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HUGO L. BLACK: THE EARLY YEARS

by

DANIEL M. BERMAN*

President Roosevelt's nomination of Hugo L. Black to the Supreme Court in 1937 touched off a violent reaction in the Senate and in the nation. Some of the denunciation with which the selection was greeted was a delayed reaction to Roosevelt's "court-packing" attempt: the President's first Justice—no matter how impeccable his credentials—would inevitably have been considered *persona non grata* in some quarters. Another factor behind the opposition was the consistent support for the New Deal which Black had provided during his ten years as a Senator from Alabama. But beyond a doubt the major cause of the vilification to which the Justice-designate was subjected was the disclosure that, in his early years, he had been a member of the Ku Klux Klan.

Although solid evidence of Black's Klan membership was lacking during the debate over his nomination, it was taken for granted by many that there was an affiliation of some kind. Sen. Royal S. Copeland of New York, for example, called Black a "Klan sympathizer," from whom Negroes and Catholics could expect only prejudice.¹ *Time* reported that "Washington wags" were saying: "Hugo won't have to buy a robe; he can dye his white one black."² Raymond Moley, an ex-New Dealer, called Black a ". . . product of that dark political hour in the twenties when fiery crosses flared on thousands of hillsides."³

It was not, however, until after Black's nomination had been confirmed that his enemies obtained any hard facts about his association with the Klan. On September 13, 1937, the *Pittsburgh Post-Gazette* began publication of a six-part series which was to win its author, Ray Sprigle, a Pulitzer prize. The newspaper declared bluntly that Black had been—and still was—a member of the Klan. Sprigle spared no adjectives. The first article began:

"Hugo L. Black, associate justice of the United States Supreme Court, is a member of the hooded brotherhood that for ten long, blood-drenched years

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¹ 81 CONG. REC. 9068-70 (August 16, 1937).

² August 23, 1937, p. 13.

³ NEWSWEEK, August 21, 1937, p. 40.

ruled the Southland with lash and noose and torch, the Invisible Empire, Knights of the Ku Klux Klan.

"He holds his membership in the masked and oath-bound legion as he holds his office on the nation's Supreme tribunal—for life."⁴

Sprigle's "proof" that the Justice still belonged to the Klan was a "grand passport" that Black had been given after his 1926 primary victory. The document said nothing about life membership. Sprigle had inferred this from the absence of an expiration date.⁵ The "klorero" (state meeting) at which the "passport" was presented was held more than a year after Black had left the Klan. Sprigle charged that the resignation had been a spurious one.⁶ A photographic reproduction of the letter of resignation showed that it had been signed, "Yours, I.T.S.U.B., Hugo L. Black." The initials mean "in the sacred and unfailing bond," and to Sprigle this indicated continued allegiance to the organization.⁷ Sprigle produced the following hard facts: Black joined the Klan in 1923 and resigned in 1925, before he ran for the Senate. After winning the Democratic nomination in 1926, he attended one more Klan meeting. On this occasion he accepted the organization's "grand passport" and made a speech acknowledging Klan support.⁸ Sprigle had no evidence that there had been any further connection with the Klan in the eleven years preceding the Court appointment.

The revelations were page-one news in every paper in the country.⁹ Apparently no one thought it strange that the Klan had given Sprigle documents that could destroy a man who was supposedly still a faithful member of the organization. Everyone, including President Roosevelt, wondered what Black would have to say for himself. The President told his press conference that he had not known of any Klan link when he appointed Black to the Court. Roosevelt added: "I know only what I have read in the newspaper. I note that the stories are appearing serially and their publication is not complete. Mr. Justice Black is in Europe where

⁴ Pittsburgh Post-Gazette, September 13, 1937.

⁵ *Id.*, September 16, 1937.

⁶ In 1921, Imperial Kleagle E. Y. Clarke said that Klan organizers were instructed ". . . to avoid enrolling in the early stages men in politics or men holding office by vote of the people." New York World, September 8, 1921.

⁷ Pittsburgh Post-Gazette, September 13, 1937.

⁸ "I realize that I was elected by men who believe in the principles that I have sought to advocate and which are the principles of this organization." *Id.*, September 13, 1937. At this same "klorero," Imperial Wizard Hiram W. Evans spoke glowingly of ". . . native-born, white, gentile, Protestant Americans." He promised that Catholics and Negroes would not gain control of Alabama. "[T]hey are simply going to have to hold a funeral for the Negro" who claims equality with white men, he said. *Id.*, September 16, 1937.

