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# JESSE JACKSON AND THE NEW CIVIL RIGHTS MOVEMENT

*Harold A. McDougall\**

## I. INTRODUCTION

Despite great strides by its middle class, black America today is plagued by drugs, homelessness, AIDS, and murder and is at greatest risk from the fallout of a crumbling environment.<sup>1</sup> The old Civil Rights Movement, which focused on anti-discrimination law, is in need of replacement by a strategy which enables African-Americans to struggle over resources in the political arena. The increase in voting in the African-American community, partly a function of the Voting Rights Act and partly a function of the inspiration of Jesse Jackson, has laid the foundation for such a development, as evidenced by the Black Caucus and the Presidential campaign of Reverend Jackson himself. Ironically, the confrontational style of the old Civil Rights Movement remains one of its strongest legacies and needs to be revived as part of an overall strategy which includes more genteel maneuvering in the halls of power.

## II. FROM CIVIL RIGHTS MOVEMENT TO CIVIL RIGHTS LAW

### *A. The Need for Community: Towards the 21st Century*

The United States in today's international economy faces societies which are more cohesive, better organized, and more productive.<sup>2</sup> The New Deal's attempt to overcome governmental fragmentation through a fourth branch of government (regulation) has fallen into disrepute.<sup>3</sup> The progressive Democratic coalition which supported the New Deal first lost the Presidency, then the Senate, and then much of the federal bureaucracy.<sup>4</sup> The Democrats have regained the Senate, but not the White House. Further, we see no headlong rush to reinstate the New Deal, the New Frontier, or the Great Society. These have proven expensive to maintain and inadequate to coordinate law and society.<sup>5</sup>

With acceptable compromises in matters of economic approach and racial

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1. See generally NATIONAL URBAN LEAGUE, *THE STATE OF BLACK AMERICA 1989* (1989) (research papers published by the National Urban League, Jan. 24, 1989).

2. See Klare, *Workplace Democracy & Market Reconstruction: An Agenda for Legal Reform*, 38 CATH. U.L. REV. 1 (1988).

3. See Shapiro, *Apa Past, Present, Future*, 72 VA. L. REV. 447, 455 (1986).

4. Shapiro, *supra* note 1, at 457-61.

5. *Id.* at 455 (describing elements of New Deal consensus).

interaction, our nation could begin the search for a higher level of community to better integrate our people and make our economy more competitive.<sup>6</sup> Under present social and economic conditions, integration of individual and community at the national level would be very difficult.<sup>7</sup> We can begin with small-scale efforts, however, as laboratories in which new ways of creating self and community can be explored and out of which models of more general application can be created.<sup>8</sup>

Lawyers and political professionals are not the primary actors in these small experiments. There is a price involved in resorting to the state and the professionals who operate it as a way of resolving community problems.<sup>9</sup> When dialogue is limited to professionals,<sup>10</sup> strategy is inordinately conceived "according to the conventions of the legal world."<sup>11</sup> To the extent the dialogue only includes actors in the legal profession, resort to authoritativeness rather than persuasion is made more likely.<sup>12</sup>

Further, resort to the state apparatus requires the acceptance of a principle for organizing community which is "itself incapable of producing . . . normative meaning."<sup>13</sup> Thus, the social movements of the 1960s and 1970s somehow lost momentum—and, strangely, legitimacy—when they abandoned their tactics of social action in favor of a "piece of the action"—clout in the political-legal system. The Civil Rights Movement provides the most familiar and compelling example.

6. See generally S. PECK, *THE DIFFERENT DRUM: COMMUNITY MAKING AND PEACE* (1987) (arguing for a transition from individualism to community as a worthy goal of both community and individual development).

7. See Michelman, *Law's Republic* 6 (1988) (unpublished manuscript) ("jurisgenerative politics" requires a normative component that may not serve the inclusion of widely divergent experiences and outlooks in the community); *id.* at 15 (nationally organized, popular political mobilization "must forever be rare").

8. See M. CASTELLS, *THE CITY AND THE GRASSROOTS* 280 (1985). See also FISS, *Conventionalism*, 58 S. CAL. L. REV. 177, 193-94 (1985) (challenging Critical Legal Studies to articulate such a method of making social choices).

