

Vanderbilt Law Review

Volume 50
Issue 2 *Issue 2 - Symposium: Defining
Democracy for the Next Century*

Article 4

3-1997

The Black Public Sphere and Mainstream Majoritarian Politics

Regina Austin

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Law and Race Commons](#)

Recommended Citation

Regina Austin, *The Black Public Sphere and Mainstream Majoritarian Politics*, 50 *Vanderbilt Law Review* 329 (1997)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol50/iss2/4>

This Symposium is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in *Vanderbilt Law Review* by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

The Black Public Sphere and Mainstream Majoritarian Politics

*Regina Austin**

As a person who pays only passing attention to formal black electoral politics, let alone the Voting Rights Act and the Supreme Court's attempts to decimate it, it is a privilege and a daunting challenge to respond to Professor Karlan's Article, *Loss and Redemption: Voting Rights at the Turn of a Century*. At the outset, I felt inadequate to the task. My research has largely focused on informal black socioeconomic development and discourse, most of which occurs far from the spotlight of the political mainstream.¹ The only formal politics with which I am concerned occurs primarily at the local, grass-roots level.

Nonetheless, I do not for a minute think that blacks should forego any opportunity to hold government and industry, at every level, accountable and responsible for the abysmal quality of life experienced by many black people, particularly the very young. I also realize that mainstream electoral politics is one avenue through which accountability can be achieved. Yet, any financial assistance government and business provide beleaguered blacks should be funneled through organizations and associations that the blacks themselves control. This will reduce the likelihood that scarce resources will be siphoned off by elite functionaries who have no real contribution to make. Indeed, lasting gains in the well-being of the least well-off blacks are only possible if the gains are made permanent through the establishment of institutions and organizations that they control and that outlive the genuine concern any social problem generates. That explains in part why I focus on the law as it relates to black,

* William A. Schnader Professor of Law, University of Pennsylvania.

1. See Regina Austin, "A Nation of Thieves": *Securing Black People's Right to Shop and to Sell in White America*, 1994 Utah L. Rev. 147; Regina Austin, "An Honest Living": *Street Vendors, Municipal Regulation, and the Black Public Sphere*, 103 Yale L. J. 2119 (1994); Regina Austin, *Beyond Black Demons & White Devils: Anti-black Conspiracy Theorizing & the Black Public Sphere*, 22 Fla. St. U. L. Rev. 1021 (1995).

small-scale or micro-institution building. For example, I have written about the black informal economy² and informal economic discourse.³

But Professor Karlan's insightful work forced me to consider the relationship between black socioeconomic advancement and the achievement of blacks' political agenda. Or, to put it another way, to consider the significance of the entire black public sphere to majoritarian democratic politics in America.

The term "black public sphere" has been variously defined. As I use the term, it encompasses both politics and economics. Hence, it consists of all the markets and audiences that consume the fruits of black creativity, productivity, and sensitivity to the material and moral order of things in America. The most salient feature of the black public sphere is that it "puts engagement, competition and exchange in the place of resistance, and uses performativity to capture audiences, Black and White, for things fashioned through Black experience."⁴

It is in the black public sphere that black public opinion and a black political agenda are formed. It is in the black public sphere that a conception of the black "good life" is formulated and debated. It is through the black public sphere that this notion of a black good life is disseminated to other marginalized peoples (including other racial and ethnic minorities, working class white women, lesbians and gays, and counterculture youth) who have public spheres of their own. In this way, the black notion of the good life enters into a broader conception of what a good life would be for everyone.

I realize that references to the "black public sphere" and "the black good life" may cause doubts and unease in a number of readers. For some, the terms ring of separatism and divisiveness. That is not my intent. An irrational nationalism would be antithetical to the development of markets and audiences in which blacks play a predominant or significant, but not exclusive, role. Other readers may doubt the capacity of blacks' notion of the good life to address the universal human condition. I urge them to consider the impact that

2. See generally Austin, *"The Black Community," Its Lawbreakers, and a Politics of Identification*, 65 S. Cal. L. Rev. 1769, 1799-814 (1992); Austin, 103 Yale L. J. at 2119 (cited in note 1).

3. Austin, 22 Fla. St. U. L. Rev. at 1033-34, 1043-45 (cited in note 1).

4. Editorial Comment, *On Thinking the Black Public Sphere*, Public Culture xi, xii (Fall 1994). Though "performative" generally refers to expressions that effect an act by their utterance, see 9 *Oxford English Dictionary* 545 (2d ed. 1989); *Random House Dictionary of the English Language* 1070 (unabridged ed. 1983), as used in the text, the term pertains to acts that by their sheer execution have the force of words that persuade, seduce, or captivate.

the black civil rights movement has had on liberation struggles in the United States and abroad.