⁹ The Montgomery Advertiser must have felt puzzled by all the fuss. It had reproduced Black's "grand passport" on September 2, 1926.

undoubtedly he cannot get the full text of these articles. Until such time as he returns there is no further comment to be made."¹⁰

While he remained in Europe, Black refused to say anything. Some of his former Senatorial colleagues now admitted their regret at having voted for confirmation.¹¹ When it was revealed that Black had taken the Court oath before leaving the country,¹² demands arose that he resign or be impeached. Senator Copeland, an anti-Roosevelt Democrat, made Black the issue in his New York mayoralty race.¹³ Many Catholics, Negroes, and Jews were now up in arms over the appointment. The National Association for the Advancement of Colored People pressed Black to step down.¹⁴ The Justice, however, was not even considering such a move.

When his ship landed in the United States on September 29, Black was besieged by reporters badgering him for a statement. He told them bluntly: "If I make any statement it will be in a way the people can hear me and understand what I have to say, and not have to depend on some parts of the press which might fail to report all I have to say."¹⁵ Mistrustful of the newspapers, he decided to use the radio so that the people could hear his words exactly as he spoke them.¹⁶ On the night of October 1, few people who had radios neglected to turn them on. About fifty million listeners heard the unprecedented speech.¹⁷ Except for the abdication address of King Edward VIII, no talk had ever drawn a larger audience.¹⁸

The speech lasted only ten minutes. Black admitted that he had been a member of the Klan. He added:

"I later resigned. I never rejoined. What appeared then or what appears now on the records of the organization, I do not know.

"I have never considered and I do not now consider the unsolicited card given to me shortly after my nomination to the Senate as a membership of any kind in the Ku Klux Klan. I never used it. I did not even keep it."

¹⁰ New York Times, September 15, 1937.

¹¹ Senator Robert F. Wagner of New York asserted: "If he were a member of the Klan and I knew of it, I would not have voted for his confirmation." Newsweek, September 27, 1937, p. 11.

¹² New York Times, September 16, 1937.

¹³ Copeland, however, lost the Republican-Fusion nomination to Fiorello LaGuardia and the Democratic nomination to Jeremiah T. Mahoney. *Id.*, September 17, 1937.

¹⁴ Pittsburgh Post-Gazette, September 16, 1937.

¹⁵ New York Times, September 30, 1937.

¹⁶ Max Lerner called his idea of speaking by radio "a sound democratic instinct." NATION, October 9, 1937, p. 367.

¹⁷ Pittsburgh Post-Gazette, October 2, 1937.

¹⁸ FRANK, MR. JUSTICE BLACK 105 (N.Y., 1949).

"Before becoming a Senator I dropped the Klan. I have had nothing to do with it since that time. I abandoned it. I completely discontinued my association with the organization. I have never resumed it and I never expect to do so."

There was no explanation of why Black had joined the Klan. But there was a denial that he had ever advocated even the slightest abridgment of "complete religious freedom." The Justice took pains to explain that he was not anti-Negro, anti-Catholic, or anti-Jewish:

"I have among my friends many members of the colored race. I have watched the progress of its members with sympathy and admiration. Certainly they are entitled to the full measure of protection accorded to the citizenship of our country by the Constitution and our laws.

"Some of my best and most intimate friends are Catholics and Jews . . ."¹⁹

Black called the campaign against him "planned and concerted." He warned: "If continued, the inevitable result will be the projection of religious beliefs into a position of prime importance in political campaigns and to reinfest our social and business life with the poison of religious bigotry. . . . It will set neighbor against neighbor and turn old friends into new enemies." The Justice announced: "When this statement is ended, my discussion of the question is closed." As far as the press was concerned, however, the discussion was just beginning.

The *New York World-Telegram* said that the speech was "clever . . . 'too damned clever.'" David Lawrence called Black ". . . an insult to the millions of Catholics, Protestants, Jews, white, and colored citizens."²⁰ The *New York Herald-Tribune* labeled Black a "coward,"²¹ and the *New York Times* declared that the cause of liberalism had been betrayed.²² The *American Mercury* summed Black up as "a vulgar dog. . . ."²³ Norman Thomas assailed him.²⁴ The *New York Sun* used photographic legerdemain to produce a picture of a hooded Klansman posing with eight other Justices.²⁵ A cartoonist made the Washington monument look like a man dressed in KKK garb. There was little the press neglected. Not since Brandeis' appointment had there been such a storm.

