

THE REPRESENTATION OF THE POOR IN AMERICAN SOCIETY

A SUBJECTIVE ESTIMATE OF THE PROSPECTS OF DEMOCRACY

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After nearly ten years in which most of my practice as a lawyer has been among the indigent or those otherwise dispossessed or disowned by society, it has become impossible for me to think dispassionately or consider hypothetically or address academically the issues of the representation of the poor in politics and in the law in America. I suspect that there is, about these matters, no such thing as objectivity anyway; I know there is no option of neutrality about them. It would be pretentious for me to feign objectivity; it would amount to fraud to assert that I am neutral.

Be cautioned, therefore, that in what follows I speak as a partisan—as someone with a definite viewpoint—though, in doing so, I trust, I thereby uphold the discipline of advocacy which is the venerable societal office of the lawyer.

My viewpoint regarding the representation of the poor in society, especially in the realms of politics, legislation, administration of the law, and litigation, is, of course, informed by my own practice among the poor. No doubt every reader who is a lawyer is similarly positioned in relation to his own particular experience in practice, whatever it happens to be, whether he is specifically conscious of that or not, unless he be some mere legal mechanic who forbears to reflect as a human being upon the work he does every day.

I am a Christian, moreover, which means that the focus of my attention in work, as well as everything else, is upon *this* world and the possibility and actuality in this world of mature human life in society. Biblically and empirically, the Christian concern is characteristically mundane, not spiritual. If there be preachers who none the less deny this world and vainly talk of other worlds or after lives, if there be ministers of institutional religion who spread a word that Christianity is bothered only with personalistic salvation and not with the corporate existence of mankind—and there *are* legions of them—then they are either knaves or harlots: it is sometimes difficult to distinguish between the two. They had better read the Bible more avidly

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and the daily newspapers more discerningly, because both of these testaments bear witness that the scene of God's presence and vitality is this history in which men now live, with all its ambiguity, alienation, strife, controversy, and scandal.

My law practice began and remains much in Harlem, where clients are Negroes or Puerto Ricans, usually uninformed about their legal rights and causes, mostly impecunious, existing commonly in abominable tenement slums, their children attending radically deprived public schools, with the highest percentile of male unemployment in the nation, frequently not registered as voters and hence without organic or effectual political power, whose main access to the rest of society is a relationship of paternalistic charity in one form or another. They are, in short, among the indigenous American urban poor—the disinherited, the unskilled, the unwanted, the neglected, the concealed and as yet mainly quiescent poor who populate the interior of every city of any significant size in the nation.

On some vague principle such as "misery loves company," I suppose, my practice has diversified beyond Harlem citizens and represents a number of other persons and factions in society that are also unpopular, or perchance just unfamiliar, to many lawyers. By that I refer to clients who are political nonconformists, various pacifists and agitators, sexual offenders of both sexes, and a somewhat bizarre assortment of other outcasts and cast-offs in society.

My practice as a lawyer originated and continues in this way, representing those who, in one sense or another, live at the extremities of society, because in law school I heard, approvingly, the dictum that everyone is entitled, regardless of race or class or politics or sex or education or other status, to representation in society in the making, administration, enforcement, litigation, and adjudication of the law.

As a citizen, as well as a lawyer, I believe most urgently that if, at any given juncture, those who exist on the borders of society, because they are poor or politically unpopular or socially discriminated against, are not represented, as a practical matter then the whole of society is jeopardized and indeed the very idea of a democratic community is aborted.

That is the substance of the point of view from which I approach the specific issues of the representation of the poor in politics and in the law.

POVERTY AND POLITICS

Poverty and race are profoundly entangled in America. That has been very evident in the past fifteen years in which the civil rights movement has achieved organic significance; but it has in fact been the case from the origins of chattel slavery four centuries ago. There are regions in the country where poverty and race are not intimately associated one with the other—for example, among some of the rural white farmers whose poverty is a consequence of agricultural mechanization or also among the poor whites in the hinterlands of Appalachia. And there have been the successions of European immigrants who have endured poverty for

a generation or two in the great cities before becoming substantially assimilated into the mainstream of the economy. For all of that, poverty remains most stubborn in America where it is associated with those who are not white, notably the American Indians and Negro citizens. Of these, emphatic attention is now given to poverty among Negroes most appropriately if only because of the multitudes of Negro citizens. If the association of poverty and race is not resolved with respect to Negroes, then it is a moral certainty that it never will be with regard to the Indians—the Indians will simply die off before they are emancipated.

