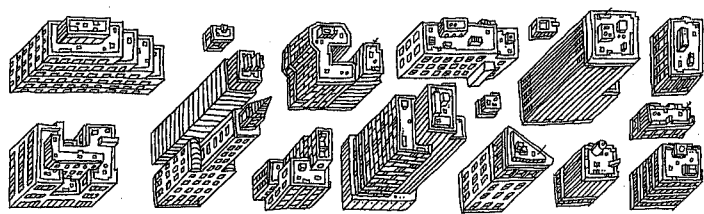


# THE CRITICS



A CRITIC AT LARGE

## THE COLOR OF LAW

*Voting rights and the Southern way of life.*

BY LOUIS MENAND

On February 18, 1965, a civil-rights worker named James Orange was arrested in Marion, Alabama, on charges of disorderly conduct and contributing to the delinquency of minors, and was thrown into the local jail. Orange had organized a march by young people ("minors") in support of a voter-registration drive being run by several groups, including the one he worked for, the Southern Christian Leadership Conference, whose president was Martin Luther King, Jr.

That night, four hundred people gathered in Zion's Chapel Methodist Church, in Marion, and prepared to walk to the jail, about a block away, and sing freedom songs. They left the church at nine-thirty and ran into a police blockade. Ordered to disperse, they were attacked by fifty or more state troopers and other law-enforcement officials wielding clubs. Street lights had been turned off or shot out; white vigilantes were on the scene; reporters were attacked and cameras were smashed. No photographic record of the night survives.

As Gary May tells the story, in "Bending Toward Justice" (Basic), people still in the church, hearing the screams outside, ran out the back, chased by the troopers. One of those who fled, Cager Lee, was struck on the head, fell to the ground, and was kicked. Lee was eighty-two; he was five feet tall and weighed a hundred and twenty pounds. But he escaped, and ran into a café, where he saw his daughter Viola and two grandchildren, Emma Jean and Jimmie Lee Jackson. When troopers stormed the café and began

beating people, Jackson tried to protect his mother. He was shoved up against a cigarette machine and shot twice in the stomach by a trooper named James Fowler. Jackson managed to get out of the café but was beaten over the head until he collapsed on the street. He lay there, bleeding, for thirty minutes. Eventually, after a nearby hospital was unable to treat him, he was driven by a black undertaker, in a hearse, to a hospital in Selma, thirty miles away.

Jackson was twenty-six years old, and an Army veteran. He had tried five times to register to vote, without success. While he was in the hospital, Colonel Al Lingo, the director of public safety for the state of Alabama, placed him under arrest for assault and battery with intent to murder a peace officer. But on February 26th, eight days after the shooting, Jackson died. The Voting Rights Act of 1965, generally regarded as the greatest legislative achievement of the so-called "classical phase" of the civil-rights movement—the phase that began in 1954 with the Supreme Court decision in *Brown v. Board of Education*—had three martyrs. Jimmie Lee Jackson was the first.

This is the act a key provision of which was struck down last week by the Supreme Court, in the case of *Shelby v. Holder*. (Other important provisions remain in effect.) The act is celebrated because it was enormously effective in giving African-Americans the vote—far more effective than *Brown* was in integrating schools—and because it gave African-Americans something desegregation

alone could not give them: political power. After *Shelby*, Congress can rewrite the law, but a Congress that cannot pass a farm bill is unlikely to craft new legislation protecting minority voting rights. The moral and political will that characterized the era for which the act has stood as a prime symbol may have run its course.

At the time of *Brown*, securing the right of African-Americans to register to vote looked to be the most attainable goal in the campaign to overthrow Jim Crow. Both the Eisenhower and the Kennedy Administrations, wary of intervention in what they preferred to characterize as a local matter, believed that voting fell within the purview of the federal government. The Fifteenth Amendment, ratified in 1870, is explicit: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Even the relatively toothless Civil Rights Act of 1957, the first civil-rights legislation to make it through Congress since Reconstruction, gave the Justice Department authority to pursue litigation against local registrars who discriminated on the basis of race.

Something else about voting made it distinctive in the strange regime of Jim Crow: it does not necessitate interracial contact. Unlike going to school, riding a bus, sitting at a lunch counter, or playing checkers (a pastime once segregated by law in the city of Birmingham), casting a ballot is not a social activity. The argument often given in defense of segregation, which was that the races prefer it that way, does not work very well with voting. After all, one means of proving that the races prefer to be separate would have been to test the proposition in the voting booth.

Convicting Southern registrars of racial discrimination was not easy, though. One reason, as Taylor Branch explains in "Parting the Waters" (1988), the first volume of his stupendous history of the King years, was Screws. Claude Screws was a Georgia sheriff who, in 1943, arrested an African-American named Robert Hall and, with two other white men, drove him to a courthouse and beat him to death in public view. The State of Georgia declined to prosecute, but the Justice Department secured a conviction under a



*King and other civil-rights leaders enter Montgomery, on a 1965 march inspired by James Bevel (left, in skullcap).*

PHOTOGRAPH BY MATT HERRON

THE NEW YORKER, JULY 8 & 15, 2013

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"Where's that damn 'escape' key?"