9. Cover, *Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 15-16 (1983). An early example is the compromise over slavery built into the Constitution. Jefferson, himself a slaveowner, was so intensely in favor of the ideals of the Revolution that he felt slavery was incompatible with them; and the early drafts of the Declaration of Independence contained ringing denunciations of slavery. These were eliminated, however, and the Constitution itself permitted the slave trade to continue openly until 1808. See D. BELL, *AND WE ARE NOT SAVED* 28 (1987). *But see* FISS, *supra* note 8, at 183 ("Constitution embodies a public morality, including a commitment to racial equality.").

10. See Eskridge & Frickey, *Legislation Scholarship and Pedagogy in the Post-Legal Process Era*, 48 U. PITT. L. REV. 691, 722 (1987) (citing O. FISS, *THE CIVIL RIGHTS INJUNCTION* (1978); O. FISS, *INJUNCTIONS* ch. 3 (1973); O. FISS & D. RENDLEMAN, *INJUNCTIONS* ch. 9 (2d ed. 1984)).

11. Eskridge & Frickey, *supra* note 10, at 725. See, e.g., Farber & Frickey, *The Jurisprudence of Public Choice*, 65 TEX. L. REV. 873, 912 (1987) (Congress should limit interest group stranglehold on policymaking through legislation, such as limiting PAC contributions to campaign financing.). See also *id.* at 920 (Courts may be able to insure sound public policy by insisting that legislatures follow established procedures as in *INS v. Chadha*, 462 U.S. 919 (1983) and *Bowsher v. Synar*, 478 U.S. 714 (1986)).

12. FISS, *Objectivity and Interpretation*, 34 STAN. L. REV. 739, 757 (1982).

13. Cover, *supra* note 9, at 16.

### B. *The Turn to Legalisms in the Civil Rights Movement*

The use of law in the Civil Rights Movement has changed dramatically since the civil disobedience campaigns of the late 1950s and early 1960s. At the outset the Civil Rights Movement was driven by a spontaneous combustion made possible by the closely-knit nature of the segregated black community. Civil rights workers generally defied the law rather than using it as an instrument of social change, despite the landmark *Brown v. Board of Education* decision.<sup>14</sup>

To the extent law was used, it served as an adjunct to an overall strategy of ideological warfare. Legal doctrine and advocacy were placed at the service of “utopian and messianic yearnings, imaginary shapes [were] given to a less resistant reality” and “critiques [were] leveled at the justificatory enterprises of [the] law.”<sup>15</sup> Norms such as equality and nondiscrimination were publicly articulated through litigation, providing a basis for a continuing dialogue in the civil community which strengthened and extended the bonds of common awareness which were being generated in the smaller community of civil rights workers and other movement participants.

The Civil Rights Movement relinquished some of its larger egalitarian goals, however, so that more modest goals could be pursued within the framework of legislation. After the major civil rights bills of the 1960s were passed—the Civil Rights Act of 1964,<sup>16</sup> The Voting Rights Act of 1965,<sup>17</sup> and the Fair Housing Act of 1968<sup>18</sup>—the law was on the side of civil rights. The civil rights lawyers and other professionals who came to Washington to guard this legislation the Movement had achieved by pressure at the street level “became” the Civil Rights Movement.<sup>19</sup>

The Civil Rights Movement thus spun off a large community of leaders, lawyers, and other professionals who agreed on certain basic assumptions about society and the role of the moral individual in society. This community today is called the “Leadership Conference on Civil Rights.” Interestingly, many of the participants in the Leadership Conference still have a “Movement” style and identification. They practice by “networking” as well as by litigation, legislation, and regulation. The network they have created connects the public and

14. 347 U.S. 483 (1954).

15. Cover, *supra* note 9, at 9.

16. Pub. L. No. 88-352, 78 Stat. 241 (1964) (codified as amended as 28 U.S.C. § 1447; 42 U.S.C. §§ 1971, 1975a-1975d, 2000a-2000h-6 (1982 & Supp. 1988).

17. Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended at 42 U.S.C. §§ 1971, 1973-1973p (1982 & Supp. 1988).