For both Negro and white citizens the contiguity of poverty and race poses sensitive and complex issues; but that does not inhibit some insight into why so many Negroes remain poor, generation after generation, both in the deep South and in the black ghettos of the urban North.

For one thing, though property has generally ceased to be a condition of holding office or of suffrage, as a practical reality, property is much esteemed in the United States as a credential for full citizenship. Those who have property, even those who are modest wage earners, can retain lawyers; their special interests are the concerns of candidates; legislators listen to them; and those who have or control much property are very ably represented in politics and in the law. Those who are, however, unorganized, unemployed, or unemployable or only marginally employed, welfare recipients, or nominal taxpayers so far as property or income are concerned are not likely to be represented in either politics or the law. They are seldom able to locate, much less afford, counsel of their own choosing. Their interests are not taken into account in state legislatures. School boards leave their needs unheeded. Thus property, at least to the extent of having a relatively secure job, remains virtually indispensable to the effective exercise of the ordinary requisites of citizenship.

Meanwhile, waiving racial discrimination per se in education and employment, as the impact of cybernation and automation accelerates, even the menial, seasonal, unskilled jobs heretofore available to many Negroes are eliminated and the legacy of prolonged deprived education becomes vested in unemployability. The prospects of full citizenship consequently diminish for ghettoized Negroes.

The esteem for property as a sanction for citizenship is most poignant, and most pathetic, in the case of Negroes because of their unique inheritance in chattel slavery. Whatever the bigotries which have assaulted other ethnic groups in this nation, whatever their tribulations and grievances, only the Negro in American history has ever been legally and socially regarded as property. Slavery in the United States represented the most radical ethic of white supremacy conceivable; and though slavery was abolished, that ethic remains deeply imbedded in the folk mentality of white Americans. Nowadays it seems to be the case that the virulent and vulgar expressions of white supremacy are waning (though if the ghetto riots continue to spread, it may turn out that the more savage forms of white supremacy have only been sublimated). In any event, the more subtle condescension which

prompts white citizens to suppose that theirs is the prerogative to dispense to Negro citizens certain rights and opportunities is itself a symptom of the ethic of white supremacy from which most white Americans, I fear, have yet to be exorcised.

It is this latter consideration—this ethos of white supremacy in which so many generations of Americans, in both South and North, have been reared—which answers the redundant query of white citizens about why, since Portugese, Italians, Jews, and others immigrated to this country, endured hardships for a while but finally became assimilated, Negroes have not or cannot do the same. I suggest that immigrants could be far more readily assimilated into American society because their presence never challenged the white supremacy ethic and that, indeed, many immigrants emulated that ethic. It has been, in fact, only in the past decade or so that white supremacy has been directly threatened at all, in the maturing of the Negro revolt.

Furthermore, the assimilation of immigrants was abetted by the political system dominant in the major cities of the North in the earlier part of this century—a system which bartered services essential for assimilation of votes. For instance, when East Harlem was still an immigrant neighborhood, in the twenties and the outset of the thirties, one congressman maintained no less than sixteen offices in his district where the people could obtain free legal counsel, bargain for jobs, make complaints about housing, sanitation, fire hazards, schools, arrange for economical medical care, or bring any problem. In other words, for all their troubles, the immigrant poor were able to secure representation of a sort in politics and in the law. For all the taint of corruption and bossism of the old-time city machines, their contribution to immigrant assimilation was substantial.

The migration of Negroes in great numbers from the South to the northern cities began as this political system was starting to die, and though vestiges of it survive here and there to this day, American Negroes never really became beneficiaries of such a system, as the immigrants had. Politicians did not register Negroes as voters readily; and those Negroes who became active in politics or received some political recognition were with few exceptions accommodated to the white political establishment—"Uncle Toms" useful for ceremonial functions. That has remained true in the northern black ghettos until the present decade.

