

THE NEGRO AND ORGANIZED LABOR. By *Ray Marshall*.<sup>\*</sup> New York: John Wiley & Sons, 1965. Pp. x, 327. \$6.95.

The past two years have witnessed rapid and exciting advances in race relations; responses to discrimination in employment have been particularly promising. In the space of a few months, more than two decades of slovenly fair employment activity suddenly bore fruit in several notable developments. Most significantly, Congress finally passed a fair employment practices law, which prohibits racial and other discrimination by employers and unions whose activities substantially affect interstate commerce.<sup>1</sup> On the very day that this law was signed, the National Labor Relations Board, under its powers to aid unions in becoming and remaining collective bargaining agents and to remedy unfair labor practices, began its own important administrative enforcement of national policy against racial discrimination. It de-certified a union that was discriminating and prohibited certain discriminatory acts by unions<sup>2</sup> and, soon thereafter, by employers as well.<sup>3</sup> Shortly before and after these significant national developments, the appearance of lethargy generally projected by state Fair Employment Practices Commissions<sup>4</sup> was partially shattered when several commissions made it clear that henceforth they would aggressively oppose and remedy racial discrimination in employment.<sup>5</sup>

In the light of these and many other hopeful developments in governmental and private anti-discrimination policies and programs,<sup>6</sup> and

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1. Title VII of the Civil Rights Act of 1964, 78 Stat. 253 (1964), 42 U.S.C. § 2000e (1965).

2. Local 1, Independent Metal Workers, 147 N.L.R.B. 1573 (1964); see Local 2, Plumbers and Pipefitters, 152 N.L.R.B. No. 114 (1965); cases cited note 3 *infra*.

3. Local 1367, Int'l Longshoremen's Ass'n, 148 N.L.R.B. 897 (1964); Local 453, UAW, 149 N.L.R.B. No. 48 (1964); Local 12, United Rubber Workers, 150 N.L.R.B. No. 18 (1964).

4. See, e.g., Blumrosen, *Antidiscrimination Laws in Action in New Jersey: A Law-Sociology Study*, 19 RUTGERS L. REV. 189 (1965); Hill, *Twenty Years of State Fair Employment Practice Commissions: A Critical Analysis with Recommendations*, 14 BUFFALO L. REV. 22 (1964); Witherspoon, *Civil Rights Policy in the Federal System: Proposals for a Better Use of Administrative Process*, 74 YALE L.J. 1171 (1965).

5. See, e.g., *Lefkowitz v. Farrell*, C-9287-63 (New York State Commission for Human Rights, 1964), *consent decree approved*, *sub nom.* State Commission for Human Rights v. Farrell, 43 Misc. 2d 958, 252 N.Y.S.2d 649 (Sup. Ct. 1964), *supplemental proceedings*, 59 L.R.R.M. 3050 (Sup. Ct. 1965), 60 L.R.R.M. 2178 (Sup. Ct. 1965), 60 L.R.R.M. 2509 (Sup. Ct. 1965); *In re Myart*, 57 LAB. REL. REP. 264 (Charge No. 63-C-127, Illinois Fair Employment Practices Commission, No. 18, 1964), *aff'd as modified*, *sub nom.* Motorola, Inc. v. Illinois FEPC, 58 L.R.R.M. 2573 (Ill. Cir. Ct. 1965) (The trial examiner's decision in this famous case is reprinted at 110 Cong. Rec. 5476-79, Daily ed. March 19, 1964).

6. See generally, Rosen, *The Law and Racial Discrimination in Employment*, 53 CALIF. L. REV. 729 (1965).

in the light of continuing indications of some unfortunate divisions between trade unionists and civil rights activists,<sup>7</sup> a new volume on relations between Negroes and organized labor would indeed be welcome, especially since no outstanding book has been published on the subject in about twenty years.<sup>8</sup> Sadly, the void in the contemporary literature of race relations persists, for Dr. Marshall's book does not command enthusiastic reception.

In three parts the book undertakes to examine the history or "Evolution of Negro-Union Relations" (pp. 1-85); "Union Racial Practices and Problems" (pp. 87-207); and "Public [Governmental] Policy" and programs (pp. 209-298). A final chapter contains some "Concluding Observations," including recommendations which are also interspersed throughout (pp. 299-320).