Reconstruction-era statute that made it a federal crime willfully to deprive someone of his civil rights under color of law.

Screws argued that his actions were not covered by the statute, because he had not killed Hall under color of law. He had killed Hall in violation of the law. It was Georgia's business, not the federal government's, to prosecute him for it. The Supreme Court rejected this argument, but it reversed Screws's conviction on a theory of its own. In an opinion by Justice William O. Douglas, the Court ruled that it was not enough to show that a white sheriff had brutally murdered a handcuffed black man. The government had to prove that he did so with the willful intention of depriving the prisoner of his rights. The case was remanded, and Screws was duly retried and acquitted.

*Screws v. United States* was a jurisprudential tease. It said that discriminatory acts were covered by federal statute but that the government had to show intent, a state of mind notoriously difficult to prove. The shooting of Jimmie Lee Jackson was perfectly analogous. If Fowler killed Jackson with the intention of depriving him of a constitutional right (the right to a fair trial) but claimed to have done so in the line of duty, then the act fell under the federal statute. But, to obtain a conviction, the government would have to establish what was in Fowler's mind when he pulled the trigger.

In cases of voting, Southern states made things even more difficult by having registrars in suspect counties resign, so that, when the Justice Department

came calling, there were no officials around to charge. Also, in some Southern counties, almost no African-Americans in the twentieth century had ever even attempted to register, so there were few cases to litigate. One goal of voter-registration drives was to build up the inventory of litigable cases.

The primary goal, though, was to provoke official reaction sufficiently violent to compel the White House to produce a voting-rights bill with enforcement bite. The provocation part proved amazingly easy. All that the protesters had to do was to walk to the courthouse and ask to register. There was nothing covert about the strategy—"We are going to bring a voting bill into being in the streets of Selma," King proclaimed from the pulpit of Selma's Brown Chapel—yet Southern police, troopers, sheriffs, and deputies clubbed, sicced police dogs on, blasted fire hoses at, teargassed, and shocked with cattle prods nonviolent demonstrators, many of them clergymen and children, with an indifference to national and international opinion that was almost blithe. Their tactics were encouraged, defended, and sometimes ordered by Southern city halls and statehouses.

But in Birmingham, when the Commissioner of Public Safety, Eugene (Bull) Connor, brought out the police dogs and fire hoses, and in Selma, when Sheriff Jim Clark socked a black minister, C. T. Vivian, in the face, reporters and cameramen were right there. Many white Americans who saw or read about the violence

blamed the demonstrators, but the world blamed the American government. That got the attention of the White House.

Southern mayors and governors were playing to their electoral bases. But American Presidents were trying to run a Cold War. They could live with Jim Crow when it was an invisible regional peculiarity, but once conditions were broadcast around the world they experienced an urgent need to make the problem go away.

The pressure of world opinion was crucial to the speed with which civil-rights gains were made after 1954. It forced American Presidents to do something Presidents rarely do, which was to get out ahead of domestic opinion on the subject of race. When a bus carrying Freedom Riders was firebombed outside Anniston, Alabama, on Mother's Day, 1961, and a photograph appeared the next day on the front page of the *New York Times*, John F. Kennedy was horrified. He had never heard of the Freedom Riders and had no idea what they were doing in Alabama. (They were testing the integration of interstate bus terminals pursuant to a recent Supreme Court decision. They were obliged to conclude that the decision had had little impact.)

Kennedy called the one person in the White House with a civil-rights brief, Harris Wofford. "Can't you get your god-damned friends off those buses?" he said. "Stop them." Sixty-three per cent of the American public disapproved of the Freedom Riders, but American public opinion was not Kennedy's concern. His first summit meeting with Nikita Khrushchev was scheduled to take place in Vienna in three weeks, and he could see Khrushchev waving the *Times* in his face.

As Mary Dudziak explains in her important book "Cold War Civil Rights" (2000), the trick was to turn a failure of government into something that looked like a triumph of government. Civil rights had to become a story about how American democracy confronted an injustice and eradicated it. The nation that had liberated Europe from racist domination had gone to the rescue of another captive people. It was important to do this heroically, not apologetically. No elected official relishes having to deal with a charismatic popular leader; the usual forms of leverage are not effective. Kennedy and Lyndon Johnson did not especially like dealing with King. But they needed him,



because they needed a hero whose vision the democratic system could realize. The triumphalist narrative demanded it.

