

Supplementary Material

Chapter 8: The New Deal/Great Society Era—Equality/Race/The Fall of Jim Crow

The Civil Rights Act of 1964¹

The congressional debate over the Civil Rights Act of 1964 was the longest in American history up to that time. Support for civil rights was bipartisan, with only southern Democrats and more libertarian Republicans raising objections. The measure passed easily in the House, with almost four-fifths of all Republicans joining northern Democrats in support of the bill. Senate passage was more difficult, given the usual filibuster by southern Democrats. Senator Everett Dirksen of Illinois, the Republican minority leader, proved crucial. Although a political conservative, Dirksen was personally disturbed by the brutal southern reaction to civil rights protests and aware of the strong civil rights vote in the North. After liberals agreed to a few compromises, Dirksen provided the Republican support necessary to break the southern filibuster. The filibuster was broken on June 10, 1964. Within two weeks, the Senate had voted to pass the Civil Rights Act. Two weeks later, the House agreed to the Senate's revisions. The measure became law on July 2, 1964.

The Debate in Congress

SENATOR HUBERT HUMPHREY (Democrat, Minnesota)

...

It is difficult for most of us to fully comprehend the monstrous humiliations and inconveniences that racial discrimination imposes on our Negro fellow citizens. If a white man is thirsty on a hot day, he goes to the nearest soda fountain. If he is hungry, he goes to the nearest restaurant. If he needs a restroom, he can go to the nearest gas station. If it is night and he is tired, he takes his pick of the available motels and hotels.

But for a Negro the picture is different. Trying to get a glass of iced tea at a lunch counter may result in insult and abuse, unless he is willing to go out of his way, perhaps to walk across town. He can never count on using a restroom, on getting a decent place to stay on buying a good meal. These are trivial matters in the life of a white person, but for some 20 million American Negroes, they are important considerations that must be planned for in detail. They must draw up travel plans much as a general advancing across hostile territory would establish his logistical support.

...

It is heartbreaking to compare . . . two guidebooks, the one for families with dogs, and the other for Negroes. In Augusta, Ga., for example, there are five hotels and motels that will take dogs, and only one where a Negro can go with confidence. In Columbus, Ga., there are six places for dogs, and none for Negroes. In Charleston, S.C., there are 10 places where a dog can stay, and none for a Negro.

...

The American Negro does not seek to be set apart from the community of American life. He seeks participation in it. He does not seek separation. Instead, he seeks participation and inclusion. These Americans want to be full citizens, to enjoy all the rights and privileges, and to assume the duties and burdens. Surely Congress can do nothing less than to permit them to do their job, to be parts of the total community, and to be parts of the life of this Nation. America has become great because Americans are a

¹ Excerpt taken from 110 *Congressional Record*, 88th Cong., 2nd Sess. (1964), 6531, 6080, 4855, 6549.

united people. The American Negroes seek to be part of that society; and they are asking that it be made a legal reality. This is what title II is all about.

Ironically, the very people who complain the most bitterly at the prospect of Federal action are the ones who have made it inevitable. Had they devoted the singleness of purpose and energy to the integration of the Negro into American life that they have expended in attempting to isolate him, neither title II, nor the remainder of H.R. 7152, would be before us. This proposed legislation is here only because too many Americans have refused to permit the American Negro to enjoy all the privileges, duties, responsibilities and guarantees of the Constitution of the United States. Their continued refusal to recognize the obligations of human dignity and equality compels us to provide legal process to protect them.

...
There has been considerable discussion as to whether the constitutional bases of the public accommodations provisions of H.R. 7152 should be the commerce clause or the 14th amendment. The contention will even be made that no constitutional authority whatsoever supports the legislation. I think there is little doubt that, with the careful changes that have been made during the course of its development, this bill finds firm support in both the commerce clause and the 14th amendment, and is not prohibited by any other provision of the Constitution.

... [T]hat title II does embody a moral judgment should not be a reason for failing to rely on our power to regulate commerce.

In fact, the Constitution of the United States is the Constitution of a Nation. All its provisions are properly available to effectuate the moral judgments of that Nation. That is why it is wholly appropriate to use any relevant constitutional authority with respect to a national problem. If more than one provision of the Constitution provides that authority, so much the better.

In fact, we have not hesitated to use the power to tax as an instrument against gambling and the narcotic traffic. We have not hesitated to use the power to regulate commerce to fight the white slavery trade.

