economic realities of American life and becomes a sort of protective angel hovering above us and keeping a constant vigil over the rights of all America's children, black and white, rich and poor, employer and employee and, like impartial justice, blinded to their differences. This view ignores the quite significant fact that the Constitution is a very flexible instrument and that, in the nature of things, it cannot be anything more than the controlling elements in the American society wish it to be. In other words, this charter of the black man's liberties can never be more than our legislatures, and, in the final analysis, our courts, wish it to be. And, what these worthy institutions wish it to be can never be more than what American

public opinion wishes it to be. Unfortunately, so much of American public opinion is seldom enlightened, sympathetic, tolerant or humanitarian. Too often it resembles mob violence.

*Interracial Conciliation.*—It follows, therefore, that the policy of civil libertarianism is circumscribed by the dominant mores of the society. Its success, in the final analysis, must depend upon its ability to create a sympathetic response to its appeals among influential elements in the controlling population. In the long run its militancy must be softened and the inevitable tendency is for it to conform to the general pattern of the genteel programs of interracial conciliation, which attempt to cultivate the good will of the white upper classes. The churches, the young men's and young women's Christian associations, the interracial commissions, and social welfare agencies such as the Urban League, are the leading institutions among the Negro engaged in the dubiously valuable work of developing interracial fellow feeling.

It is not surprising, therefore, that assertedly militant civil-libertarian organizations like the N.A.A.C.P. should employ tactics which are progressively less militant. Such organizations, if they remain constant in their faith, are forced into a policy of conciliation with the enlightened, *i.e.*, the ruling interests, in the dominant group. They must rely upon sympathetic understanding and fair play in their campaigns for social justice, and they can scarcely expect to find these noble traits in the victimized and unenlightened masses. Consequently, the more "liberal" the better

elements of the white South become, the less militant these associations can afford to be. They can be militant, but only politely so; they can attack, but not too harshly; they must entreat, bargain, compromise and capitulate in order to win even petty gains. They must politely play the game according to the rules even though they have no stakes. In other words, they play cricket.

*The Courts.*—Such policies merely reflect the fact, established by the legal and political history of the group, that the Negro in the United States is a special ward of the Supreme Court. The Negro has had countless experiences which sufficiently establish the fact that he has rights only as this august tribunal allows them, and even these are, more often than not, illusory. It is only inadvertently that the courts, like the legislatures, fail to reflect the dominant mass opinion. It must be futile, then, to expect these agencies of government to afford the Negro protection for rights which are denied to him by the popular will. Moreover, even could we optimistically hope that the Supreme Court, in its theoretical legal detachment, would go counter to the popular will and wipe out the proscriptions imposed on the Negro, as it appeared to do in the Scottsboro cases, the condition of the group could not be greatly changed. In the first place, American experience affords too many proofs that laws and decisions contrary to the will of the majority cannot be enforced. In the second place, the Supreme Court can effect no revolutionary changes in the economic order, and yet the status of the Negro, as that of other groups in the society, is

fundamentally fixed by the functioning and the demands of that order. The very attitudes of the majority group which fix the Negro in his disadvantaged position are part and parcel of the American economic and political order.

The peculiar position of the Negro as a ward of the judiciary is readily explained by his political history. The Civil War amendments were designed to give him a rather nebulous freedom and to protect him in his fundamental rights. The Thirteenth amendment guaranteed his physical freedom. The Fourteenth purported to protect his right of life, liberty and property, *i.e.*, to afford him the full privileges and immunities of citizenship, due process and equal protection of the laws. The Fifteenth amendment assured him that he would not be deprived of the suffrage because of his race, color, or previous servitude. These measures were realistic, they recognized that the newly-emancipated Negro citizen would be crushed by the Southern states unless special protection were afforded him. They were applied directly as limitations upon the states. But the Negro has never been accepted as a participating, legal member of his Southern state. There is perhaps a measure of government *for* the Negro in the South, but never *of* or *by* him. The Southern states recognize no duty to insure or extend his legal rights, and the Constitution imposes no such positive responsibility upon them. The state governments, being "democratic" governments, were keenly responsive to the popular will, and seriously devoted themselves to the task of preserving the inferior status of the Negro popula-

tion. The issue is thus clearly drawn for the Negro. Against the subversive laws of the state legislatures and decisions of the state courts he opposes his "Constitutional rights." The burden of proof is always upon him. For the interpretation and realization of these rights he is forced to appeal to the Supreme Court.

Thus the Negro has been compelled to substitute the complicated, arduous and expensive processes of litigation for the ballot box. What other groups are able to do for themselves, the Negro hopes the judiciary to do for him. There is more than ample evidence in the decisions of the supreme tribunal of the land on questions involving the rights of the Negro to disprove the possibility of any general relief from this quarter.

The fight for the rights of the group before the courts directs itself to such impairments and deprivations of civil liberties as segregation, together with inferior accommodations and instruction in the public schools, unequal apportionment of school funds, segregation and inferior accommodations on common carriers, residential segregation, exclusion from jury service, disfranchisement, and peonage. These evils have all been attacked through litigation but with only indifferent success. In scores of decisions on these questions the highest courts of the land have amply demonstrated their willingness to acquiesce in the prevailing attitudes of the dominant population in respect to the Negro.

The legal theory behind such decisions is that race discrimination is contrary to the Constitution only when it involves inequality in rights or the possession by one race of rights

which are denied to another solely because of its race. Race "distinctions," on the other hand, if based on substantial differences, do not constitute discrimination. Such permissible race distinctions in law are usually ascribed to one or more of the following motives: (1) the prevention of race conflicts; (2) the preservation of race purity by the prevention of intermarriage or of illicit sex relations; (3) the existence of race peculiarities which demand recognition in special legislation. It is well settled that statutes may be framed to attain any of these objectives which will not be objectionable to the protective clauses of the Fourteenth Amendment.