18. Pub. L. No. 90-284, 82 Stat. 81 (1968) (codified as amended at 42 U.S.C. §§ 3601-31 (1982 & Supp. 1988).

19. See Clune, *A Political Model of Implementation and Implications of the Model for Public Policy, Research, and the Changing Roles of Law and Lawyers*, 69 IOWA L. REV. 47 (1983) for discussion of the various professional roles available to “civil rights lawyers” at 114-17 & nn.175-79 (law prophets) and at 116 n.175 (“second generation” administrative law reformers”).

the three branches of government through dialogue in the civil rights area. Civil rights lawyers participating in the Leadership Conference today build consensus as well as manipulate the rule-based system, creating a web of relationships which has become as important as legal rules themselves in creating and effecting policy.<sup>20</sup>

The Leadership Conference's consensus-building process includes a good deal of education and outreach. The Conference thus touches a much larger group of lay people at its periphery who endorse the values first articulated by the Civil Rights Movement. Some of these people were strongly stirred by the Civil Rights Movement itself, through participation or confrontation in the 1960s. Others have been involved in the more recent efforts to extend or amend the basic civil rights legislation of the 1960s. Many of these lay persons at the periphery of the Conference adhere to the Movement's basic principles of racial and gender equality and freedom from government interference in private life.

With a core of lawyers and other professionals linked to a larger sympathetic group in the civil community, the Leadership Conference handed President Reagan his three greatest domestic policy defeats during his two terms in office—the 1982 extension of the Voting Rights Act of 1965, The Civil Rights Restoration Act of 1987, and the Fair Housing Amendments Act of 1988.<sup>21</sup> The Conference has thus matured to considerable influence.<sup>22</sup>

There is a limit, however, to the depth of contact which can be achieved through legislation alone. The issue becomes one of securing adherence to established rules, rather than seeking to alter behavior through conversation, confrontation, and the force of example. Where the Civil Rights Movement was a conversation which sought to engage the entire nation in dialogue, its law and policymaking offshoot engages in conversations which bind interest groups and institutional actors together, sometimes excluding, rather than including others.<sup>23</sup> Legal "corpus, discourse, and interpersonal commitment" have melded together into a new kind of legal culture, one which has one foot in the redemptive community of the Civil Rights Movement (or similar movements) and the other in the highly charged, awesome power of the national government.<sup>24</sup>

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20. Eskridge & Frickey, *supra* note 10, at 705-06.

21. Voting Rights Act Amendments of 1982, 42 U.S.C. §§ 1973, 1973b, 1973aa-1a, 1973aa-6 (Supp. 1988); Civil Rights Restoration Act of 1987, 20 U.S.C. § 1681 (Supp. 1988); Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (1988).

22. On this process see Clune, *supra* note 19, at 68-70. Professor Kingdon calls these "policy communities." J. KINGDON, *AGENDA, ALTERNATIVES, AND PUBLIC POLICIES* 123-28 (1984) (detailed discussion of the operation and composition of such communities).

23. Eskridge & Frickey, *supra* note 10, at 717; *see also id.* at 718-19.

24. Cover, *supra* note 9, at 12. Dr. Charles Hamilton observes that political (i.e., electoral) participation must be supplemented by the ability to affect public attitudes (through social movement tactics and use of the media) and the ability to effect the *implementation* of public policy. *See* NATIONAL URBAN LEAGUE, *supra* note 1.

### III. THE CIVIL COMMUNITY, POLITICS, AND SOCIAL MOVEMENTS

Instead of movements led by lawyers, a wide variety of ordinary citizens must grapple with issues of civil rights, peace, women's rights, and the environment at the street level, using dialogue and nonviolent confrontation as a means to further humanize both themselves and their opponents.<sup>25</sup> This dialogue, both quiet and strident, must take place in communities all over the country.<sup>26</sup> The analogy is to "committee of the whole" in which issues are debated but no legislative action can be taken.<sup>27</sup>

To expand the scope of these small conversations, outreach needs to be carried on in schools, colleges, work settings, and communities.<sup>28</sup> The language and terms of the discussion need to be accessible to the general population and not so rarified as to make public policy, in real terms, a matter for the elite alone.<sup>29</sup> During the American Revolution, such outreach took place in the form of plays, songs, and didactic literature on republican virtues. Political satire and epic poetry were found in abundance. Each of the 100 newspapers existing in the colonies published the full text of the proposed Constitution for discussion and debate which took place in school, church, and tavern.<sup>30</sup> Dialogue and open discussion is the key to the process.<sup>31</sup> Neither Congress nor a constitutional convention could fully contain such a dialogue. Similarly, legal rules, whether of common-law or statutory origin, may be insufficient for the task of building community.<sup>32</sup> A glimpse of this process was available during the recent presidential elections in the political campaign of Jesse Jackson.