¹⁹ *New York Times*, October 2, 1937. Many members of minority groups consider the phrase, "Some of my best friends . . .," both patronizing and offensive. The *Christian Century* pointed out that the expression is normally used by one ". . . who looks upon certain groups as inferior [but] has found in them a few superior individuals to whom special recognition can be given." October 10, 1937, p. 1256.

²⁰ *THE DIGEST* (Review of Reviews), October 16, 1937, p. 7.

²¹ October 2, 1937.

²² October 2, 1937.

²³ October, 1937, pp. 229-33.

²⁴ Letter to *NATION*, October 9, 1937, p. 387.

²⁵ October 2, 1937.

* * *

The storm has now had almost twenty-two years in which to abate. The same Hugo L. Black whose admitted past membership in the Klan convinced many liberals that he was a racist has stayed on the Court long enough for many Southerners to become equally convinced that he is an integrationist. The standard popular explanation of this phenomenon is that, as a Justice, Black has bent over backward to prove that he had never been a Klansman at heart. For two reasons, this analysis seems defective. For one thing, bending over backward represents a rather uncomfortable posture and one quite difficult to maintain for nearly a quarter of a century. And secondly, there are enough liberal elements in Black's early thought to suggest that there was more continuity than conversion involved in his development.

A summary of his early years in Alabama may provide some facts relevant to an evaluation of the popular myth about his "conversion."

* * *

Black was born on February 27, 1886, in Harlan, Clay County, Alabama. He was the eighth and last child born to Martha and William Black. Harlan was nothing but a postal designation for William Black's farm and store and the cabins of two tenant farmers who worked for him. The entire county was poverty-stricken; the Black home could not boast indoor plumbing. About five years after Hugo was born, the family moved sixteen miles to the town of Ashland in order to enlarge the children's educational opportunities. From his sixth year to his sixteenth, Hugo studied at a modest private school with the imposing name of Ashland College. By the time he was seventeen, he had completed all the education that the school had to offer, roughly the equivalent of one year of college. He proceeded to enroll in the Birmingham Medical College, but a year there convinced him that he really wanted to become a lawyer. At the age of eighteen, he entered the University of Alabama Law School, and two years later he received an LL.B. degree and membership in the Alabama bar.²⁶

Black began his practice of law in a small office above a grocery store in Ashland. Within a year, however, the building had burned down.

²⁶ FRANK, *op. cit. supra* note 18, at 7 ff.

The young lawyer's library, which had cost him \$1500, was destroyed. He decided not to open another office in Ashland. Instead, he would try to establish himself in Birmingham, the largest city in Alabama.²⁷

Black started his Birmingham career when he was twenty-one years old. One of his clients was the carpenters' union, and in 1909 he represented the miners in their first Alabama strike.²⁸ An early case that he won involved a Negro convict who had been held in jail twenty-two days after he should have been released. Black won a verdict of \$150, of which \$37.50 was his fee.²⁹ His practice was far from lucrative, but a growing reputation indicated a promising future. A local circuit judge, A. O. Lane, thought he recognized an able man. "I would fire questions at him with the thought they would floor him," he said. "But every time I did, he landed on his feet like a cat and came back at me." When Lane became a city commissioner, he appointed Black—then only 25 years old—to the bench of the Birmingham police court.³⁰

Birmingham, the "Magic City," was a fast-growing industrial center. Its principal industry was the mining of coal and iron. Homicide and syphilis rates were among the highest in the nation.³¹ Although only petty offenses were within his jurisdiction, the new judge caught more than a fleeting glimpse of humanity in the raw: hoboes, opium addicts, wife-beaters, crapshooters, and a faith healer who had victimized hundreds of Negroes.³²

Negroes represented forty per cent of Birmingham's population. Whenever a Negro offender appeared before Black, the local newspapers would have a field day. After the exact shade of the culprit's skin had been noted, he would probably be compared with an animal, his speech would be reproduced in dialect, and in general he would be portrayed as a member of a race hopelessly addicted to crime, ignorance, and lechery.³³ But there is no evidence that Judge Black treated Negroes any more harshly than whites. He does not seem to have been a very lenient judge generally. Prohibition violators were stunned by \$500 fines and ninety-day jail sentences, and vagrants received two-month prison terms.³⁴ But

²⁷ NEWSWEEK, August 21, 1937, p. 11.