According to the preface, the book was "not intended to be a general quantitative survey of various union racial practices" (p. vi). This is unfortunate because a comprehensive history and catalogue of union racial practices, both racist and anti-discriminatory, would have made a unique contribution at this time. And, curiously enough, despite its protestations to the contrary, the book, although not comprehensive, engages a great deal both in assay of such factual data and in history-telling. Moreover, it is at its best when all too rarely it performs these tasks cogently and coherently.

The book's first two sentences declare that: "This study attempts to deal objectively and analytically with the relations between the Negro and organized labor with emphasis on the factors responsible for the evolution of union racial practices. It is based on the conviction that an understanding of these causal relationships must precede peaceful accommodations between the groups involved in the racial employment relationship" (p. v). The ultimate goal thus established is high-minded, but only if the accommodation sought is one in which racial or other

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7. The book being reviewed takes the position, largely correct, that there has been a great improvement in Civil Rights-Union relations since the AFL-CIO's convention in 1963. See, e.g., p. 81. Considerable ill-will does, however, continue. See, e.g., Hill, *Racial Practices of Organized Labor: In the Age of Gompers and After*, 4 NEW POLITICS 26 (Spring 1965) (prefatory comment); Raskin, *Civil Rights: The Law and the Unions*, The Reporter, September 10, 1964, p. 23; N.Y. Times, September 4, 1964, p. 10, col. 3. (Resignation of the number three man in CORE, who then joined the staff of the AFL-CIO); see also, N.Y. Times, September 2, 1965, p. 20, col. 4.

8. For significant early literature, see NORTHRUP, *ORGANIZED LABOR AND THE NEGRO* (1944); CAYTON & MITCHELL, *BLACK WORKERS AND THE NEW UNIONS* (1939); SPERO & HARRIS, *THE BLACK WORKER* (1931); see also, WEAVER, *NEGRO LABOR: A NATIONAL PROBLEM* (1946). Within the last year several additional books were published on related subjects, including, HESTAND, *ECONOMIC GROWTH AND EMPLOYMENT OPPORTUNITIES FOR MINORITIES* (1964); NORGREN & HILL, *TOWARD FAIR EMPLOYMENT* (1964).

invidious discrimination has no place. It is, moreover, questionable whether an accurate understanding of the central "causal relationships," and particularly of their evolution, is attainable or even whether it is essential to the achievement of the desired end.<sup>9</sup> As the contemporary debates over de facto segregation and preferential treatment make eminently clear,<sup>10</sup> our society is beginning to understand, often unwillingly to be sure, that it is not motives or even causes for exclusion of Negroes and for racial discrimination, but the consequences of such exclusion and discrimination that are really important.<sup>11</sup>

Dr. Marshall, on the other hand, strenuously argues against the implementation of policies of preferential treatment when implementation threatens pre-existing rights of Caucasians or ignores their qualifications and those of Negroes. His argument proceeds from the view that: "Preferential treatment which destroys the pre-existing rights of whites is based on the theory (in my judgment, mistaken) that whites as a race are collectively responsible for the disadvantages suffered by Negroes and that whites therefore should be penalized in order to compensate Negroes for their historically conditioned disadvantages" (p. 302). But Marshall's premise is correct only to the extent that it contains a fairly accurate reflection of the personal motivation of some (and on some levels all) advocates of preferential treatment. And, by so arguing against preferential treatment, Marshall demonstrates that he does not understand that such practices can appropriately be justified as an incident to the massive effort we are undertaking to rid our society, as quickly as possible while avoiding anarchy, of the cancer of irrelevant disparities between races, a long-term condition that is assuredly as harmful to whites as it is to Negroes.

In his attempt to reveal the sources and "evolution of union racial practices" (p. v), Dr. Marshall also demonstrates that he does not understand that while a scholar must remain faithful to his quest for objective and historic truth, the mythology that has evolved may have become a highly significant part of the historic reality. Nor does he realize that understanding of the mythology and its effects may be as important,

9. Cf., Black, *The Lawfulness of the Segregation Decisions*, 69 YALE L.J. 421 (1960), reprinted in, BLACK, *THE OCCASIONS OF JUSTICE* 129 (1963); cf. Ionesco, *The Bald Soprano*, in *FOUR PLAYS BY EUGENE IONESCO* 7, 15-19 (Grove Press, Evergreen, 1958) (a particularly delightful literary demonstration of the limits of deductive logic and other such "objective" truth-seeking devices).