25. Singer refers to this process as the "joint reconstruction of social life." Singer, *The Player and the Cards: Nihilism and Legal Theory*, 94 YALE L.J. 1, 66 (1984) (quoting Frug, *The Ideology of Bureaucracy in American Law*, 97 HARV. L. REV. 1276, 1386 (1984)). See also R. HATCH, *BEYOND OPPORTUNITY: JESSE JACKSON'S VISION FOR AMERICA* 82-85, 86-90 (1988).

26. The outcome of such struggles is not always positive (*viz.*, Howard Beach and the Brawley situation). See Michelman, *supra* note 7, at 18 & n.132.

27. Compare Michelman, *supra* note 7, at 20 (notion of republican dialogue not exclusively . . . tied to the coercive exercise of centralized majoritarian power); and at n.29 (quoting Benhabib on the notion of public decisions being made by reasonably "autonomous citizens in a process of unconstrained exchange of opinions").

28. See W. Kaplin, *The Process of Constitutional Interpretation: Roles for Lawyers and Significant Others* 24 (1987) (unpublished manuscript).

29. See W. Kaplin, *supra* note 28, at 24. See also Brest, *Interpretation and Interest*, 34 STAN. L. REV. 765, 772 (1982) (law is a "mysterious science" . . . inaccessible to laypersons"). The Roosevelt Center for Public Policy (dedicated to the public policy tenets of all three Roosevelts—Theodore, Franklin, and Eleanor) has done some extraordinary work developing simulations on such issues as budget-balancing, national defense, and the like, for use by citizen's groups in outreach on public policy issues. See also Michelman, *supra* note 7, at 18 (freedom including the self-intrusion and self-evaluation made possible by dialogue, reordering the lives and experiences of others by considering their perspectives).

30. M. Bloomfield, *Constitutional Values and the Literature of the Early Republic* 4 (1988) (unpublished manuscript). This is one of the reasons it is so difficult to identify the "framers" of the Constitution. *Id.*

31. Cf. M. KING, JR. *STRIDE TOWARD FREEDOM* 223 (1958).

32. Frug, *The Ideology of Bureaucracy in American Law*, 97 HARV. L. REV. 1276, 1385-86 (1984) ("Modest realists" should think of the world not as comprised of rules and structure but of human interaction which is both necessary and threatening and which must be constantly subject to reconstruction and revision.). See also Fish, *Fish v. Fiss*, 5 MISS. C. L. REV. 1 (1984). Cf. Farber & Frickey, *supra* note 11, at 912, 920.

*A. The Jackson Phenomenon*<sup>33</sup>

The politics of inclusion practiced by Jesse L. Jackson are a good indication of how broad a community can become even (or especially) with a focus on the political-legal system.<sup>34</sup> Seven million Americans of a wide range of class and ethnic backgrounds and ages voted for the Reverend Jackson in the 1988 Democratic primaries. Jackson brought 1,200 delegates to the Convention.

The "Rainbow" Movement of Reverend Jackson is the heir to the Mississippi Freedom Democratic Party ("MFDP") of Fanny Lou Hamer and Ella Baker, returning in triumph in 1988 to the Democratic Convention which ostracized MFDP in 1964, offering to seat only two of their delegates.<sup>35</sup>

The history of the MFDP is a history of both the Civil Rights Movement and the Democratic Party.<sup>36</sup> In 1964 blacks constituted 2.8% of the delegates to the Democratic Convention.<sup>37</sup> In 1988, 23% were black, for a total of 962 delegates.<sup>38</sup> In 1964, a 64-member, integrated delegation called the Mississippi Freedom Democratic Party challenged the credentials of the all-white delegation of the state's regular Democratic Party.<sup>39</sup> Only two members of the delegation were allowed to be seated, and the two, Fanny Lou Hamer and Aaron Henry, refused.<sup>40</sup> In 1968, Julian Bond led an integrated delegation from Georgia to challenge the all-white delegation led by Governor Lester Maddox. Half of Bond's delegation was seated, half of Maddox's.<sup>41</sup> In 1972, Jesse Jackson challenged the Illinois delegation led by Mayor Richard Daley and won, unseating the entire Daley delegation.<sup>42</sup> These challenges also led to a more open delegate selection process from which Jackson and others ultimately benefited.