King understood this perfectly. He was not political in the small-“p” sense, but he had remarkable political instincts. He could read a room. He was a preacher, after all. He spent his entire life sensing exactly which words would move a congregation. He spoke a language that Kennedy and Johnson could associate themselves with. One of the key differences between King and the older generation of civil-rights leaders—A. Philip Randolph, of the Leadership Conference on Civil Rights; James Farmer, of the Congress of Racial Equality; Roy Wilkins and Thurgood Marshall, of the N.A.A.C.P.—is that King rarely talked about equality. The word occurs only once in the “I Have a Dream” speech. King believed in equality as much as anyone, but in his speeches and sermons he talked about freedom. His rhetoric was an amalgam of the Book of Exodus and “The Battle Hymn of the Republic”—the leading of the Israelites out of bondage and the emancipation of the slaves. Liberation analogies worked in a Cold War context. The Mason-Dixon Line could be figured as a North American Iron Curtain.

After the violence in Birmingham, in the spring of 1963, followed, in June, by Governor George Wallace’s symbolic “stand in the schoolhouse door,” in Tuscaloosa, protesting the admission of Vivian Malone and James Hood to the University of Alabama, Kennedy finally took the moral high ground and gave a nationally televised speech on civil rights. A week later, he delivered a civil-rights bill to Congress, and in August he welcomed to the White House the leaders of the March on Washington, organized by Randolph, King, Wilkins, and Bayard Rustin (among others) to demonstrate for the Administration’s bill. The march was covered live by all three networks and broadcast abroad via the new communications satellite, Telstar.

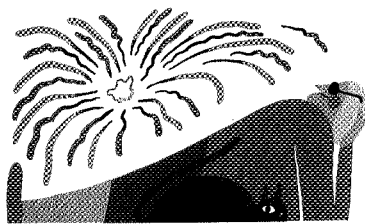
Less than three months later, Kennedy was dead. Lyndon Johnson was known to civil-rights leaders as the man who, when he was Senate Majority Leader, had carefully emasculated Eisenhower’s Civil Rights Bill in order to secure enough Southern votes for passage. But, as President, Johnson unexpectedly

assumed the mantle of a crusader for racial justice, and he pushed the 1964 Civil Rights Bill through the longest filibuster in Senate history.

The act was signed on July 2nd. It addressed segregation in public accommodations, public places, and schools. Fulfilling a long-standing hope of Randolph and Rustin—the subject of William Jones’s “The March on Washington” (Norton)—it banned discrimination in employment and established the Equal Employment Opportunity Commission (whose chairman would one day be Clarence Thomas, a Reagan appointee). But its voting-rights provisions did not address the use of voter-qualification tests to disenfranchise registrants on the basis of race.

Johnson recognized the need for additional voting-rights legislation, and he directed Nicholas Katzenbach, soon to be his attorney general, to draft it. “I want you to write me the goddamnest toughest voting rights act that you can devise,” is the way he put it. But then progress slowed. Johnson had the most ambitious legislative agenda of any President since F.D.R. (his idol), and he explained to King that he was worried that Southern opposition to more civil-rights legislation would drain support from the War on Poverty and hold up bills on Medicare, immigration reform, and aid to education. He asked King to wait.

King thought that if you waited for the right time for direct action (as nonviolent protests were called) you would never act. So on January 2, 1965, he went



to Selma, where efforts by local activists and members of the Student Non-Violent Coordinating Committee to register African-Americans had been under way, with little success, for several years. Eight weeks later, Jimmie Lee Jackson was killed.

Integrating voting rolls was a very different kind of problem from integrating buses and lunch counters. In many Southern cities, a large percentage of the population was African-American; in

some, African-Americans were in the majority. They had economic power, which direct-action protests like boycotts and sit-ins tapped. When buses were boycotted in Montgomery, in 1955 and 1956, the company complained that it was losing twenty-two cents for every mile each of its buses travelled. To help it avoid bankruptcy, the city commission granted an emergency fare increase, raising the fare by fifty per cent for the whites still riding the buses. In Nashville, African-American shoppers spent fifty million dollars a year, ten million of it in the downtown stores targeted by picketers and boycotters in 1960. Those stores soon desegregated.

Segregation made little sense from a business point of view. Integration of hotels, restaurants, movie theatres, lunch counters, and department stores was therefore relatively (though by no means entirely) frictionless after the passage of the Civil Rights Act of 1964. But voting was not an economic issue or even a social issue. It was a political issue. The reason Southern officials resisted voter-registration drives with such viciousness was that the region’s whole political system was predicated on the restriction of the franchise.

Before African-Americans were disenfranchised, they were enfranchised by the Fifteenth Amendment. The era of Jim Crow began, around 1890, with states erecting obstacles to voting, such as poll taxes and literacy tests, with loopholes exempting many whites. In 1896, in *Plessy v. Ferguson*, the Supreme Court ruled that segregation was constitutional; in 1898, in *Mississippi v. Williams*, and, in 1903, in *Giles v. Harris*, it upheld voting laws that operated to disenfranchise African-Americans. Those were the judicial pillars of legal segregation. Their effect was immediate. In 1896, there were 130,334 African-Americans registered to vote in Louisiana. In 1904, there were 1,342. Estimated black turnout in Virginia and South Carolina in the 1904 Presidential election was zero.