10. See, e.g., CARTER, KENYON, MARCUSE & MILLER, *EQUALITY* (1965); Lichtman, *The Ethics of Compensatory Justice*, 1 LAW IN TRANSITION, Q. 76 (1964).

11. The Massachusetts Legislature, for example, recently took steps to outlaw racial imbalance in the public schools of that state. See N.Y. Times, Sept. 10, 1965, p. 21, col. 1; see also cases cited *supra*, note 5.

indeed even more important, to the achievement of the desired goal, in this case "peaceful accommodations between the groups involved in the racial employment relationship" (p. v), than the isolation of mythology from, and separate understanding of, the other aspects of the historic reality.<sup>12</sup> In particular, by his repeated attempts to separate racial prejudice from all other causative factors of discrimination, and by his concomitant devaluation of this factor's importance,<sup>13</sup> Dr. Marshall indicates that he neither perceives nor appreciates the continued and critical relevance in our society of color and of racial prejudice.

Despite the limitations of Dr. Marshall's outlook, his book might nonetheless have been a highly useful study. Unfortunately, however, the book's main virtue, like that of the crooked poker game, is that it is, for the moment at least, the only one in town. Just as there is something to be learned even in that legendary card game, there is much that the careful reader may derive from this book, in which a great deal of information about the racial practices of American trade unions is arrayed. But, in reading the book the neophyte must be wary lest he be misled. The danger results not so much from sheer errors, of which there are too many,<sup>14</sup> but from the book's unannounced bias. For despite its scholarly claim of objectivity, the book is actually an apology for the "responsible" trade union position on racial problems.

Admittedly, it may be that the reviewer is biased—against all but heroic efforts to end differentials, harmful to Negroes and consequently to whites as well, that are drawn according to race. More likely I have not yet sufficiently developed Professor Freund's ideal of "a bias against bias-against-bias."<sup>15</sup>

My criticism of this book is not that Dr. Marshall failed to inveigh against unions for not being sufficiently anti-discriminatory; rather the primary defect of the book is that although Marshall claimed to engage in scholarly objectivity, he tended, unconsciously or otherwise and too much for my taste at least, to overindulge organized labor and to articulate its fundamental position as his own.

Efforts to lay bare specific indications of the book's bias cannot avoid appearing to be of the nit-picking variety, for the author is sufficiently successful in creating the appearance of objectivity that the bias is

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12. Consider, for example, the utility of continuing to question, after 2000 years, whether Jesus Christ, the man, actually existed, or, after nearly 200 years, whether the men who drafted our Constitution intended a system of government substantially different from the one that has evolved.

13. See, e.g., pp. 18-20, 116-17, 129 n.4, 300; cf., pp. 196-200.

14. Specific examples are documented, note 39 *infra*.

15. FREUND, *THE SUPREME COURT OF THE UNITED STATES* 55 (1961).

betrayed mainly by the book's flavor and nuance, which obviously are not readily amenable to elaborate documentation. How, for example, does one document the fact that when finished with the book, the reader is left with the impression that the main point Marshall has made is that labor unions did not invent and ordinarily are not the primary cause of racial discrimination; and furthermore, that they are certainly no worse and probably are much better on race questions than are our other major social institutions? And how do you document the fact that having insinuated this position, Marshall repeatedly seems to ask, without actually articulating the question: Why knock labor unions?—particularly since, as he again only appears to say, if we do not push them too hard and we are all nice and understanding, “we’ll have union racial peace, justice and equality in the sweet bye and bye.”<sup>16</sup> Indeed, why knock labor unions, for Marshall's premise is in fact correct. Collectively, unions are as good as or better than any of our other major institutions. (Individually, however, they are as bad as the worst.) Marshall actually supplies the answer to his own question, but without seeing it. Throughout the book, he demonstrates that politically and economically Negroes and labor must or at least should be allies. If this is true, and it is, it should then not be difficult at least to understand and even to accept the fact that the civil rights movement finds especially intolerable discrimination, often brutal, by its natural ally, and consequently meets such discrimination with particular aggressiveness.