To some extent, the Negro churches that followed the migration from the South, or that were spawned inside the ghettos because white churches in the North did not welcome Negroes, substituted in providing services similar to those which the politicians had furnished immigrants; but this only emphasized the exclusion of Negroes from the rest of society. At the same time, in the aftermath of the depression the vast expansion of private and public welfare agencies and programs took place. If anything, this also became evidence of the resistance in the white establishment and white society generally to integration of Negro citizens in education, employment, housing, and politics. The social work bureaucracy became

perhaps a more benevolent paternalism than that represented by the old-line political machines; but it became a more blatant paternalism, too. It has been able to provide for the subsistence of the ghetto Negroes in rent subsidies and allotments for food and clothes and medical care, but it has offered no remedies to poverty. No doubt charity is to be preferred to starvation or unattended illness; but neither private nor public welfare in the last thirty years has created exits from the ghettos for urban Negroes in any significant numbers. Welfare has been addressed to meeting dire emergencies, to merely maintaining existence in a minimal way in the slums, but has opened few doors that lead out of the slums; it has not had the technical capability of furnishing the Negro poor with education and sophisticated occupational skills marketable in society outside the ghettos. Welfare has been a means, in other words, of underwriting and institutionalizing urban poverty associated specifically with *de facto* segregation in the North. And, because it has not had the element of reciprocity characteristic of the earlier political barter of services for votes, it has had the effect of retarding the assimilation of Negro citizens, of reinforcing their imprisonment in ghetto neighborhoods, and of inadvertently feeding prejudicial stereotypes, popular among citizens who are prosperous and white, that Negroes are indolent, generically inferior, or content to live in the slums with their own kind.

The war on poverty has the potential of changing all this if the congressional mandate for representation of the poor in antipoverty programs were to be followed. That could be a beginning to the far broader representation in politics and in the law which is essential to breaking the deadlock of poverty and race that has come to pass in the Negro migration to the northern cities. It could be the means of exposing a whole array of issues that have been pretty much ignored up to now but which are part of the everyday aggravations of ghetto existence. For example, the design and routing of public transportation in many cities fails to provide economical and convenient access for ghetto residents to other regions of the community, though that is indispensable to integration in education and employment and consumer activities. In some jurisdictions, notably New York City, rent control statutes which originated in the Second World War, and are supposedly safeguards for the poor, have become so archaic in the present circumstances that they actually have caused rents on slum dwellings to reach astronomical figures. If the poor were to emerge as a political voice in their own right, such laws might be reformed, and remedies might be found for the failure of urban renewal programs to hinder the spread of slums or the deepening congestion of ghetto areas, the absence of viable sanctions against landlords, and the inability or unwillingness of municipal authorities to enforce health, sanitation, fire and building codes. The stamping out of usury, the upgrading of schools and the integration of city schools by the abandonment of the fiction of "the neighborhood school," the increase of apprenticeship and other on-the-job training programs in business and industry, the opening of the

construction and building trades to Negro union membership, the provision for free higher education for qualified Negro students, the availability of credit for small business ventures, home mortgages, and consumer purchasing—all of these things become possibilities only if the ghetto poor are represented politically and in the making and administration of the law. The legislative authorization for participation of the poor in the design and execution of antipoverty programs—if implemented—could begin to move America toward the renovation of society sorely needed if the black ghettos are to be eliminated.

With few exceptions—Philadelphia appears to be one, San Francisco is at least struggling to become one—this mandate of the war on poverty is *not*, however, being implemented. This war has been a bonanza for the social work bureaucracy, of course, creating new jobs for these professionals and permitting an expansion of traditional welfare programs, but the promise of the war on poverty will be surely frustrated if it ends up as merely a further extension of the welfare concept. Even more ominous are the indications that the incumbent political authorities in the major cities have seized upon the war on poverty as a means to enhance and entrench their own power. In one midwestern city, in less than eighteen months, about 8,000 new patronage jobs have been manufactured by funnelling antipoverty funds through the local political machine. At least two high officials in the Washington administration of the war on poverty—Adam Yarmolinsky and William Haddad—have been required to resign because of pressures from congressmen and local politicians provoked by the efforts of these men to honor the mandate for representation of the poor. One of the pioneer antipoverty programs—Mobilization for Youth—has been emasculated by the elimination of its “community action programs,” which involved the participation of the poor, by a savage attack upon the agency by the then head of New York’s antipoverty program, Paul Screvane, who later in 1965 aspired to become mayor of the city.