The greatest voter suppression was often in areas where blacks were in the majority. Selma was more than fifty per cent black; in 1965, only 383 of the fifteen thousand African-Americans living there were registered to vote. Marion (where Coretta Scott King went to school) had

no black voters. In nearby Lowndes County, where almost half of the lynchings in Alabama between 1880 and 1930 took place, and where stores refused to sell Marlboro cigarettes because of rumors that the company had donated to the N.A.A.C.P., four out of five residents were black. None could vote. Mississippi was almost fifty per cent black; 6.4 per cent of eligible African-Americans there could vote.

One consequence was the near-ubiquity of all-white juries—since jurors were typically drawn from the pool of registered voters. The Southern judicial system, as Claude Screws appreciated, was turned into a rubber stamp of approval for police and vigilante actions against African-Americans. The system also produced some astonishing verdicts. In 1958, a black handyman named James Wilson was convicted of stealing a dollar ninety-five in change from the white woman he worked for in Marion, and was sentenced to death. The Alabama Supreme Court upheld the sentence, but the international outcry was so intense that the governor, James (Big Jim) Folsom, commuted it.

The South became a one-party bloc, standing for one principle above all, expressed by the logo of the Alabama Democratic Party: a white rooster with a banner above it reading “White Supremacy.” It was as though the purpose of holding elected office was to perpetuate the system that made one’s election possible. Voting rights went to the very heart of the Southern “way of life.”

Officials were therefore ingenious in coming up with ways to thwart registration efforts. In response to an S.C.L.C. registration drive in Louisiana, the state reviewed voter rolls and found cause to remove ten thousand African-Americans. Mississippi cut off the distribution of federal food surpluses to two counties in the Delta: Sunflower, where 161 of 13,524 African-Americans were registered to vote, and LeFlore, where fourteen-year-old Emmett Till had been lynched, in 1955. In LeFlore alone, twenty-two thousand people lost their relief. In Alabama, Circuit Court Judge James Hare enjoined virtually every civil-rights leader from gathering in groups of more than three.

And there were methods of discouragement that did not bother with the color of law—that is to say, terror. In

1963, Hartman Turnbow became the first African-American of the century to try to register to vote in Holmes County, Mississippi. A month later, his farmhouse was firebombed. Turnbow engaged in a gunfight with men surrounding the house and drove them off. When the sheriff arrived, he arrested Turnbow and charged him with bombing his own house.

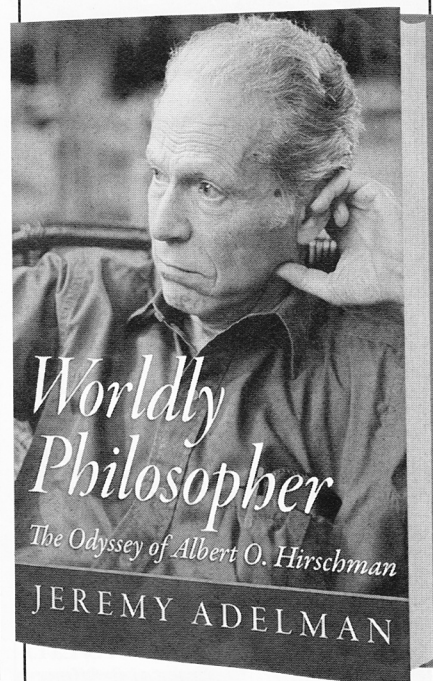
The nadir was the reaction to the Mississippi Summer Project, in 1964. Thirty-five churches were burned and thirty buildings were bombed that summer in Mississippi. Eighty people were beaten, and there were at least six murders, most notoriously the lynching, by a group that included members of the Neshoba County sheriff’s office, of the civil-rights workers James Chaney, Andrew Goodman, and Michael Schwerner. Civil-rights leaders in Selma, eight months later, had little reason to expect a com-  
plaisant response to their demands. But, if Jackson’s shooting was intended to send a message to the protesters, they rewrote the message.

The man who made Jackson into a martyr was James Bevel, a twenty-eight-year-old member of the S.C.L.C. He had come out of the Nashville sit-in movement, and had committed himself to voter registration after four little girls died in the Sixteenth Street Baptist Church bombing, in Birmingham, in 1963. The afternoon Jackson died, Bevel went to see Cager Lee and Jackson’s mother and sister. They were still bandaged up. Bevel asked them what should be done. They told him the marches should continue. Bevel knew poverty—he was from the tiny town of Itta Bena, Mississippi—and he knew racial violence, recently in Birmingham, where he had organized marches that led to children being shocked with cattle prods. But after he left their house he wept.