My call for the advancement and further development of the black public sphere proceeds from a recognition that

[b]lacks must move beyond reactive resistance to higher levels of intragroup cooperation and intergroup competition. Through the conscious development of their own public sphere, blacks should be able to achieve a degree of autonomy from the values and institutions of the dominant white-supremacist mainstream. The purpose of strengthening the black public sphere, however, is not to secure separatism or total self-sufficiency. Rather, the black public sphere should be where blacks are at the center of a universe of markets and audiences that integrate whites and other nonblacks into arenas controlled by blacks, rather than the other way around. The institutions of the black public sphere should not only assure a good life for blacks, but also be exemplary of the pursuit of the common good. To this end, the institutions of the black public sphere must strive for excellence and thereby challenge the white elites' conceit that only they are capable of building institutions worth preserving.⁵

Professor Karlan's Article raises two very important concerns about the present state of the black public sphere. She discusses the "bleaching hypothesis" that is advocated by opponents of race-conscious districting.⁶ According to the hypothesis, when blacks are concentrated in an electoral district in order to facilitate the election of black representatives, other adjacent districts become whiter, more conservative, and more likely to elect representatives who are unsympathetic to blacks' interests. In the view of the critics, race-conscious voting therefore pits blacks' desire to elect candidates of their choice against blacks' ability to see their policy preferences enacted.⁷ I commend to the reader Professor Karlan's thorough analysis of this hypothesis.

What I find interesting, however, is that the critics of race-conscious districting assume that black policy preferences arise as if out of whole cloth, without the operation of democratic processes or the exercise of democratic values among blacks *inter se*. On the contrary, the so-called black community hardly possesses a unified and certain set of interests or attitudes that originate without debate and a counting of hands, as it were. Contests between opposing black

5. Regina Austin, "A Nation of Thieves": *Consumption, Commerce, and the Black Public Sphere*, *Public Culture* 225, 244-45 (Fall 1994).

6. Pamela S. Karlan, *Loss and Redemption: Voting Rights at the Turn of a Century*, 50 *Vand. L. Rev.* 291, 294-313 (1997).

7. *Id.* at 293.

candidates may be essential to the determination of black policy preferences. Democratic dialogue is facilitated when blacks run against each other. Furthermore, the democratic institutions of the black public sphere achieve maturity, sophistication, and legitimacy when blacks run against each other.

From time to time, black politicians and community leaders do call for black political unity around a particular candidate or proposal. There may indeed be times when these calls should be heeded. The black public sphere is subject to intense scrutiny and pressure from the mainstream which might profit from the fragmentation of the black electorate. But the black public sphere would be in deeper jeopardy if the need for solidarity in the face of external opponents was used to short-circuit or stifle internal practices of dialogue and democracy.

Of course, internal debate and dissension would be less threatening if the overall strength of the public sphere were substantial. Unfortunately, relations between the black public sphere and the mainstream raise real doubts on that score. That leads me to a second point raised by Professor Karlan.

Professor Karlan suggests that blacks' limited capacity to play a pivotal role in influencing political compromises in mainstream (read "white") politics is not so much a structural problem, as it is a political one. Mainstream politicians and parties keep their distance from the black electorate in order to court other voters, who, in the electoral equivalent of white flight, are put off when too much attention is paid to black political concerns. Professor Karlan describes how efforts by the Democratic Party to distance itself from its solid black core of support in an effort to rebuild its base among white middle- and working-class voters have generated "disagreements . . . over the possibility and means of constructing a multiracial governing coalition that fairly responds to the distinctive demands of its black constituents."⁸ These conflicts, writes Professor Karlan, are the product of "an exhaustion of the national commitment to economic and racial justice for blacks" and of "progressives . . . suggesting that attention to race has diverted us from more important issues."⁹

One explanation for the failure of the black political agenda to find support among groups that were once sympathetic to blacks' concerns may be the current weakness of the black public sphere. Michael Dawson, a political scientist at the University of Chicago, has

8. *Id.* at 320.

9. *Id.* at 292.

offered a very interesting and pessimistic assessment of the black public sphere today in an article entitled *A Black Counterpublic?: Economic Earthquakes, Racial Agenda(s), and Black Politics*.¹⁰ Professor Dawson generally laments the absence of “institutions, communication networks and practices which facilitate debate of causes and remedies to the current combination of political setbacks and economic devastation facing major segments of the Black community, and which facilitate the creation of oppositional formations and sites.”¹¹

In support of his conclusion, Professor Dawson cites evidence that the black public sphere that existed prior to 1970 or so and that generated “a devastating critique of American political institutions and values as well as suggestions about theoretical and institutional alternatives”¹² has suffered grievous losses. The organizations and institutions that were the infrastructure of the black public sphere in the 1950s and 1960s—the independent black press, black churches, black student unions and worker caucuses, and militant black secular, community-based organizations—were vastly weakened, if not destroyed, by internal conflict and direct and covert governmental harassment and prosecution.¹³ In addition, the economy undermined their fiscal solidity as well as the relevance of their programs.¹⁴ Deindustrialization and flexible accumulation, which produced smaller workforces and weakened unions, undercut the wage base of the black working and middle classes.¹⁵ Dependent as they were on the fortunes of their black constituents, “black organizations shrunk and disappeared when their financial status worsened and their programs were seen as less relevant to solving the problems of a devastated economy.”¹⁶ As the labor movement’s fortunes declined, so too did the opportunities for black and white interaction and cooperation.¹⁷

10. Michael C. Dawson, *A Black Counterpublic?: Economic Earthquakes, Racial Agenda(s), and Black Politics*, Public Culture 195 (Fall 1994).