The MFDP only aimed to integrate the Mississippi delegation to the Con-

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33. For a very incisive view of Reverend Jackson and the implications of his style for the future of American politics, see R. HATCH, *supra* note 25, at 37-43 (nexus of religious and political resources for purposes of social transformation).

34. Jackson, as the "first black candidate to contend seriously for a major party political nomination" invoked his "rise from poverty as a symbol of hope for poor and working-class Americans (as well)." Benenson, *From Day One, Unity is the Convention Theme*, CONG. Q., July 23, 1988, at 2025.

35. In his Democratic Convention speech, Jackson invoked the heroes of the Civil Rights Movement and introduced Rosa Parks, "heroine of the 1955 Montgomery, Ala. bus boycott." And some fence-mending within the Movement was evidenced when, on Wednesday, Coretta Scott King declared that her late husband would be "proud" of Reverend Jackson and of "the way [Jackson] broadened political participation in America." Benenson, *supra* note 34, at 2027. He observed that "Fanny Lou Hamer didn't have the most votes in Atlantic City, but her principles have outlasted every delegate who voted to lock her out." Text of Jackson's July 19, 1988, address to Democratic National Convention, *reprinted in* CONG. Q., July 23, 1988, at 2057, 2060.

36. See Maraniss, *Blacks and the Long Road to Atlanta*, Wash. Post, July 18, 1988, at A1, col. 4.

37. *Id.* at A1, col. 5.

38. *Id.* at A1, col. 4-5.

39. *Id.* at A1, A20, col. 1.

40. *Id.* at A1, A20, col. 4.

41. *Id.*

42. *Id.*

vention. The Rainbow Coalition, however, aims to become the left wing of the Democratic Party.<sup>43</sup> As such, the Rainbow Coalition presents an interesting interface between law (and politics) and community. The fervor of the Rainbow Movement called for an uncompromising position vis-a-vis the Democratic candidate for President and the Democratic Platform Committee. At the same time, a large number of those who voted for Jackson did so because they agreed with his programmatic focus and were not simply swayed by charisma. Compromises were called for if the Rainbow Movement was to become the party's left wing.<sup>44</sup>

The realization that compromise was necessary, however, was only the first step of the elaborate dance between Jackson and Dukakis, between the Rainbow Movement and the Democratic Party. Preliminary talks after the New York primary left Jackson forces convinced that Dukakis and his staff were not taking them seriously and were insufficiently respectful of the electoral ground they had gained.<sup>45</sup> Under these circumstances, Jackson forces resorted to "movement" techniques such as the much-publicized bus caravan along the route of Sherman's March to Georgia as a way of building pressure for more satisfactory negotiations.<sup>46</sup> The bus caravan was but one example of the Jackson phenomena which confused and worried party regulars—a "movement within a campaign—a unique phenomenon in U.S. politics."<sup>47</sup>

At the same time, certain realities of electoral politics placed restraints upon what tactics could be used. Jackson, during the primaries and during the Convention, walked a tightrope between movement excess and electoral co-optation.<sup>48</sup> Dukakis, in turn, tried to avoid the appearance of capitulation to "movement" excess while at the same time not appearing to co-opt Jackson.<sup>49</sup>

Political compromise unsettled social movement people in 1988, just as

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43. The Democratic campaign platform showed Jackson's influence in foreign policy (policies against apartheid and Contra aid), defense and domestic spending (higher spending for prenatal care, nutrition programs for pregnant women and infants, the headstart program, education, and a comprehensive national health care program). Elving, *Platform Compromise Yields Benefits, Risks*, CONG. Q., July 23, 1988, at 2011.