Other indications of the book's apologetic character can more easily be documented. Occasionally the text itself even makes specific betrayal of the bias. For example, both in the preface and in the concluding chapter, inordinate anxiety is expressed at the possibility that the book may have given “greater weight to the negative than to the positive aspects of union racial practices” (p. vi; *accord*, p. 299). But surely this is a weakness that can easily be forgiven any book which attempts to study the racial practices of a major institution functioning in a society that remains predominantly segregated and discriminatory.

The author's bias is also reflected by the fact that his discussions of whether union discrimination is motivated by race hatred or bigotry seem directed less to adducing the facts than to proving a case, specifically that economic and other such socially acceptable motives are separable from and more important than bigotry as causes of the dif-

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16. Suggested by Joe Hill's song, “The Preacher and the Slave: Pic in the Sky.” *Folkways Records Album No. FP39* (1954).

ferences that unions draw between Negroes and whites.<sup>17</sup> Overeagerness is also evinced to offer explanation, sometimes dubious,<sup>18</sup> that unions were not initially responsible for the discriminatory employment practices that they still often promote.<sup>19</sup> In addition, more concern is shown for stressing the incontrovertible fact that as a group Negroes are relatively unprepared for skilled employment than is shown for suggesting ways of solving the problem,<sup>20</sup> and the book's apparent self-congratulation at the discovery that the deterioration in the Negro's economic position since World War II is a result not of increased discrimination but of technological change, depressed economic conditions and the Negro's lack of training and preparation, is a bit too pat for my taste (p. 302).<sup>21</sup>

Additional illustration of the book's bias (or perhaps the defect is failure of perception) is revealed by the fact and form of its general opposition to the more disruptive direct action techniques of civil rights militants. The best single illustration of this is presented by a comparison that is made between the anti-discrimination results that the book ascribes to the voluntary plans for progress, to which the old President's Committee on Equal Employment Opportunity had persuaded many international unions and large employers to subscribe,<sup>22</sup> and those results that the book ascribes to the 1963 demonstrations at New York City construction sites. The book states the comparison as follows:

Moreover, through either the threat of legislation or revocation of contracts, the plans for progress have been relatively successful in producing jobs for Negroes. It was reported, for example, that in three months firms signing the plans added 60,000 employees, 15,000 of whom were Negroes. The demonstrations in New York City in the summer of 1963 probably produced less than 200 jobs (p. 237).

First, the comparison is partly gratuitous, for the 1963 demonstrations are discussed over one hundred pages earlier (pp. 118-128). Second, the comparison reflects a total refusal or failure to consider whether the

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17. See note 13 *supra*.

18. See, e.g., NORTHROP, *op. cit. supra* note 8, at 17-22.

19. See, e.g., pp. 10, 133, 139-45; *cf.*, pp. 14-15.

20. See, e.g., pp. 134-35, 183.

21. Interestingly, there has been recent, but as yet not long-term, indication of an absolute and relative decline in Negro unemployment. See N.Y. Times, September 7, 1965, p. 16, col. 3.

22. By Executive Order 11246, 30 Fed. Reg. 12319 (Sept. 28, 1965), the President's Committee was dissolved and its duties and powers vested in the United States Department of Labor and the Civil Service Commission.

more peaceful programs, and hence less offensive to unions, like the Plans for Progress, might in part have been induced by the atmosphere created by the more demonstrative anti-discrimination tactics. Third, the comparison suffers from an "apples and oranges" defect. The jobs gained by the New York demonstrations, as is clear from the book's own discussion of those demonstrations, were in the highly paid and highly skilled construction trades. No indication, however, is given of the kinds of jobs and skill levels at which Negroes were placed following the signing of Plans for Progress. Nor is indication given of the percentage of jobs that went to Negroes in the months preceding the Plans for Progress.