11. Id. at 197.

12. Id. at 201.

13. Id. at 207-08.

14. Id. at 208-10.

15. Id. at 209-10.

16. Id. at 210.

17. Id.

Finally, black elected officials have been unable to deliver on their promises because of the urban fiscal crisis they inherited.¹⁸ Furthermore, their political ambitions require them to develop the crossover appeal that attracts nonblack voters. Black elected officials have created "a buffer class that helped to delegitimize protest" and manage race relations by channeling it into a regulatory mechanism committed to incremental change.

I do not entirely share Professor Dawson's gloomy conclusions regarding the weakness of the black public sphere, partly because, unlike him, I believe that action in the cultural realm of music and entertainment has been politically useful, even though the critique generated there has not spawned mass movements or political institutions.¹⁹ Yet, Professor Dawson's analysis makes it clear that if we want to ensure the critical engagement and participation, if not leadership, of blacks in the mainstream democratic process, we must work to strengthen the black public sphere. It is not enough to oppose measures that target black political participation narrowly defined; rather the counterattack must extend to action that negatively impacts any aspect of the black public sphere.

We need to recreate a climate in which blacks' notion of the good life is taken seriously enough that it stands a chance of becoming a reality. In this regard, the economic and cultural or social aspects of the black public sphere are as important as the strictly political. It becomes easier to dismiss blacks' claim to political equality and fair consideration of their problems when blacks are social pariahs in many contexts and economically marginalized in a great many more. In my view, nothing undermines the efforts of blacks to win converts to the view that the government is obligated to assist citizen and resident alike to live a good life more than blacks' low social status and their peripheral economic standing, whether actual or imagined.

Economic marginality has become a marker for blackness, however multicolored the reality may be. How else can we explain the common misconception that there are more blacks on welfare than whites? In the scheme of American racist ideology, when we speak of poverty, black faces come to mind. Yet the association is not sufficiently strong to support systematic constitutional attacks on income-based segregation or the disproportionate burdening of blacks in such significant areas of existence as transportation, environmental protec-

18. See *id.* at 212 ("Black elected officials at the local level inherited cities that were devastated by . . . economic upheavals They were severely limited in their ability to meet the demands of their disadvantaged constituents.").

19. *Id.* at 215-17.

tion, leisure, and health care. In these areas, adverse racial impacts are sustained by class-based rationales that are as readily accepted as nightfall.

Furthermore, blackness has become a marker for economic marginality, mendacity, and shiftlessness. How else can we explain the fear that comes over a shopkeeper's face when a black person armed with gold cards and cash enters a commercial establishment? Of course, exploitation and preservation of the status quo are in play here. The linkage between race and economic marginality is both the producer and the product of an extensive array of devices that work to guarantee that a dollar in the hands of a black person is worth less than it is in the hands of a white person.

A complete understanding of the mechanisms by which blackness is tied to and associated with socioeconomic inferiority is crucial to comprehending the political importance of the black public sphere and to effectuating blacks' notions of the good life. We must fully understand and expose the processes that produce the complex ties between race and social and economic subordination, so that even constitutional adjudicators cannot avoid confronting them.

At the same time, the decline of the institutional base of the black sphere that Professor Dawson describes must be arrested. The independent black organizations and associations that form the core of the sphere's institutional base must be supported in the face of accusations that they are separatist and/or irrational. The institutional base is crucial to the achievement of anything approaching the good life by the majority of poor young blacks, who are now foreclosed from material security and hope for the future. Moreover, a solid core of institutions successfully assisting blacks to achieve a good life would provide the best evidence of the ways in which society as a whole might assure a good life for all who want one.

For the reasons that Professor Dawson enumerates and others, it is more difficult now than it once was to point to black institutions and concerns that are not only substantial contributors to blacks' efforts to live a good life, but exemplars of the pursuit of the common good as well. That should not be true.²⁰ Arresting the decline of the institutional base of the black public sphere will require a conscious commitment to defending and promoting the cause of black institution

20. Regina Austin, *Commentary: Concerns of Our Own*, 24 Rutgers L. J. 731, 733 (1993).

building. That commitment must proceed as if America's collective political future depends on it.

Blacks' full and equal participation in the American democracy depends on the advancement of blacks' material well-being and the materialization in our own lives of our hopes and ideas of a good life. The reverse is true too. In the past, blacks have played a pivotal role in advancing the cause of American democracy. If blacks are to continue to be instrumental in advancing American democracy, then blacks must be allowed to move out of the socioeconomic periphery to the center, and the black public sphere in all its dimensions must be allowed to flourish.