44. Jackson's compromises and his emergence as a "team player" signaled a victory of "pragmatism over idealism." For the first time since 1968 the "issue oriented activists who dominated the Democratic nominating process . . . subordinated their agendas to the goal of party victory." Benenson, *supra* note 34, at 2023.

45. Gilliam, *Jackson Plays It Right*, Wash. Post, July 18, 1988, at D3, col. 4.

46. See Ifill, *Letter from the Jackson Caravan: Images Aplenty Along the Road From Chicago to Atlanta*, Wash. Post, July 17, 1988, at A29, col. 1.

47. Gilliam, *supra* note 45, at D3, col. 4.

48. As one of Jackson's delegates put it during the convention, "Rather than protest, we have to iron out our differences and not make a scene" (Frances Bright Johnson, a union delegate from Savannah, Georgia). Taylor, *Dukakis Arrives to Claim Nomination*, Wash. Post, July 18, 1988, at A1, A19, col. 4.

49. Dukakis was urged by his staff "to walk a line between not appearing to go overboard to accommodate Jackson, and not appearing to be ungracious to him or his constituency." Taylor, *Jackson Tones Down Rhetoric, Speaks of Healing and Unity*, Wash. Post, July 16, 1988, at A1, col. 3. Negotiations involved a plane and resources for campaigning and voter registration as well as spots on the Democratic National Committee, Dukakis's transition team, and the Dukakis Administration, should there be one. Taylor, *supra*, at A6, col. 2-3. Electoral bargaining chips Jackson had in hand were the threat to challenge Bentsen as Vice President and stage a floor fight over the Democratic Party platform.



it did in 1964 (when it led to a sit-in and walk-out).<sup>50</sup> Compromise has no place in a social movement.

Losers become martyrs in a crusade. Victory is achieved only when the crusade takes total control. Negotiations and deals, the stuff of American politics, are seen as condescending tokens by crusaders. That's why the compromises Dukakis [offered were at first] ignored by Jackson's crusaders. Their only goal [was] total victory.<sup>51</sup>

In 1988, however, it was clear that the party *needed* the Rainbow Coalition, not just at the Convention but in getting out the vote and winning the election.<sup>52</sup> In fact, the spectacle of Dukakis and Bentsen "dicker[ing] over how [Jackson] would be rewarded for staying within the party unsettled party regulars as much as Jackson's 'crusaders.'"<sup>53</sup>

Jackson's "movement" people were urged at the end of the Convention to throw themselves into the electoral process.<sup>54</sup> Persuading Jackson's supporters to vote even though Jackson was not on the ticket became "the responsibility of leadership."<sup>55</sup> But the primary "electoral" victory had already been won—to avoid a repeat of the violent, fratricidal confrontations of the 1968 Convention.<sup>56</sup> Despite an embarrassing flub when Lloyd Bentsen was selected for Vice Presidential running mate and Jackson was not properly notified, Dukakis did an admirable job of bringing Jackson and his forces into the fold. Unfortunately, it was all downhill thereafter as Dukakis during the convention tried vainly to capture the moderate and conservative vote by moving Jackson from center stage.

### B. Civil Rights and National Politics

Despite the eventual disappointments of the 1988 presidential race, the dance between the Civil Rights Movement and the political process will continue for the foreseeable future.<sup>57</sup> Jackson, and others such as Lloyd Bentsen, might begin to play the role of The Loyal Opposition, a phenomenon ensconced in

50. A painful moment came when Jackson assembled his 1,200 delegates in his hotel to tell them that he would not be on the ticket. Maraniss, *Jackson's Road to Acceptance*, Wash. Post, July 24, 1988, at A1, A19, col. 4.

51. Williams, *Waiting for the Jackson Reaction*, Wash. Post, July 17, 1988, at C1, C4, col. 3.

52. Dukakis "had to recruit [Jackson] and his movement to the Convention and the Fall campaign." See Elving, *Marching From Atlanta, Their Eyes on the Prize*, CONG. Q., July 23, 1988, at 2007, 2010.

53. Dukakis was careful to maintain that "[t]here's no deal . . . no fine print . . . It's a matter of respecting each other, understanding what we stand for, having that common ground that Reverend Jackson talked about . . ." CONG. Q., July 23, 1988, at 2064 (text of Dukakis-Jackson-Bentsen July 18, 1988, press conference). See also Broder, *Dukakis-Jackson Talk Ushers in Harmony as Convention Opens*, Wash. Post, July 19, 1988, at A1, col. 4.