That night, addressing a mass meeting in Brown Chapel, Bevel told the story of Esther. As Mordecai had instructed Esther to go see the king on behalf of her people, he said, they should march from Selma to Montgomery, the state capital, to see “the king”—George Wallace. Montgomery was fifty-four miles from Selma, and walking there meant crossing Lowndes County. But Bevel’s audience embraced the idea. A week later, King spoke at Jackson’s funeral, where more than a thousand people walked three miles

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—Malcolm Gladwell, *New Yorker*



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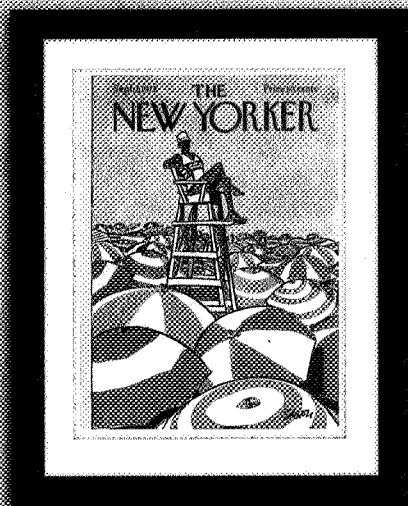
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in the rain to the black cemetery. "Jimmie Lee Jackson is speaking to us from the casket, and he is saying to us that we must substitute courage for caution," King said. He endorsed the call for a march.

There were, in the end, three marches from Selma. Each was momentous. King was not present at the first, which took place on March 7, 1965—"Bloody Sunday." Some six hundred marchers, led by John Lewis, of SNCC, and Hosea Williams, of the S.C.L.C., set off from Brown Chapel and crossed the Edmund Pettus Bridge (Pettus was a Confederate general, later a Grand Dragon of the Alabama Ku Klux Klan), over the Alabama River. At the far end, they found arrayed before them more than a hundred and fifty armed men: state troopers, under Lingo's command, and Sheriff Clark's posse, some on horseback. Wallace had ordered Lingo to take "whatever steps necessary" to stop the march. The troopers wore gas masks and carried nightsticks; Clark's men were armed with clubs, whips, and cattle prods. One carried a rubber hose wrapped in barbed wire. A number of white Alabamans had come out to watch the sport.

So had the press. It's all on film. The marchers halt fifty feet from the line of troopers. They are told that they have two minutes to turn around and go back to their homes and churches, but, well before two minutes have passed, the troopers charge into the line, beating everyone in sight. They are followed by Clark's men on horseback, then by the tear gas.

Forty tear-gas cannisters were fired that day. The marchers were chased for a mile back to Selma. Troopers fired tear gas into the Carver housing project; posse men rode their horses up the steps of Brown Chapel. That evening, forty-eight million television viewers watching "Judgment at Nuremberg" on ABC had the movie interrupted for a fifteen-minute film of the attack. There was no voice-over. The only sounds were the thuds of clubs, reports of tear-gas cannisters being fired, the rebel yells of Clark's posse, and the constant, hysterical screams of the victims.

At least ninety marchers were wounded, and Lewis had a fractured skull, but the effect was achieved. The film left no room for hairsplitting about provocation. Unarmed men and women

on a highway were set upon by uniformed men wearing gas masks and riding horses. The Pettus Bridge was a turning point in American race relations and American history. Branch calls it "the last great thrust of a movement built on patriotic idealism." Many years later, Lewis said that Barack Obama "was what comes at the end of that bridge."

King returned to Selma and vowed that the march would continue. Calls were put out to churches nationwide, and clergy of virtually every denomination arrived. Nearly a thousand people were prepared to cross the Pettus Bridge and march to Montgomery. Then, unexpectedly, a federal district judge, Frank Johnson, issued an injunction postponing the march until further notice.

The injunction put King in a bind. He had never violated the order of a federal judge. The federal judiciary was the movement's friend. That had always been the position of the N.A.A.C.P., which deplored direct action, and which had been pursuing desegregation by litigation for fifty years. Judge Johnson himself was a friend of the movement. George Wallace had called him "a low-down, carpet-baggin', scalawaggin', race-mixin' liar"—a pretty solid recommendation. In 1956, he was a member of a three-judge panel that ruled bus-segregation laws unconstitutional—the ruling that vindicated the Montgomery bus boycott. This time, King felt obliged to wait.

But the students in SNCC saw no difference between an unjust state court and an unjust federal order. The whole philosophy of direct action was, as King himself put it, "the right to protest for right." SNCC had opposed even the first march (Lewis marched in defiance of his own organization), which it regarded as purely symbolic. Its members also resented King, whom they referred to privately as De Lawd. They felt that they had done the hard work, and then King had shown up and got all the attention. And they didn't believe in leaders.