²⁸ Lerner, *op. cit. supra* note 16, at 367.

²⁹ Solis, *One Young Man*, Chicago Daily Times, August 18, 1937.

³⁰ *Id.*, August 19, 1937.

³¹ WILLIAMS, HUGO L. BLACK: A STUDY IN THE JUDICIAL PROCESS 38 (Baltimore, 1950).

³² Birmingham Age-Herald, January 25, 1912; FRANK, *op. cit. supra* note 18, at 18-19.

³³ Charles H. Mandy wrote a daily "humorous" court column in the Birmingham Age-Herald. He specialized in racist jibes.

³⁴ Birmingham Age-Herald, January 25, 1912.

eleven Negroes were acquitted of disorderly-conduct charges, although a white officer had testified against them.³⁵ And, when a Negro furnace-worker was accused of having assaulted a white installment collector, Black demanded to hear all the facts. Questioning disclosed that the collector had wanted to repossess the man's furniture. The Negro had pointed out that his wife was ill and begged the white man not to disturb her. It was only when the collector insisted on taking the furniture that the Negro struck him. Black could not bring himself to condemn the worker. He dismissed the case.³⁶

By their extensive coverage of Black's decisions, the newspapers helped make him a colorful and popular local figure during his two years as police judge. There was little surprise when he decided to become a candidate for an elective public office.

For sixteen years, the position of solicitor, or prosecutor, of Jefferson County had been held by Harrington Heflin, brother of Senator Tom Heflin. Under the prevailing penal system, the state paid a fee to jailers and sheriffs for each person in their custody. The prisoners themselves had to bear the costs of their incarceration. Thus the "fee system" put a premium on delaying trials as long as possible in order to expand the detentions of the accused and the salaries of the jailers, and during Heflin's administration the court docket was clogged with untried cases.

In 1914 Black ran for the solicitorship and pledged himself to end "the law's delay." He believed that ". . . the people were tired of having hundreds of Negroes arrested for shooting craps on pay day and crowding the jails with these petty offenders."³⁷ After a vigorous eight-month campaign against Heflin and three others, Black was elected prosecutor of Jefferson County and took office in December, 1914.³⁸ He remained in this position for a little more than two and one-half years. One of his first acts was to release five hundred prisoners who had suffered particular mistreatment under the fee system. Before he resigned from office, the court docket was up to date.³⁹ This meant far more than a victory for judicial efficiency. It was a body blow at the abuses of the fee system, which had been assailed by a federal grand jury more than two years before Black became solicitor.⁴⁰

³⁵ FRANK, *op. cit. supra* note 18, at 18.

³⁶ SCHOLASTIC, September 18, 1937, p. 14.

³⁷ Quoted in Birmingham News-Age-Herald, January 31, 1937.

³⁸ FRANK, *op. cit. supra* note 18, at 22.

³⁹ *Id.* at 22-23.

⁴⁰ Birmingham Age-Herald, March 17, 1912.

Early in his term the new prosecutor uncovered a sickening scandal in the town of Bessemer, just outside Birmingham. Curious as to why Bessemer seemed to be producing an inordinate number of confessions—especially from Negroes—he investigated and learned of the existence of incredibly brutal third-degree methods, including the dead-of-night beatings of helpless prisoners. Lacking clear jurisdiction over the Bessemer police, Black decided to present the facts to a grand jury, which proceeded to adopt the report he wrote. The document charged that prisoners were beaten until “. . . they were red with their own blood, in an effort to obtain confessions. . . . A leather strap with a buckle on one end was invented for the purpose of assisting the officers in this heinous practice. . . .” The report concluded that such methods were “. . . dishonorable, tyrannical, and despotic. . . .” Fundamental rights, said the grand jury, should “. . . not be surrendered to any officer or set of officers, so long as human life is held sacred and human liberty and human safety of paramount importance.”⁴¹ The grand jury submitted the report to the judges of the criminal court and thus set in motion a chain of events that resulted in elimination of the horrors Black had uncovered.⁴²

The solicitor's name became anathema to others in addition to the police of Bessemer. The coal companies developed a cordial dislike for him when he prosecuted some of them for short-weighting their employees. The insurance companies resented his suggestion that courts should be allowed to set aside settlements that were made with injured workers before the exact extent of disability had been ascertained.⁴³ And the newspapers were unhappy when he forced them to comply with a law banning liquor advertisements.⁴⁴ His enemies, still smarting from his surprise election more than two years before, now found that their ranks had been augmented by those whom the prosecutor had alienated while in office. Thus fortified, they initiated a campaign to drive him from his position by insisting that another state official, unfriendly to the solicitor, had the power to name Black's assistants. The Alabama Supreme Court upheld them, and Black decided to resign rather than be hamstrung by assistants who opposed him. He wrote the Governor: “I do not feel that I can perform the duties of my office satisfactorily to the people and in accord with my own conscience with these assistants.”⁴⁵

⁴¹ Birmingham Age-Herald, September 18, 1915.