It takes no genius to discern what the politicians fear. If the representation mandate were implemented with vigor, the poor would acquire experience in community affairs and there would likely emerge from that a political consciousness and political organizations not beholden to the incumbent officeholders and party leaders. If the poor were represented, they might become a new and coherent political force in the cities; and, out of the most elementary instincts of self-preservation, the last thing the incumbents wish to see is a new political alignment in their jurisdictions. There is a certain poetic irony in the recalcitrance of politicians toward the participation of the poor in antipoverty efforts: they are now visited with the consequences of their own indifference and neglect, and that of their predecessors, for the acceptance and assimilation of Negroes migrating from the South to the northern cities.

I am well aware that arguments can be mustered against the participation of the poor in the war on poverty. The antipoverty programs should be administered

by experts. Fine, but in many jurisdictions the bona fide experts have already been shunted to the sidelines—as Dr. Kenneth Clark, the distinguished Negro social psychologist, was by New York politicians in the HARYOU-ACT program. Moreover, just such experts—Saul Alinsky in the Woodlawn ghetto in Chicago is an example—originated and advocated the involvement of the poor. If the poor do have a voice, they may waste public monies. Perhaps, but that is already being accomplished wherever the effort is usurped as patronage. The poor have little or no experience in community organizations and projects. True, but how else shall the poor acquire experience? There is disorder and violence in the ghettos. Indeed there is; and one of the proximate causes of that unrest is the failure of this society to afford representation in politics and law for generations. If the poor are activated it might lead to radical social change. Precisely, it might even overthrow the ethic of white supremacy, a change long overdue in America.

If the poor were represented, there would be hope for the vindication of democracy in this country.

THE POOR AND THE LAW

The issues raised by the representation mandate in the war on poverty cannot be comprehended or evaluated apart from the context of the experiences of the people over the long period in which so many urban Negroes have been confined to the ghettos.

Their exposure to the law in these circumstances has hardly been one which would cultivate respect for law and order or be persuasive about the likelihood for them of equal protection under the law.

Now and then there is some notorious and specifically provocative case, as where an off-duty white police officer shot and killed a fifteen-year-old Negro school boy in the presence of scores of other school children in the prelude to the Harlem riots of 1964. It is too easy, however, to attribute the cynicism and animosity of the ghetto residents toward the law to such relatively occasional incidents. It is, rather, I suggest, the reality that each dramatic incident such as this summons to the recollection of virtually all ghetto folk their own grievances and complaints against the law. It is as if each caustic happening triggers the memory of a multitude of comparatively trivial cases. I have in mind the cases typical of my own practice: a tenant is unable to obtain heat or light or water from a slum landlord and finds that the courts assess, if anything, only nominal fines if the tenant prevails, while the condition continues uncorrected; a boy is stopped on the street and detained and searched without explanation by the police; a parent whose children are in constant peril from the rats which infest the tenement discovers that the building inspectors are being bribed to ignore the condition; an addict is repeatedly arrested under the presumption that he possesses drugs for illegal transfer, while the pusher from whom he gets his stuff operates openly and is never touched by the narcotics squad;

a marriage fails but the costs of obtaining a legal separation or divorce place such remedies out of reach; a family is capriciously evicted from public housing without explanation or hearing. Every famous case recalls all the numberless, anonymous, and apparently minor matters, through many generations, in which those who are poor and those who are black in the great cities have suffered indignity, discrimination, importunity, and persecution in one way or another under the auspices of the law. Thus the only image of the law which is credible to the ghetto poor is of the law as a symbol of their rejection by society.

Is there a breakdown of law and order in the inner city? Is there crime in the subways and violence in the streets? Are the police sometimes assaulted when they make arrests? Are there riots in Watts and Rochester and Cleveland and skirmishes in Springfield and Roxbury and Buffalo? Will the next season be long and hot and volatile and bloody? Answer all such questions in the affirmative—but then ask *why*?

The answer to *that* is that the accumulation of grievances against the law, and against how the law has been made and administered and enforced for so long, has become more than can any longer be humanly endured. Besides, what is to be lost? The worst that can happen is that one would be killed—and one who is a ghetto person in America is already as good as dead.

That is the mood that is now overtaking both the civil rights movement and the war on poverty. And if this sounds bitter or extreme to those outside the ghetto regions, let me assure them that it is mild and understated in the hearing of the ghetto captives. The truth is that the internal state of the ghettos is fundamentally chaotic and imminently threatens to descend into anarchy.