One final indication of the apologetic nature of the book is provided by the fact that accolades are given too freely for presumed anti-discrimination action by unions, action that sometimes may in fact exacerbate the position of Negroes. The reader is informed, for example, that "Even unions like the Tobacco Workers (TWIU), with predominantly Southern memberships, adopted a policy after 1946 of not forming new segregated locals. By July 1964, however, the TWIU had merged all of its segregated locals except those at Durham, N. C., and efforts were being made to merge those locals" (p. 97). No mention is made, however, of the fact that a Negro local in Durham, Local 208, had for a relatively long period of time been actively resisting the TWIU's attempts to merge it with the previously all white Local 176 on the ground that the proposed merger would actually perpetuate discrimination and destroy the accrued seniority rights of the Negro members.<sup>23</sup>

The limitations of this book unfortunately do not end with its bias. The book also suffers from numerous defects in structure and from other technical flaws that significantly curtail its effectiveness. Initially,

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23. Local 208 contends that the TWIU intends to take control of the local and transfer its membership to Local 176. Upon transfer, it is contended, all former members of Local 208 are to be placed behind all of the members of Local 176 for seniority and other purposes regardless of whether their accrued seniority was actually greater than that of any or all of Local 176's members. Local 208 has, consequently, been attempting to challenge the TWIU's merger plan before the NLRB and the President's Committee on Equal Employment Opportunity. Suit has been brought to maintain the status quo pending such proceedings and a federal district court issued an injunction designed to achieve that purpose.

Daye v. Tobacco Workers Int'l Union, 234 F. Supp. 815 (D.D.C. 1964); see also McKissick, SENIORITY RIGHTS, INTEGRATION AND EQUAL EMPLOYMENT OPPORTUNITIES: DESTRUCTION OF NEGRO LOCALS—LOCAL 208, DURHAM, NORTH CAROLINA (Memorandum to Civil Rights Leaders, Sept. 17, 1964) (Mr. McKissick was both counsel for Local 208 and National Chairman of CORE; he is now the Executive Director of CORE).

readers who are conversant with the literature in the field of union racial discrimination will experience the uncomfortable "Haven't I been here before" feeling. Dr. Marshall has long toiled in these vineyards.<sup>24</sup> He has produced enough articles, essays and papers in learned journals and other places to fill a book,<sup>25</sup> which is almost precisely what he has done, and in such a fashion that you can almost smell the paste and hear the clink of the scissors. Although prior publication is acknowledged (pp. vii-viii), the book is not billed as a collection of somewhat related articles about a central theme; it is passed off as a coherent and internally well-connected volume, which it is not.

Let there be no misunderstanding; the book's technical deficiencies are of such a high order as to have become in effect substantive faults. It is for this reason, and in general protest against the growing publication of this kind of bad book or even non-book, that the review will be lengthened to elaborate many of the technical failings of Marshall's book.

In particular, this does not appear to be a situation in which portions of a coherent and consistent book which was under preparation were published in learned journals, and certainly it is not one in which journal articles were accommodated into a cohesive book. This volume, as published, is comprised largely of a series of earlier writings most of which have been dismembered and rearranged, often inartfully; par-

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24. See Marshall, *Some Factors Influencing Union Racial Practices*, PROCEEDINGS OF THE FOURTEENTH ANN. MEETING INDUSTRIAL RELS. RESEARCH ASS'N 104, n.1 (1961), where it is reported that Dr. Marshall conducted a study of union racial practices for the trade union project of the Fund for the Republic between 1958 and 1960.

25. See *ibid.*; Marshall, *Union Racial Practices and the Market*, 85 MONTHLY LAB. REV. 269 (1962); Marshall, *Union Racial Problems in the South*, 1 INDUS. RELS., A JOURNAL OF ECONOMY & SOCIETY 117 (1962); Marshall, *Ethnic and Economic Minorities: Unions' Future or Unrecruitable*, 350 THE ANNALS 63 (1963); Marshall, *Union Structure and Public Policy: The Control of Union Racial Practices*, 78 POL. SCI. Q. 444 (1963); Marshall, *Racial Factors Influencing Entry into the Skilled Trades*, in THE ECONOMICS OF HUMAN RESOURCES 23 (Perlman Ed. 1963); Marshall, *Union Racial Practices*, in *Hearings Before the Senate Subcommittee on Employment and Man-Power of the Committee on Labor and Public Welfare*, 88th Cong., 1st Sess., pt. 1 at 1192 (1963), reprinted in THE NEGRO AND EMPLOYMENT OPPORTUNITY: PROBLEMS AND PRACTICES 167 (Northrup & Rowan Eds. 1965); Marshall, *The Negro and Organized Labor*, 32 J. NEGRO EDUC. 375 (1963); Marshall, *Some Factors Influencing the Upgrading of Negroes in the Southern Petroleum Refining Industry*, 42 SOCIAL FORCES 186 (1963); NORGREN & HILL, *op. cit. supra* note 4, at p. x. (Dr. Marshall prepared a memorandum upon which was based that book's Chapter 3, *Union Racial Practices* p. 40, and Chapter 9, *Alternatives to Fair Employment Legislation* p. 204); Marshall, *The Job Problems of Negroes* in NEGRO EMPLOYMENT OPPORTUNITY, *op. cit. supra* at 1; Marshall, *Unions and the Negro Community*, 17 IND. & LAB. REL. REV. 179 (1964); see also Marshall, *Some Factors Influencing the Growth of Unions in the South*, PROCEEDINGS THIRTEENTH ANN. MEETING INDUS. RELS. RESEARCH ASS'N, 166 (1960).