⁴² FRANK, *op. cit. supra* note 18, at 27-30.

⁴³ *Id.* at 23-24.

⁴⁴ Birmingham Ledger, February 15, 1915.

⁴⁵ Unpublished letter to Gov. Charles Henderson, July 12, 1915.

Black's legal career was interrupted by a year of service in the Army during World War I. Upon his discharge he returned to Birmingham to resume private law practice. In addition to continuing to represent labor unions, he now discovered a new forte: personal damage suits, in which he displayed a remarkable ability to persuade juries that his clients were entitled to huge verdicts.⁴⁶

It was in this period that Black ended what had started to look like confirmed bachelorhood. At the age of thirty-five, he married Josephine Foster, daughter of a former Presbyterian minister. Josephine came from an old Southern family and was related to Malcolm Patterson, a former governor of Tennessee. She had been a Navy "yeomanette"—the First World War's equivalent of a Wave. Her father did not approve of the match because of Black's labor practice, but other members of the Foster family considered the handsome and affluent attorney quite a catch, even if some did refer to him as "that young Bolshevik."⁴⁷ At any rate, in 1921 Josephine Foster and Hugo Black began thirty-one years of happy married life.⁴⁸ Both newlyweds had been in military service, and both now joined an American Legion post. Black, in fact, was an incorrigible joiner. He became chancellor of Alabama's Knights of Pythias, an officer of his Masonic lodge, and a member of Civitan, Odd Fellows, Moose, and Pretorians. But the organization that was really sweeping Alabama in the 1920's was the Ku Klux Klan.

This was the second Klan the South had spawned. The original one, formed after the Civil War, was a reaction to the alleged excesses of Reconstruction. It won wide support for its campaign of terror against Negroes by nurturing the hatred many white Southerners felt for the Freedmen's Bureau and for carpetbaggers and scalawags. With the restoration of home rule to the South, the Klan lost its principal issue and its "Invisible Empire" soon disappeared.⁴⁸

World War I gave momentum to a new surge of nativism and xenophobia in the South. In 1915 a new Klan was organized, and its growth was spectacular. By 1926 it had about 85,000 members in Alabama alone. Klansmen filled state, county, and city offices. They contributed more than their share to the personnel of prosecutors' offices and

⁴⁶ FRANK, *op. cit. supra* note 18, at 34.

⁴⁷ Virginia Durr, sister of Josephine Foster Black, in letter to the writer, August 21, 1956.

⁴⁸ Josephine Foster Black died in 1952. Five years later, Black married Elizabeth S. DeMeritte, who shares both his Southern background and his interest in the law.

⁴⁸ MECKLIN, *THE KU KLUX KLAN* 56 ff. (N.Y., 1924).

even of some of the courts.⁴⁹ The "grand dragon" of the Klan was the assistant attorney general of Alabama.⁵⁰ Addicted to the violence that had been the trademark of its predecessor, the KKK was best known for its virulent hatred of Catholics, Negroes, aliens, Communists, Jews, evolutionists, and liberal religionists. There is no proof that the Alabama Klan was any better than its sister branches. In fact, the Alabama Supreme Court mentioned it specifically in a condemnation of ". . . organizations which seek to direct the action of judges, juries, and courts in the administration of justice."⁵¹ Yet only relatively minor instances of "direct action" in Alabama were reported in the *New York Times* during the early 1920's: the flogging of a hotel clerk who had "talked about" the Klan,⁵² and a parade of one thousand Kluxers through Tuskegee in silent protest against the hiring of Negro personnel at the local Negro War Veterans' Hospital.⁵³ There are other slight indications that the Alabama Klan may have been relatively moderate. Alabama was scarcely mentioned in the investigation of the Klan conducted in 1921 by a Congressional committee.⁵⁴ And the *New York World*, which published a 21-part exposé of the Klan in 1921, did not seem to have much evidence against the Alabama organization.⁵⁵