As such a fatal unrest festers in the hearts of ghetto citizens, so far as I can discern, the intransigence of established society outside hardens, and the public authorities seem beset with what can only be described as incipient hysteria. The politicians and law enforcers have become so accustomed to inertia toward the situation in the ghettos that on the day—today—when the issues of the ghettos can no longer be ignored or rationalized, their instinct is to stomp out any trouble by naked violence.

That was the case in the 1964 Harlem riots. The authorization was issued, when the early incidents happened, for the police to fire their weapons to disperse those congregating on the streets. The initial resort was the most extreme that could be undertaken. Not fire hoses, not mounted police, not tear gas, but, first of all, guns to subdue the rioters. That came as no surprise to anybody in Harlem. After all, there, as in all black ghettos of the North, the police have long since functioned basically as an occupation army. It is not just that a place like Harlem is heavily policed, though it is; it is more that every corner is guarded, that every movement is under surveillance, that a stranger entering the ghetto is emphatically advised to turn back, that those indigenous to the neighborhood are often detained and

interrogated about their business—it is that sort of thing, which has been going on for a long time now, which makes Harlem, and its counterparts in other cities, occupied territory.

I am not alleging, notice, that all policemen are racists, or brutal, or either like or approve what they are ordered to do. I have observed some policemen in Harlem who would no doubt have achieved great distinction in the S.S. Corps; but I am not persuaded that they are typical. I have also known some officers who were knowledgeable and sensitive, though I am not convinced they are typical either. I am saying that most policemen are workingmen, who want to keep their jobs and perhaps win promotions and who obey their orders—and that the mentality which governs the assignment and conduct of the police in the ghettos is one which manifestly regards the crises of race and poverty as essentially military problems. Hence the determining operational factors are to confine the residents of the ghetto and keep them quiet, to prevent them from leaving the area unless they are going to work, to break up and disperse them if many gather in the same locality, to keep everybody moving, to be sure all are aware of the police presence on the scene by conspicuous deployment of patrols and paddy wagons, and, if, after such “preventive” measures fail (as I believe they inevitably will), riot erupts, at all costs to localize the violence inside the ghetto so as to most efficiently suppress it.

The crises in poverty and race in the urban ghettos will never be resolved by ever more anxious resort to force and ever greater escalations of police power. Did Watts, with its appalling fatalities, or the other sixteen riots of 1964 and 1965 teach the nation nothing? Shall the militia be summoned for permanent duty in the ghettos? That is what is coming; that is what is morally certain unless the legitimate discontent of the ghetto people is answered in fundamental redress, rather than futile reliance upon the superiority in firepower of the police against rioters.

If that comes, the fundamental structure of this society as a democracy will be subverted.

I do not imply, by calling attention to the change in the function of the police to a military role in the ghettos, that the police are worthy of all the blame for the present hostility between the law and ghetto poor. It is, rather, that the prolonged failure to provide representation in the law for the rights, complaints, and causes of these poor is now brought to focus in this way. After all, legal education, while insistent that law students cram accounting, has not been zealous in its concern for either social justice in the law or social conscience in the profession at the level of the ordinary issues of ghetto existence. And right now, as some ideas are circulated and some effort launched to provide representation for the indigent in the neighborhoods where they live, strenuous opposition from within the bar seeks to block these ventures. In New Haven a whole year was lost before a neighborhood legal program could really begin to function because of such opposition among local attorneys. In one Ohio city, it took a major riot to convince leaders of the profession

and of the law school that representation of the poor before the law, specifically in those redundant and apparently trivial matters which heretofore have usually been unrepresented in any way, was an urgent responsibility of lawyers.

The default of the legal profession, of legal education, and of those charged with the enforcement and administration of the law with respect to the ghetto poor jeopardizes the whole of society, not only the poor. If equality before the law is not functional—that is, readily accessible and viable in remedies for a ghetto citizen's complaint or assertion of right—then it is a fiction, even for those who are represented before the law as a matter of privilege or purchase.

CONCLUSION

So I conclude where I began: The representation of the poor in politics and in the law measures the maturity and health of society. By that assessment, contemporary America is profoundly decadent; but at least the juncture of poverty and race in the urban ghettos has exposed the issue. Whether the nation has the moral stamina to act for its own survival as a democracy is a matter still pathetically in doubt.