...
Moreover, reliance on the commerce clause is not merely a legal device. The evil of racial discrimination with which title II is concerned has clear economic consequences. . . .

Among other things, that clause gives Congress authority to deal with conditions adversely affecting the allocation of resources. Discrimination and segregation on racial grounds have a substantial adverse effect on the interstate flow of goods, capital, and of persons. Skilled or educated men who are apt to be victims of discrimination in an area are reluctant to settle there even if opportunities are available. For this and other reasons, capital is reluctant to invest in such a region and, therefore the flow of goods to, and their sale within, such an area is similarly reduced. It is quite clear that Congress may legislate with respect to such conditions: indeed, it has done so. The Fair Labor Standards Act, title 29, United States Code, section 201, and the following—indicates that one of the reasons that a minimum standard of living is desirable is because it has a substantial effect upon “the orderly and fair marketing of goods in commerce.”

...
[Humphrey then considered whether the Civil Rights Act of 1964 is consistent with the Civil Rights Cases (1883), which declared unconstitutional the provision in the Civil Rights Act of 1875 forbidding discrimination by places of public accommodation.]

Since 1883 Congress has passed and the courts have upheld as an appropriate exercise of authority under the commerce power legislation of the type considered in the Civil Rights Cases; that is, legislation outlawing racial discrimination on public conveyances, such as railroads and air and motor carriers. At the very least, I think all will agree that the Civil Rights Cases are not now and never have been regarded as an authoritative interpretation of the commerce clause of the Constitution.”

...
A long line of decisions has made it clear that for the purposes of the 14th amendment the phrase “State action” is a broad one which may be satisfied by a number of circumstances. Section 201 (d) states that segregation by an establishment covered by section 201 (b) shall be considered to be “supported by

State action" within the meaning of title II if, and only if it

(1) is carried on under color of any law, statute, ordinance or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of a State or political subdivision.

Each one of these tests has been held to be State action within the meaning of the 14th amendment. In short, the legislation considered in the civil rights cases did not meet the judicial tests of "State action." On the other hand, title II does meet them. The phrase "is carried on under color of any law, statute, ordinance, or regulation" is taken from section 1 of the Civil Rights Act of 1871. It is still on the books as title 42, United States Code, section 1983. The constitutionality of language such as this is now clear (*Monroe v. Pape* [1961]. . .).

...
The goals of this bill are simple ones. To extend to Negro citizens the same rights and the same opportunities that white Americans take for granted. These goals are so obviously desirable that the opponents of this bill have not dared to dispute them. No one has claimed that Negroes should not be allowed to vote. No one has said that they should be denied equal protection of the laws. No one has said that Negroes are inherently unacceptable in places of public accommodation. No one has said that they should be refused equal opportunity in employment.

This bill cannot be attacked on its merits. Instead, bogeymen and hobgoblins have been raised to frighten well-meaning Americans.

...
It is claimed that the bill would require racial quotas for all hiring, when in fact it provides that race shall not be a basis for making personnel decisions.

...
One hundred and ninety years have passed since the Declaration of Independence, and 100 years since the Emancipation Proclamation. Surely the goals of this bill are not too much to ask of the Senate of the United States.

REPRESENTATIVE EDWIN WILLIS (Democrat, Louisiana)

...
... [T]he commerce clause does not say that Congress has the right to regulate habits, customs, human behavior, morals, or attitudes; it can only regulate interstate commerce.

You will hear about court cases concerning the manufacture of goods and farming operations, and so on. There is no doubt that the courts have gone far in this field. But you can at least see and feel corn and wheat; you can measure and buy these grains by the ton, and you can put them in a truck or a boxcar and ship them across State lines. But that is a far cry from what the proponents of this bill would twist the commerce clause to mean. And so even to those of you who are not lawyers, I ask you to remember the simple provision of the powers of Congress under the commerce clause, that is to regulate commerce among the several States.

In respect of "commerce" title II indulges the presumption that "transients" generate "commerce" and that offers to serve travelers affect "commerce." in the area of the 14th Amendment and the concomitant requirement of some sort of "State action," it equates "custom and usage" to affirmative action by a State. In both respects, title II constitutes a novel and dangerous experiment in political theory. Its adoption could work a revolutionary change in the existing balance of Federal-State relationships.