Negotiations, complicated by the requirement of state officials that they not have to deal personally with African-Americans, led to a compromise. The result was the second march, on March 9th. King led the protesters across the bridge. Again the troopers were assembled, and again the marchers were ordered to



disperse. But suddenly the troopers stepped aside, inviting King to defy the judge's order. King and Ralph Abernathy knelt and prayed. Then they turned the line around and marched back into Selma. The retreat made permanent the rift between SNCC and the S.C.L.C.

That night, three white clergymen went out to dinner in Selma. After they left the restaurant, they were attacked, and one of them, James Reeb, a Unitarian minister from Boston, was clubbed on the head. Police managed to delay his transportation to a hospital, and two days later he died. He was thirty-eight years old, and the father of four.

On March 15th, Judge Johnson was shown footage of the first march. Plainly disgusted, he later ruled in King's favor and allowed a march to Montgomery. That evening, President Johnson addressed a joint session of Congress and, on national television, called for a voting-rights act. The speech was interrupted thirty-six times by applause. It was the greatest of Johnson's Presidency. "Their cause must be our cause too," Johnson said. "Because it's not just Negroes, but really it's all of us, who must overcome the crippling legacy of bigotry and injustice. And we *shall* overcome." It was the movement's own slogan. A tear is said to have rolled down King's cheek when he heard it. For Southerners, it told them the game was over. It was, as the mayor of Selma, Joseph Smitherman, put it, "a dagger in your heart."

On March 21st, thirty-six hundred marchers, protected by Alabama National Guardsmen, set out from Selma for Montgomery. Four days later, King addressed twenty-five thousand people from the steps of the Capitol, where, in 1861, Jefferson Davis had been sworn in as President of the Confederate States of America. King delivered one of his most exhilarating speeches, the speech that works off the refrain "How long? *Not* long." At the end, he recited the first and fourth verses of "The Battle Hymn of the Republic."

That day, Johnson sent a voting-rights bill to Congress. And that night a thirty-nine-year-old woman from Detroit, a mother of five named Viola Liuzzo, driving marchers home, was shot and killed by Klansmen on Route 80, near Montgomery. Two Northern whites had now been murdered. Few Southern-

ers in Congress saw good reason to throw themselves in front of the train. There was some stalling in committees chaired by segregationists, but the Voting Rights Act passed the Senate by 79 to 18 and the House by 328 to 74. It was signed into law by Johnson on August 6, 1965. On August 20th, Cager Lee, whose father had been sold in a slave market, registered to vote.

Between 1965 and 1968, seven hundred and forty thousand new African-American voters were registered in the Deep South. The central pillar of Jim Crow was destroyed, and with it the regime of legal segregation that had prevailed for seventy years. The act gave the executive branch direct enforcement authority over voting rights. It suspended for five years, in covered states, the use of all devices, such as literacy tests, employed to restrict access to the voting booth. And federal examiners could go into Southern counties to register voters. Initially, six states were covered, along with counties in several more.

The act's effectiveness was due in part to its elimination of the Screws problem. It replaced intent with effect. If the effect of a change in voting requirements was to diminish the voting power of minorities, it didn't matter what anyone deliberately intended. The coverage formula said nothing about race, and therefore produced some anomalies: Alaska was covered, for example, although low turnout there is a function of the weather, not discrimination. But it restored the franchise to African-Americans in the South.

It was also the end of the classical phase of the civil-rights movement. (The first person to use that term to describe the decade after Brown was Bayard Rustin.) Historiography of the movement is characterized by a division of emphasis between the classical phase, also called the Second Reconstruction, and the "long" civil-rights movement, dating from the turn of the nineteenth century (and before), and including events in the North.

Of the books published in anticipation of the fiftieth anniversary of the March on Washington, two are especially useful on the politics of the movement. May's "Bending Toward Justice" is a book of the classical phase, a lively and unabashedly partisan account of Selma and the Voting

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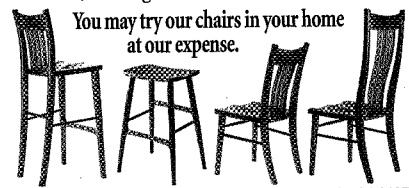


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Rights Act. (The title is from a saying of the abolitionist Theodore Parker that King quoted on the steps of the Alabama statehouse: "The arc of the moral universe is long, but it bends toward justice.") Some of this material is covered in earlier books like Branch's trilogy and David Garrow's "Bearing the Cross" (1986), both staggering achievements of research and reporting. But May tells the story his own way, and he is able to add many details, particularly to the Jackson shooting, for which he acknowledges the help of John Fleming, a reporter for the *Annis-ton Star* who is part of the Civil Rights Cold Cases Project team. Among the parallels between Nazism and Southern racism was the difficulty of bringing to justice the perpetrators of racial violence, most of whom did little to hide their identities. In 2004, Fleming got James Fowler to admit to shooting Jackson. In 2010, he was convicted of second-degree murder and sentenced to six months.