54. Gilliam, *After the Unity, Healing*, Wash. Post, July 25, 1988, at D3, col. 4.

55. *Id.* (quoting Mayor Thomas Barnes of Gary, Indiana).

56. Bradley, *Were Those Democrats in Atlanta?*, Wash. Post, at C1, C2, col. 4.

57. Broder & Ifill, *Jackson Seeks Major Role*, Wash. Post, July 17, 1988, at A1, A31, Col. 3-6.

European politics but so sorely needed—and missing—in the United States. The role of the Opposition is to point out the mistakes of the incumbent—for all four years of the administration, not in a flurry of rhetoric during the election year.

A key question as we look forward to 1992 is the level upon which the racial issue will be hauled into national campaigns. Will politicians and the media, especially, use the “Jackson” issue to educate, to lead the country toward a higher level of integration, or will they pander to the racism of “Joe Six-Pack”?<sup>58</sup> Will liberal features of Democratic policies be labeled “Jackson” policies?<sup>59</sup> Clearly, Dukakis during the national elections failed to play his strong suit, conducting an overly sanitized version of the politics of inclusion, drastically underutilizing Jackson’s energy and talent.<sup>60</sup> Reverend Jackson will no doubt always keep one foot in the “Movement” and one in the electoral arena; however, the tension between the two may create problems for him, but it will also create unique opportunities as well.

Jackson has not been fully transformed from a “movement” leader to a political leader and perhaps will always straddle the fence. Jackson spoke of his constituency as accompanying him in the great hall as his name was put in nomination for the presidency; people with great hopes and ambitions, whose children are on drugs and their grandchildren raised in broken homes.<sup>61</sup> Partly because of the nature of this constituency, he will always need to have resort to “movement techniques” as well as electoral and political ones.<sup>62</sup> He has literally, as well as figuratively, not left these people behind. For Jackson, this dual process is not only political, “in terms of votes,” but also “sociological in terms of transforming people . . . .”<sup>63</sup> We can thus expect him to continue to “[m]ake it tense, but not ugly . . . [because] [f]rom creative tension, new life comes.”<sup>64</sup>

#### IV. THE NEW CIVIL RIGHTS MOVEMENT

Our national culture seems to have been at sea since John F. Kennedy was

58. If Dukakis “[allows Jackson to jerk him around] there are a lot of Joe Six-packs around the country who are going to say [he’s] kissing Jesse’s ‘rearend’ . . . .” Taylor, *supra* note 49, at A1, A6, col. 1 (quoting a “top Democratic campaign operative, who asked not to be identified”).

59. Elving, *supra* note 51, at 2010.

60. Benenson, *supra* note 34, at 2024.

61. Harris, *On Atlanta’s Street of Dreams*, Wash. Post., July 21, 1988, at B1, B11, Col. 4. The Civil Rights Movement removed barriers to equal opportunity—in the franchise, public accommodations, housing, and education. But there is a way in which class and race have interacted to place lower-class blacks in a particularly intractable position. Ironically, this has occurred while the black middle class has made visible progress. See Thompson, *Atlanta’s Unequal Prosperity*, Wash. Post, July 18, 1988, at A17.

62. Maraniss, *supra* note 50 at A1, A19, col. 1.

63. Hill, *A Reflective Jackson Has Yet to Define His ‘Next Campaign’*, Wash. Post, July 21, 1988, at A28, col. 2.

64. *Id.*

assassinated.<sup>65</sup> Perhaps after Kennedy's death we lost our sense of the future, which is why it has become increasingly difficult to muster the political will to provide for education, infrastructure, or the environment. We continue to search for a hero to lead us out of our condition and for a scapegoat to blame it on.