In my opinion, however, the attempted utilization of the 14th amendment and the commerce clause to support title II cannot be defended on constitutional grounds. You are well aware of the decision of the Supreme Court in the *Civil Rights Cases* (1883) which held squarely and unequivocally that

the act of Congress of 1875, entitled "An act to protect all citizens in their civil and legal rights" and proposed to do exactly what is proposed to be done by title II, was unconstitutional and could not be supported under the 14th amendment.

Since my guess is as good as anyone's, I venture to say that the reason no effort was made to base the 1875 Statute on, or to justify it under, the commerce clause was because of the feeling that there was far less chance to support its constitutionality on the commerce clause than there was to have its constitutionality upheld under the 14th amendment.

SENATOR JOHN SPARKMAN (Democrat, Alabama)

...
The 14th amendment provides: "No State shall." It does not provide, "No individual shall." I challenge any Senator to show me in this amendment any words which give the Federal Government the power to regulate individual citizens, acting privately, in the manner which is attempted in this act. They are not there. These words were absent in 1883; and the Supreme Court said so. They have not been scribbled in the margin in the meantime.

The *Civil Rights Cases* of 1883 have not subsequently been overruled, as have so many others. . . .

I am thankful for this fact, for I hope never to see the day when Congress will arrogate to itself the power, unfounded by the Constitution, to "create a code of municipal law for the regulation of private rights." Though the Court, in the aforementioned case, has stated that this cannot be done under the Constitution, the pending legislation before us seeks to do just that. We must not let this bill pass.

Some would have the temerity to attempt to justify this proposal as a proper exercise of the commerce power granted Congress by the Constitution. . . .

Clearly, title II is not a regulation of commerce between the States, or even with the Indian tribes. Rather, this proposal invades the domain reserved to the States by the 10th amendment. This type of police regulation is one which, without a doubt, should be left to the State and local governments.

Also, title II would vest unprecedented powers in the Attorney General of the United States. He would be a sort of car, with almost unlimited power to harass and intimidate individual business owners who wish nothing more than the right to serve whomever they please.

Hubert Humphrey, "Speech on the Proposed Civil Rights Act of 1964"

...
Contrary to the allegations of some opponents of this title, there is nothing in it that will give any power to the Commission or to any court to require hiring, firing, or promotion of employees in order to meet a racial "quota" or to achieve a certain racial balance.

That bugaboo has been brought up a dozen times; but it is nonexistent. In fact, the very opposite is true. Title VII prohibits discrimination. In effect, it says that race, religion and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualifications, not race or religion.

In title VII we seek to prevent discriminatory hiring practices. We seek to give people an opportunity to be hired on the basis of merit, and to release the tremendous talents of the American people, rather than to keep their talents buried under prejudice or discrimination.

*Civil Rights Act of 1964*²

² 78 U.S. Stat. 241, 243, 248, 255-56 (1964)

TITLE II – INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATIONS

SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

...

TITLE VI – NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

...

TITLE VII – EQUAL EMPLOYMENT OPPORTUNITY

...

SEC. 703. (a) it shall be an unlawful employment practice for an employer –

- (1) To fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
- (2) To limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer to employment any individual on the basis of his race, color, religion, sex, or national origin.

(b) it shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization –

- (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;
- (2) to limit, segregate, or classify its membership, or to classify or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or
- (3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

Lyndon B. Johnson, "Radio and Television Remarks upon Signing the Civil Rights Bill," July 2, 1964

We believe that all men are created equal. Yet many are denied equal treatment.
We believe that all men have certain unalienable rights. Yet many Americans do not enjoy those rights.

We believe that all men are entitled to the blessings of liberty. Yet millions are being deprived of those blessings—not because of their own failures, but because of the color of their skin.

The reasons are deeply imbedded in history and tradition and the nature of man. We can understand—without rancor or hatred—how this all happened.

But it cannot continue. Our Constitution, the foundation of our Republic, forbids it. The principles of our freedom forbid it. Morality forbids it. And the law I will sign tonight forbids it.

....

The purpose of the law is simple.

It does not restrict the freedom of any American, so long as he respects the rights of others.

It does not give special treatment to any citizen.

It does say the only limit to a man's hope for happiness, and for the future of his children, shall be his own ability.

It does say that there are those who are equal before God shall now also be equal in the polling booths, in the classrooms, in the factories, and in hotels, restaurants, movie theaters, and other places that provide service to the public.



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