Jones's "The March on Washington" is distinctly a work of the second-emphasis school. It provides an alternative to the standard account by stressing the part played in the movement by unions and women's groups. (Though many heroes of civil-rights activism, from Pauli Murray and Diane Nash to Rosa Parks and Fannie Lou Hamer, were women, not a single woman was included in the three-hour official program at the Lincoln Memorial on August 28, 1963.) Jones insists that the march was about more than King's famous speech—so much so that he gives the speech less than two pages. This may be a case of overcorrecting. King understood that, without economic opportunity, racial equality didn't mean much. After 1965, he devoted his life to the cause of economic justice.

The idea of marching on Washington dates from 1941, when Randolph planned a march to force Franklin Roosevelt to ban discrimination in employment by defense contractors and in the armed forces. Randolph cancelled the march when Roosevelt created the Fair Employment Practices Commission. But after the war Congress eliminated the commission. As Jones explains, Randolph saw the 1963 march as a resurrection of his old crusade. He agreed to incorporate King's agenda in order to maximize participation—which is why, in photographs of the march, you see

placards reading "March on Washington for Jobs and Freedom." The jobs part was Randolph's.

It was a source of deep annoyance in the N.A.A.C.P. that King got the media attention while the organization filed the lawsuits and paid the bills. During a meeting in 1963, Wilkins turned to King and said, "Martin, if you have desegregated anything by your efforts, kindly enlighten me." King took the point. "I guess about the only thing I've desegregated so far is a few human hearts," he said.

But the direct-action movement was not about interpreting the Fourteenth Amendment. It was about the sights and sounds, the singing and preaching of a people who were, as King liked to say, "on the move." The fourteen-part documentary "Eyes on the Prize," narrated by Julian Bond and shown on PBS in 1987 and 1990, is a terrific resource for those sights and sounds, as well as for its interviews with participants. The first six parts, covering the classical phase, are now finally available on DVD.

The best record, though, is the three-hour "King: A Filmed Record . . . Montgomery to Memphis," a brilliant piece of documentary filmmaking created by Ely Landau and shown for only one night, in 1970. It was released this January on DVD, by Kino. There is no narration. Besides the canonical events, there is footage of King in less formal mode—grinning as Mahalia Jackson sings "Joshua Fought the Battle of Jericho" in a Chicago church, and reminiscing about the times he was most afraid.

Why did the classical phase come to an end? That is easy to answer: the fissuring of the movement over the issue of nonviolence; the challenge of addressing discrimination in places, like Chicago, that did not have Jim Crow laws, and, generally, of changing the focus from race to class; above all, Vietnam. "The war came to define America's image abroad," as Dudziak writes. "All other issues paled in significance." King's opposition to the war cost him access to the White House. And the replacement of intent with effect as the standard for determining discrimination—effect is the standard that affirmative-action programs use—contributed to a white backlash. In 1964, sixty per cent of blacks and thirty-nine per cent of whites agreed that

there had been a "real change" in the position of African-Americans. In 1976, sixty-three per cent of whites agreed with that statement, but only thirty-two per cent of blacks.

A harder question is why the classical phase lasted as long as it did. The answer surely has something to do with the personality of King and the nature of his leadership. As a student at Crozer Theological Seminary and Boston University, King had taken an interest in the Social Gospel movement and in Gandhi's campaign for Indian independence. But he does not seem to have imagined himself leading a crusade for social justice. Branch suggests that he originally expected to preach, then take an academic position.

When he was approached, in 1955, to speak at the first mass meeting of the Montgomery bus boycotters, King was twenty-six years old. He declined. He changed his mind when he was assured that he would not have to take a leadership position. King had less than half an hour to prepare that speech, which he delivered in the Holt Street Baptist Church to an overflow crowd of more than five thousand. It's a powerful oration—"If we are wrong," he said, "God Almighty is wrong!"—and he must have sensed, from the frenzied response, that this was work he was intended to do. And it's all he did. He never thought of running for office. Despite being tempted, cajoled, and baited, he never abandoned his commitment to nonviolence.

The activists in SNCC were not the only ones who thought King was an opportunist. So did Marshall, the man who argued Brown before the Supreme Court. So did J. Edgar Hoover, who tried to convince Kennedy that King was a dupe of the Communists, and who suspended the F.B.I.'s practice of warning political figures of death threats in King's case.

So, for a time, did Roger Wilkins, an assistant attorney general in Johnson's Justice Department. Then, in 1966, Wilkins went to see King in Chicago, where, in the face of neo-Nazi violence, King was trying to get the city to address the problems of inner-city poverty. King had rented a walkup in a slum neighborhood. When Wilkins and another Justice Department lawyer got up the stairs, they found King in a small, airless room in a railroad apartment, talking to forty or fifty gang kids. He was holding a seminar



on nonviolence. "For hours this went on," Wilkins later told one of L.B.J.'s biographers. "There were no photographers there, no newsmen. There was no glory in it. He also kept two assistant attorney generals of the United States waiting for hours while he did this." It was four o'clock in the morning when King finished. He woke Coretta and she made coffee. "We sat and we talked," Wilkins said. "He was a great man, a great man."