tially up-dated or revised; supplied with introductions, summaries and conclusions that are often simplistic<sup>26</sup> or confusing;<sup>27</sup> and then placed in a common cover. A rather unsuccessful effort to rearrange the materials both functionally and chronologically has rendered the book particularly artificial in organization and difficult to follow. The reader, in fact, is caused to hop about disconcertingly, both in time and subject, because there is no visible unifying thread. And the book, the last sentence of which is, "Moreover, informal exclusion, discrimination in referral systems, and discrimination in apprenticeship and other training programs have come under increasing attack in the postwar period" (p. 319), ends so abruptly, and at the bottom of a page, that the reader, having turned the page, does a Chaplinesque double-take when he discovers that there is no additional text. Furthermore, the impression given throughout the book is that the entire manuscript was never continuously read before publication to assure internal consistency. The resulting product is, consequently, deficient in careful and useful analysis, often disconnected or redundant, occasionally erroneous or contradictory, and, since the original articles appeared as early as 1961, sometimes exasperatingly out-dated.

Obviously, when a book is addressed to a field that is undergoing significant and rapid development, some obsolescence is inevitable. The preface of this book, in fact, contains a declaration that it has "attempted to minimize this problem, however, by continuing to observe major trends and by focusing on general principles rather than particular cases and events" (p. vi). But, it is by no means clear that the focus is, or for that matter should be, as represented, particularly since significant obsolescence nevertheless resulted.

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26. Sometimes simplicity which is not limited to introductions, summaries and conclusions is isolated. A single sentence in an otherwise well-formulated introduction, for example, speaks in all seriousness of "The 'civil rights' problem as it is called in union circles . . ." (p. 3). And in a manner devoid of humor, attention is drawn to the fact that whereas the author's notes of the 1959 AFL-CIO Convention indicate that George Meany asked A. Philip Randolph, "Who in the hell appointed you as guardian of the Negro members in America?," the officially published proceedings omitted the words "in the hell" (p. 63, n.29). Sometimes, however, entire paragraphs and pages are consumed with the malady. See, e.g., pp. 11-12, 20, 31-32, 128-129.

Most of the other criticisms contained in this paragraph of the text will be illustrated below.

27. "Summaries and Conclusions" are most confusing when they contain evaluations of information that has not previously been discussed. See, e.g., pp. 104-105 (cursory discussion and evaluation of governmental activities, in relation to segregated local unions, previously undiscussed); 239 (initial evaluation of the effect of the NLRB's recent fair employment decisions, see *supra* notes 2-3, although these have not yet been discussed). See also, e.g., pp. 128-129 n.3 (new data presented); 203 nn.2 & 3 (new data presented).

Part I, comprising four chapters,<sup>28</sup> suffers no obsolescence for it is largely concerned with sketching the history of Negro-Union relations from the time of slavery to the present. Although some of this history, or at least the manner in which the facts are arranged and related, is subject to dispute,<sup>29</sup> for the most part it is interestingly and originally told.

Part II, also comprising four chapters, deals with "Union Racial Practices and Problems."<sup>30</sup> Its merit has not been discounted by recent developments and the information it contains is often interesting and useful. But this portion, more than any other, consists of previously published materials,<sup>31</sup> and consequently suffers most from internal redundancy and from lack of clear and cohesive organization.

Part III, "Public Policy,"<sup>32</sup> deals with legal responses to employment discrimination.<sup>33</sup> This portion of the book contains a number of con-

28. Chapter 1, "Origin of the Negro-Union Relationship," p. 3; Chapter 2, "The Negro and the AFL," p. 14; Chapter 3, "The Negro and the CIO," p. 34; Chapter 4, "The Negro and the AFL-CIO," p. 53.