In Birmingham, the Robert E. Lee Klan No. 1 had a roster of ten thousand.⁵⁶ Friends pressed Black to join, but at first he resisted them. His reluctance was due to the fact that he was already involved with more fraternal orders than he could do justice to. Ideological disagreement was an insignificant factor. The Klan, like later Fascist movements, affected a kind of pseudo-radicalism on specific social issues: it was against the corporations, for the "common people," and against what was viewed as Catholic intolerance. In economically depressed areas it stressed the desirability of raising wages by cutting off the influx of cheap immigrant labor. These ideas had considerable appeal to a young progressive, and

⁴⁹ *New York Times*, September 13, 1937.

⁵⁰ *Id.*, November 26, 1926.

⁵¹ *Id.*, October 29, 1926.

⁵² *Id.*, April 11, 1925.

⁵³ *Id.*, July 4, 1923.

⁵⁴ Committee on Rules, House of Representatives, 85th Congress, 1st Session, "The Ku Klux Klan," 1921.

⁵⁵ Of the approximately one hundred instances of violence, threats, and public demonstrations that the newspaper enumerated, only one took place in Alabama: the whipping of two white women "charged with friendly relations with negroes." The newspaper added: "The affair was not traced to the KKK." *New York World*, September 19, 1921. (The series on the Klan began on September 8, 1921 and concluded on September 26, 1921.)

⁵⁶ *New York Times*, September 13, 1937.

Black was too much a product of his region to be repelled by the racism that went with them.⁵⁷

On September 11, 1923, Black joined the Robert E. Lee Klan No. 1 in Birmingham. He remained a member for almost two years. During this time he attended three or four meetings and delivered speeches that are recalled as having been libertarian in tone. A verbatim record of one of his addresses was kept. This was a talk he made at a "klorero," or state convention, in Birmingham on September 2, 1926, more than a year after his friendly resignation from the Klan. In this speech, he used expressions like "the real Anglo-Saxon sentiment," "Anglo-Saxon patriots," and "the pride of Anglo-Saxon spirit." But he also declared: "The great thing I like about this organization is not the burning of crosses, it is not attempting to regulate anybody—I don't know, some may do that. . . ." As for himself, he said, he preferred trying to refurbish America's reputation. One way to do this, he recommended, would be to keep the door of hope open ". . . to the boy that comes up on the humble hillside, or in the lowly valley." The speech was a murky melange of Horatio Alger, Billy Sunday, and a Fourth of July oration. "I desire to impress upon you, as the representatives of the real Anglo-Saxon sentiment that must and will control the destinies of the Stars and Stripes, that I want your counsel," Black averred. If he did things wrong, he wanted to be told about it. He went to great lengths to convince the Klansmen that he was their friend, but at no point did he make a specific ideological commitment. The organization had to be satisfied with flowery professions of amity. "[L]oving the pride of Anglo-Saxon spirit—and I love it," he declaimed, "I thank you from the bottom of a heart that is yours."⁵⁸

Black resigned from the Klan on July 9, 1925.⁵⁹ The following day he announced that he was a candidate for a seat in the United States Senate. The Alabama Klan seems to have been favorable to his candidacy, although the national organization preferred another candidate.⁶⁰

In his successful Senatorial campaign, Black's oratory followed orthodox Southern lines. He emphasized that he was a strict "dry" personally as well as politically, and this earned him many friends in Prohibition country. He was fond of quoting a bit of doggerel: "There is one little

⁵⁷ Lerner has written: "[The Klan] combined a spurious radicalism with terrorism. Those who leaned toward the first were often able to shut their eyes to the second." *Op cit.* *supra* note 16, at 367.

⁵⁸ The text of the speech appears in *Pittsburgh Post-Gazette*, September 15, 1937.

⁵⁹ *Id.*, September 13, 1937.