King believed that defending the voting rights of minorities was the responsibility of the executive branch. For years, while civil-rights workers were being beaten, jailed, and murdered across the South, King begged the White House to send federal authorities to protect voter-registration drives. Presidents and attorneys general always found reasons to refuse. Finally, with the Voting Rights Act of 1965, Congress gave the executive branch the tools and the authority to enforce the law.

With the decision in *Shelby v. Holder*, the Supreme Court has taken much of that authority away. Claims of Fifteenth Amendment violations must again be pursued through the courts, a lengthy and expensive process that shifts the burden of proof to the plaintiffs. As Richard Pildes, a voting-rights expert at the N.Y.U. School of Law, and others have argued, some of the blame for the decision should go to Congress. In 2009, the Court sent Congress a signal, in a case called *Northwest Austin Municipal Utility District v. Holder*, that it needed to revisit the act's definition of which areas were covered by the requirement that they clear changes in voting regulations with the Justice Department. That provision had not been revised since the mid-nineteen-seventies. But it has been politically expedient for Congress to renew the act, rather than add places where discrimination is a problem today.

"Our country has changed," Chief Justice John G. Roberts, Jr., said, a sentiment echoed by Justice Thomas. They could not mean that race is no longer an issue. The *Times* reported that one place eagerly awaiting the Court's ruling was Beaumont, Texas, where the Justice Department has blocked several attempts by a group of white citizens to change voting regulations for the explicit purpose of unseating a black-majority school board. What's so changed about that? ♦

## BRIEFLY NOTED

*The Undivided Past*, by David Cannadine (Knopf). In this impassioned and erudite critique of historical thinking, Cannadine addresses the impulse to "sunder all the peoples of the world into belligerent collectivities." Highlighting such group identities as religion, nation, class, gender, and race, Cannadine argues that our tendency to create binary narratives of "us versus them" paints a false portrait of history: individuals, reduced to their membership in a single group, are trapped in Manichean battles. Instead, we need to pay more attention to diversity within groups, and the overlap of groups with their putative enemies. The long history of Christianity and Islam, both of which comprise hundreds of rival sects, is one not just of conflict but also of peaceful cohabitation and collaboration. Polarized histories are useful to politicians, Cannadine writes, but rob us of our "just inheritance"—a history based on our "essential unity," rather than on our divisions.

*Liberty's Dawn*, by Emma Griffin (Yale). Griffin counters what she calls "the dark interpretation" of the industrial revolution in a provocative study. Surveying hundreds of autobiographical accounts by people who experienced the changes firsthand, she finds that for much of the British working class "the good wages and regular work that could be found in the factories more than compensated for the clatter of the machines." Still, the industrial revolution was clearly a double-edged sword. One William Marcroft, born in Lancashire in 1822 and forced to work from the age of six, later caught up on his education at night school and, after retirement, became active in various social and political organizations. "The same forces that had crushed his childhood schooling," Griffin writes, "helped to create new forms of cheap or free education for adults." Whether such opportunities were worth a lost childhood remains an open question.

*Serving Victoria*, by Kate Hubbard (Harper). This entertaining history of the Victorian court centers on the "household," those aristocrats obliged to join the royal entourage. They had lavish living quarters and generous salaries, and many had few duties beyond attending dinners and parties. But such perks didn't make up for the unremitting tediousness of court life and a suffocating atmosphere of respectability. "Exceedingly dull" was one maid-of-honor's verdict. Immoderate drinking, flirtation, and idle chatter were outlawed, and "peculiar" religious and cultural ideas were frowned on. Hubbard draws on a wealth of correspondence and diaries to weave an amusing "Upstairs, Upstairs" drama, one in which the servants frequently condescend to their masters. Still, even the most snobbish of Victoria's retinue had affection for her. One wrote that the royals were "a very ordinary rather second rate family," but that the Queen "had real distinction."

*Southwest Passage*, by John Lardner (Nebraska). Lardner, son of the sainted Ring, was a twenty-nine-year-old boxing writer and *Newsweek* columnist when, in 1943, he went to Australia, New Guinea, and

Papua to cover the Allies' first stirrings of resistance to sweeping early defeats by the Japanese. What keeps these ancient dispatches alive is Lardner's terse writing and obdurate informality as he joins a B-26 bomber mission, an edgy voyage aboard an explosives-laden freighter, and countless evenings in R.A.A.F. officers' bars. Air

raids and jokes and dead Japanese pilots and precisely rendered Aussie-talk and jungle butterflies and a surprisingly affable General MacArthur and an unexpected naval victory (the Battle of the Coral Sea) turn up within the onrushing dailiness of war. But what stays in a reader's mind is the curiosity and courage of these new-made combatants and their heartbreaking youth.