29. For example, compare Chapter 2, "The Negro and the AFL" with Hill, *supra* note 7. See also NORTHROP, *op. cit. supra* note 8; SPERO & HARRIS, *op. cit. supra* note 8.

30. Chapter 5, "Formal Exclusion, Auxiliaries, and Segregated Locals," p. 89; Chapter 6, "Informal Exclusion," p. 109; Chapter 7, "Some Factors Influencing Negro Job Opportunities," p. 133; Chapter 8, "Union Racial Problems in the South," p. 177.

31. Exhaustive comparisons would be entirely too tedious for both the reader and the reviewer, but, for example, compare Chapter 7, p. 133 with Marshall, *Racial Factors Influencing Entry into the Skilled Trades in THE ECONOMICS OF HUMAN RESOURCES* 23 (Perlman Ed. 1963); compare Chapter 8, p. 177 with Marshall, *Union Racial Problems in the South*, 1 INDUS. RELS., A JOURNAL OF ECONOMY & SOCIETY 117 (1962).

32. Chapter 9, "The Fair-Employment Practice and Government Contract Committees," p. 211; Chapter 10, "The Duty of Fair Representation, the Courts, and the NLRB," p. 242; Chapter 11, "State Fair-Employment Practice Laws," p. 274; Chapter 12, "Concluding Observations," p. 299.

33. Conspicuously absent both from this part of the book and from the earlier chapter on "Union Racial Problems in the South" (p. 177), is discussion or even mention of the NLRB's recent activities to render union representation campaigns comparatively free from appeals to race hatred. See *Allen-Morrison Sign Co.*, 138 N.L.R.B. 73 (1962); *Sewell Mfg. Co.*, 138 N.L.R.B. 66 (1962); *Archer Laundry Co.*, 150 N.L.R.B. No. 139 (1965); *Aristocrat Linen Supply Co.*, 150 N.L.R.B. No. 140, (1965); see also, Bok, *The Regulation of Campaign Tactics in Representation Elections Under the National Labor Relations Act*, 78 HARV. L. REV. 38, 67-74 (1964); Pollitt, *The National Labor Relations Board and Race Hate Propaganda in Union Organization Drives*, 17 STAN. L. REV. 373 (1965); Sachs, *The Racial Issue as an Anti-Union Tool and the National Labor Relations Board*, 14 LAB. L.J. 849 (1963); Comment, 72 YALE L.J. 1243 (1963). This omission may be related to the author's belief that the problem is unimportant. Cf. text following note 11 *supra*. In fact, after analysis of numerous factors that may influence a worker to vote against a union, he announces his conclusion that "If workers are convinced that unions are necessary to their particular situations, they will give little weight to the organization's racial policies in making their decisions to join a union" (pp. 198-199). Apparently we are expected to believe that a worker will ordinarily give little weight to a union's racial policies when deciding

traditions<sup>34</sup> and, more than any other, it suffers from obsolescence. Some material is dated by developments that unquestionably took place after the book was irredeemably in the publisher's hands, but other examples of obsolescence result from neglect to make proper analysis and use of governmental decisions which appeared while time remained for revision.

Most regrettable is the absence of adequate use or presentation of Title VII of the Civil Rights Act of 1964. Admittedly, even now it is difficult to discuss Title VII intelligently. But a reader is entitled to expect and receive a significant effort at meaningful discussion in a book on "The Negro and Organized Labor," published well after the Title's passage. Marshall's primary discussion of Title VII, however, is contained in a synopsis of less than two pages (pp. 237-238) which is tacked on at the end of the chapter on "The Fair Employment Practice and Government-Contract Committees." To the point of distraction, this superficiality is repeated throughout the book.<sup>35</sup>