⁶⁰ *New York Times*, August 12, 1926. A report that Black was really Jewish made the rounds. One newspaper commented dryly: "Now if somebody will just accuse him of being a Catholic he'll get the votes 'a-comin' and a-gwine." *Dothan Eagle*, July 5, 1926.

saloon every man can close, and that is the one that is under his nose." In an obvious reference to one of his opponents, he declared: "I have no sympathy and no respect for a man who runs for office on a dry platform and then proceeds to try to make the country 'dry' by drinking all the liquor in the community." As for himself, he swore: "I have never in my life tasted whiskey."⁶¹ His position on immigration was just as blunt: he wanted foreigners kept out lest they continue to depress wage rates. "The shuffling feet of myriads of immigrants fill my heart with dread," the candidate declared. He insisted that aliens already in the country should be "Americanized" before more were admitted. To him the melting-pot idea seemed ". . . dangerous to our national institutions." He assured the voters that he thought as they did on the issue. "You want Alabama kept for Americans," he noted. "So do I. . . Immigration must be stopped for awhile completely. It must never again be unrestricted. Only desirable immigrants should ever again be admitted."⁶²

Black campaigned tirelessly. The youngest of the four candidates in the Senate contest, he drove his car into every nook and cranny where there were voters to be found. His background and views made him attractive to the common people, and his indefatigable barnstorming paid dividends. When the ballots were counted in the primary, he had defeated his closest competitor by 20,000 votes.⁶³

* * *

The rest, as the expression goes, is history. As a Senator, Black was an uncompromising liberal on economic issues. By his second term, he had sloughed off a considerable portion of his Southern parochialism. Instead of worrying about backwoods bogies like whiskey and foreigners, he now concerned himself with matters like the depression, the concentration of economic power, and the need to limit the working week. He became a flamboyant Congressional investigator, and was put in charge of a sensational inquiry into the gigantic lobbying effort made to defeat the Public Utilities Holding Company Bill. As a Supreme Court Justice, he became a strong civil libertarian, a powerful defender of Negro rights, an opponent of deportations of aliens, and perhaps the dominant intellectual influence on the liberal Warren Court.

⁶¹ Marion Times-Standard, August 5, 1926.

⁶² *Id.*, August 5, 1926.

⁶³ WILLIAMS, *op. cit. supra* note 31, 43.

Black's life does indeed pose something of a puzzle. There are not many Southern politicians who end up championing Negroes, aliens, and others who cannot conceivably trace their ancestry to the passengers of the *Mayflower*. But the problems are perhaps not so great as they appear on the surface. It does indeed seem strange that a former Klansman should become a libertarian Justice and that a bitter opponent of immigration should be transformed into an articulate defender of aliens hounded by the Government. But the fact is that, superficial appearances notwithstanding, there has been remarkable continuity in Black's political thought. He has always, for example, been a critic of corporate wealth and power. He has always been concerned with helping to improve the lot of the American worker. He has always favored an America in which dissent thrives on unrestricted freedom of speech. These ideas have been firm and immutable. Only the language in which they have been expressed and the instrumentalities chosen for their furtherance have been functions of time and place.

A concern for raising the wage level of American workers has been one of Black's major objectives. There was a time when he thought this meant preventing foreigners from entering the country and competing with native labor. After he left the South, it was only a matter of time before he abandoned this narrow view and cast about for more basic methods to insure American workers a better life. The concern for the worker was a permanent feature of this thought; the xenophobia was a regional encrustation.

The membership in the Ku Klux Klan may be viewed in a similar light. In many matters the Klan used the vocabulary of the populism that Black understood. It seemed to be a vehicle for political reform—and political advancement—and Black used it for what it was worth. Not even his most intemperate detractors have ever linked him with the racist violence in which the Klan came to specialize. His interest was in reform, and this remained part of his makeup long after he had outgrown the Klan.

Only an incurable moralist would insist on stamping Black's early life as "bad" and his later career as "good"—or vice versa. Both were aspects of the development of a man. Neither justification nor condemnation would seem to be in order in dealing with any one stage of his career. It is the whole man who should be judged.

In the process of evaluating Black's life, it should never be forgotten that he is a product of the South. His still pronounced drawl is the

least important of the attributes with which his region has endowed him. Socially, emotionally, and culturally he is a Southerner—not a New Yorker who happened to spend a few benighted years in the South. Related to this is the fact that, to the extent that he is a radical, Black is of the native American variety, untouched—for better or worse—by theories of European socialism. There is a serious question, however, about whether he is a radical at all. He has never in any sense been in favor of a revolutionary transformation of society. Perhaps some call him a radical only for want of a better word to describe one who stresses old-fashioned virtues to a society which prefers a new-fangled repression.

A study of Black's life discloses that he was not very far on the right in his early years and that he is not very far on the left today. It would be foolish to deny that he has travelled. The distance is not as great as many have assumed.