The way to create public values is through social movements of many different kinds—environmental, women's, civil rights, and so forth. Empowered people don't need to look for external solutions. At the same time, empowerment requires external change as well as internal rebirth.<sup>66</sup> We thus need social movements to alter external reality, particularly social institutions. Internal rebirth, however, means that we all must accept the consequences of the historic choices which make America what she is, because we all benefit from, as well as are harmed by, those choices.<sup>67</sup> Even more, we must learn to accept the consequences of the choices we ourselves have made.<sup>68</sup>

The new Civil Rights Movement precipitated by Jesse Jackson's campaigns for the Presidency and by the work of the Leadership Conference on Civil Rights uses the electoral system, legislation, litigation, administrative rulemaking, conversation, and confrontation to focus the attention of the civil community on important issues of poverty, disease, and environmental pollution as well as the continuing denial of civil rights to many of our people.

"The media"—newspapers, magazines, news organizations, television networks—are the New Civil Rights Movement's chief obstacle and potential ally for the development of belief systems which could undergird a higher level of community in our society.<sup>69</sup> Both the media and the Movement engage the civil community in conversation. Law, politics, and telecommunications can shape dialogue, but only dialogue can build community.<sup>70</sup>

Electoral strategies and movement strategies will have to be combined to address the serious social problems we face. The New Civil Rights Movement, operating in legal and political as well as private and community arenas, might

65. Popular participation in American presidential elections has been steadily declining for the past 25 years. NATIONAL URBAN LEAGUE, *supra* note 1. The demise of the Civil Rights Movement has also contributed to the national culture's lack of direction. The Civil Rights Movement provided much of the ethical and moral focus of the country and led the country in a way that only members of an oppressed group could. Compare the present women's movement, which Professor Fiss sees as providing a new source of public values. FISS, *The Death of the Law?*, 72 CORNELL L. REV. 1, 15 (1986).

66. R. HATCH, *supra* note 25, at 82-85.

67. *City of Richmond v. J.A. Croson Co.*, 109 S. Ct. 706 (1989) holds that affirmative action programs cannot be justified unless there is evidence of prior discrimination. If public officials, accepting the consequences of our historic choices, would simply make a public admission that discrimination had taken place in the past, this would answer all of the Court's questions.

68. M. KING, JR., *supra* note 31, at 223. ("We must not let the fact that we are victims of injustice lull us into abrogating responsibility for our own lives.")

69. D.A. GRABER, *MASS MEDIA AND AMERICAN POLITICS* 163-64 (3d ed. 1989) (Media's "agenda-setting" function).

70. In this sense we straddle the contradiction between law as alienated from the subjective self and the need for dedication to law in a way that we typically reserve for subjects, but not objects. *Cf. Cover, supra* note 9, at 45.

take the civil community to "a point beyond labels (like conservative and liberal)— . . . the point of common ground and common survival [which] . . . transcend[s] race, sex, and religion."<sup>71</sup>

Future electoral strategies could include Jackson working for the Rainbow Coalition in state and local elections, in 1990 reapportionment battles, and in a Keep Hope Alive political action committee designed to aid progressive political candidates.<sup>72</sup> (He could also run for President every four years until the year 2000.<sup>73</sup>) Future movement strategies might involve building a mass base for progressive policies which can root development deep into disadvantaged communities with institution-building and public-private partnerships. As Jesse Jackson has said, "yesterday's protest is today's politics."<sup>74</sup> Jackson may have chosen for himself the catalytic role of transforming protest into politics and appears willing to pay the price of living in the purgatory between social movement and electoral politics.

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71. Jesse Jackson (July 18, 1988, press conference) *reprinted in* CONG. Q., July 23, 1988, at 2065.

72. Note, for example, Jackson's participation in the 1989 campaign for Mayor of Chicago. Peterson, *Jackson on the Defensive*, Wash. Post, Mar. 30, 1989, at A1, col. 5. The developments in Chicago indicate that Jackson is still attempting to balance protest and politics.

73. Jackson's conflicts with the National Democratic Party, and the Illinois Democratic Party, over the Chicago mayoral campaign signal his unwillingness to become a political candidate or party regular at the expense of sacrificing his social movement ties. A more likely political candidate appears to be Ron Brown, the new Democratic Party Chairman. Brown, according to Professor Martin Kilson of Harvard University, represents a more acceptable inside image than Jackson in the same way that John Kennedy projected a more acceptable inside image of Irish politics than did the more flamboyant Michael Curley, former Mayor of Boston.

74. Maraniss, *supra* note 50, at A20, col. 2.