After declining to speculate about the impact of Title VII, Marshall then entirely ignores it in the next chapter devoted to an elaborate discussion of "The Duty of Fair Representation, the Courts, and the NLRB" (p. 242). A great deal of space is taken in this chapter to discuss the judicially-enforced duty of fair representation (pp. 242-262), without even a suspicion being raised that as a result of Title VII (which now provides the courts with a more direct mandate and with some guidelines for enforcement of non-discrimination in employment) the judicially-enforced duty may be all but extinct in racial cases. The chapter on fair representation presents still another painful illustration that sufficient effort was not made to up-date the manuscript of this book properly. Tacked on to the end of the chapter (pp. 266-270), is a short statement and criticism of the NLRB's epoch *Hughes Tool* decision, in which the Board announced a very broad interpretation of its powers to remedy racial discrimination.<sup>36</sup> On the other hand, just twenty pages earlier the author had declared that: "The NLRB, how-

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whether that union is necessary to his particular situation. But see, e.g. Comment, 72 YALE L.J. 1243 (1963).

34. See *infra*, note 36 with text; *cf. infra*, notes 35, 38-39 with text.

35. See, e.g., pp. 236, 239. At the latter page Marshall declines to "speculate" on the merits of relief under Title VII as compared with that available before the NLRB. This abstention is particularly disconcerting since, at this point in the book, the NLRB's actions to promote fair employment practices have not yet been discussed. The powers of the NLRB are not discussed until pp. 263-70. It is possible that the paragraph on p. 239, which includes preliminary evaluation of the NLRB's effectiveness in this area, was actually intended for inclusion on p. 270. It certainly makes more sense that way.

36. See notes 2-3 *supra*.

ever, has limited power to prevent racial discrimination and has interpreted its power rather narrowly, forcing Negroes to resort to federal courts for relief in some cases" (p. 246).

It has become a commonplace to criticize non-lawyers for their technical deficiencies when they seek to write with particularity about law;<sup>37</sup> but it is generally a deserved criticism, and in this case it is most certainly deserved. Not only does the author, by training an economist, fail to integrate and interpret recent legal developments properly,<sup>38</sup> but his legal discussion is also replete with factual errors.<sup>39</sup>

It would serve no useful purpose to lengthen any further the discussion of this book's faults; they are too many and too exasperating—all the more so because this book might have been exceedingly useful. But it is so loose in construction and lacking in depth, and its analysis so weak and distorted that its worth is limited essentially to such as it may have as a reference work containing some factual information. Moreover, because of its other serious technical deficiencies, and because its underlying ideology and those conclusions that it reaches will not endear it to the non-union civil rights audience that it presumes to seek,<sup>40</sup> this book has failed to accomplish its stated task. It is exceedingly unlikely that it will aid in the "peaceful accommodations between the groups involved in the racial employment relationship" (p. v).

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37. Some lawyers who function mainly in other fields, take great pains, in fact, to make it clear, when writing of legal matters or for legal journals, that they are initiants. See Westin, Book Review, 69 YALE L.J. 538, 538-39 (1960).

38. An additional example can be noted here. On p. 247, the book, implying that the issue has not yet been resolved, relates that "some courts also have ruled employers jointly liable for the enforcement of that duty" of fair representation. A couple of pages of discussion of several lower federal court decisions follow. The Supreme Court's decision in *Humphrey v. Moore*, 375 U.S. 335 (1964), where the Court resolved the issue by so ruling, is ignored in that discussion although it is later cited in a different connection (p. 269, n.95).

39. It is, for example, at least annoying to be informed that, in the *Hughes Tool Co.* case, "the Board ruled for the first time that a violation of the duty of fair representation is also an unfair labor practice" (p. 266). The Board's first such decision was actually in the widely discussed *Miranda Fuel Co.* case, 140 N.L.R.B. 181 (1962), *enforcement denied*, 326 F.2d 172 (2d Cir. 1963), decided two years before *Hughes Tool*. It is equally disturbing to be told that the Supreme Court had ". . . ruled that in the absence of enforceable statutes, the Negroes had no constitutional right to membership in the union because labor organizations were voluntary associations" (p. 284). When faced with the question, the Supreme Court had, in fact, refused to resolve it. See *Steele v. Louisville & Nashville R.R.*, 323 U.S. 192 (1944); *Oliphant v. Brotherhood of Locomotive Firemen*, 262 F.2d 359 (6th Cir. 1958), *cert. denied*, 359 U.S. 935 (1959).

40. See Hill, BOOK REVIEW, *The Crisis*, April, 1965, p. 258. (Mr. Hill, who reviews Dr. Marshall's book critically, is the Labor Secretary of the NAACP.)

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