Thus, since the Fourteenth amendment is directed only against action by the states, a common carrier may, in the absence of federal legislation, provide for the separation of white and Negro passengers in interstate commerce.<sup>4</sup> Similarly, a restrictive covenant in a deed of conveyance of real estate, by which the grantee covenants that the property described shall never be used or occupied by, or sold, leased or given to, any Negro, has been held not to contravene the Fourteenth amendment.<sup>5</sup> Statutes requiring separate public schools for white and Negro children have long been sustained by the courts, as was a statute of the state prohibiting the teaching of the two races in the same private school.<sup>6</sup> Likewise, a state is upheld in requiring Chinese pupils to attend the schools provided for Negro pupils.<sup>7</sup> Pursuing its racial theories to the extreme, the Court has admitted

that fornication, when committed by persons of different races, may be punished more severely by the state than when committed by persons of the same race.<sup>8</sup>

The ability of the courts to hand down what appear to be legally sound opinions and still permit popular abuses of the Negro's rights to persist is largely due to the adroitness of the white legislators in the art of drawing up and administering their laws. These abuses generally occur under the protection of laws which are "fair on their face," and unless the court is disposed to look behind the face of the law to its administration the Negro can receive no relief. This is admirably illustrated by a comparison of the court's attitude in the case of *Yick Wo v. Hopkins*<sup>9</sup> and *Plessy v. Ferguson*.<sup>10</sup> In the *Yick Wo* case, involving the discriminatory administration of a law to the disadvantage of Chinese, the court, in deciding the case in favor of the appellants, said:

Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.

Ten years later, however, in *Plessy v. Ferguson*, involving an attack by a Negro on a "separate-but-equal-accomodations" provision for common carriers in the law of the State of Louisiana, the court accepted the act at its face value and refused to admit the contention of violation of consti-

<sup>4</sup> *Chiles v. Chesapeake and Ohio Ry.*, 218 U.S. 71 (1910).

<sup>5</sup> *Corrigan v. Buckley*, 271 U.S. 323 (1926).

<sup>6</sup> *Berea College v. Kentucky*, 211 U.S. 45 (1908).

<sup>7</sup> *Gong Lum v. Rice*, 275 U.S. 78 (1927).

<sup>8</sup> *Pace v. Alabama*, 106 U.S. 583 (1883).

<sup>9</sup> 118 U.S. 366 (1886).

<sup>10</sup> 163 U.S. 537 (1896).

tutional rights advanced by the plaintiff. The court, in fact, indorsed the provision, saying,

. . . the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order.

Perhaps no better example of the tendency of the Supreme Court to detach itself from political reality when questions involving Negro rights are concerned and to resort to legal fictions, can be afforded than the opinion of Justice Roberts in the recent Texas Primary case.<sup>11</sup> It is seemingly of no concern to the court in this unanimous decision that a party performs a vital political function, that the Democratic Primary in Texas is in fact the only significant election, and that exclusion from the primary robs the Negro of his franchise. The Court could only see that the prohibitions of the Constitution are prohibitions against the actions of the state, and that a political party is a private, voluntary association, presumably something akin to the Elks. It is significant to note that Chief Justice Hughes, in handing down an opinion in one of the celebrated Gold Clause cases, *Perry v. U.S.*,<sup>12</sup> while solemnly discussing the obligation of the government to keep faith with its contracts, said: ". . . the contractual obligation still exists and, despite in-

firmities of procedure, remains binding upon the *conscience of the sovereign*."<sup>13</sup> But Justice Roberts, in meeting the argument that if Negroes are refused admission to the Democratic Primary in Texas they are in fact altogether deprived of the suffrage, this sacred right of democratic government, failed to recognize that the sovereign had any conscience at all, and sought refuge in the dialectical stratosphere by admonishing that

So to say is to confuse the privilege of membership in a party with the right to vote for one who is to hold a public office. With the former the state need have no concern, with the latter it is bound to concern itself, for the general election is a function of the state government and discrimination by the state as respects participation by negroes on account of their race or color is prohibited by the federal constitution.

Thus, although the Democratic Primary actually takes the place of the general election in Texas (as in most other states below the Mason and Dixon Line), Mr. Roberts assures us that justice is served, since the Negro may still go through the useless exercise of casting a shadow vote at the general election. The decision is especially ironical in view of the fact that the court invoked the Fourteenth amendment—the most important section of the Negro's charter of liberty—as the sanction for thus denying him the franchise.

The recent discouraging decision of the Supreme Court in the Herndon case gives eloquent testimony to the ability of the Court to avoid delicate issues by hiding behind legal technicalities.

Such economic political tactics,

<sup>11</sup> *Grovey v. Townsend*, No. 563, October Term (1934).

<sup>12</sup> No. 532, October Term (1934).

<sup>13</sup> Italics mine.

while winning a minor and too often illusory victory now and then, are essentially ineffectual in the long run. They lead up blind alleys and are chiefly programs of escape. No minority group should relent in the most determined fight for its rights, but its leadership should recognize the limitations of opportunistic and socially blind policies. The only realistic program for any minority group in modern America is one which is based upon an intelligent analysis of

the problems of the group in terms of the broad social forces which determine its condition. Certainly no program of opportunism and no amount of idealism can overcome or control these forces. The only hope for the improvement in the condition of the masses of any American minority group is the hope that can be held out for the betterment of the masses of the dominant group. Their basic interests are identical and so must be their programs and tactics.