

The Story of the Civil Rights Act of 1964

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An Act

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

July 2, 1964

The Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 2 U.S.C., 28 U.S.C., and 42 U.S.C.).

*"This is a history we strive to put behind us. But it is a history that still informs the society we live in, and so it is one we must address with candor."*¹

- Justice Sonia Sotomayor

This essay provides an overview of various relevant events leading up to passage of the Civil Rights Act of 1964 (CRA). It is by no means comprehensive,

¹ Schuetz v. B.A.M.N., 134 S. Ct. 1623, 1655 (2014) (Sotomayor, J., dissenting).

but it nevertheless attempts to convey a sense of the turmoil out of which the CRA arose and acknowledge the collective efforts and sacrifice that made the CRA possible. The essay concludes with the CRA's enactment in 1964. This is a false conclusion. While beyond the scope of this historical overview, the CRA's impact, collateral effects, and limits over the last fifty years should be discussed and explored.

I. The Act Itself

A. Public Accommodations (Titles II and III)

The CRA prohibits segregation on the grounds of race, religion, or national origin in all places of public accommodations, which includes hotels, theaters, restaurants, courthouses, parks, and sports arenas.²

B. Desegregation of Public Education (Title IV)

The CRA authorized the Commission of Education to study equal educational opportunities, report findings to the president, and financially and otherwise assist with the desegregation of schools at the local level. The Attorney General was authorized to initiate suits under the CRA.³

C. Commission on Civil Rights (Title V)

The CRA made the Commission on Civil Rights a permanent body.⁴

D. Discrimination in Federally Assisted Programs (Title VI)

The CRA prohibited any discrimination by programs and activities that receive federal financial assistance. Various administrative departments and agencies were empowered to take action pursuant to this section.

E. Employment Discrimination (Title VII)

² Civil Rights Act, History.com, <http://www.history.com/topics/black-history/civil-rights-act/print> (last visited July 17, 2014).

³ The Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 2 U.S.C., 28 U.S.C., and 42 U.S.C.).

⁴ Id.

In Title VII, the CRA prohibits workplace discrimination based on race, color, religion, sex, or national origin.⁵ It also established the Equal Employment Opportunity Commission (EEOC), which had the power to enforce Title VII by filing lawsuits on behalf of aggrieved employees.⁶

F. Voting Rights (Titles I and VIII)

While not as comprehensive or expansive as the later Voting Rights Act (VRA), the CRA still contained provisions that prohibited unequal application of voting registration requirements and sought to address the “long and lamentable record of stymieing the right of racial minorities to participate in the political process.”⁷ However, the CRA did not address more formidable voting obstacles like literacy tests, violence, and fraud.

II. America’s Foundational Struggle to Define the National Polity

Two documents demonstrate young America’s strained attempts to articulate who its citizens were and to what they were entitled. The Constitution enshrined the notion of “We the People,” but carefully defined the contours of “We.”⁸ The earlier Declaration of Independence professed that “all men are created equal . . . endowed by their Creator with certain unalienable Rights,” including “Life, Liberty and the pursuit of Happiness.”⁹

Solomon Northup, in his autobiography *Twelve Years a Slave*, recounted his time in the nation’s capital after being captured and sold into slavery in 1841, pointing out the irony of enslavement in a country whose national narrative comprised of ideas about freedom and equality: “So we passed, hand-cuffed and in silence, through the streets of Washington, through the Capital of a nation, whose theory of government, we are told, rests on the foundation of man's inalienable right to life, LIBERTY, and the pursuit of happiness! Hail! Columbia,

⁵ Juliet R. Aiken, Elizabeth D. Salmon, & Paul J. Hanges, *The Origins and Legacy of the Civil Rights Act of 1964*, 28 J. Bus. Psychol. 383, 383 (2013).

⁶ *Civil Rights Act*, *supra* note 2.

⁷ *Schuetz*, 134 S. Ct. at 1651 (Sotomayor, J., dissenting); *Civil Rights Act*, *supra* note 2.

⁸ *See generally* U.S.Const.

⁹ The Declaration of Independence para. 2 (U.S. 1776).

happy land, indeed!”¹⁰ Chief Justice Roger B. Taney saw no irony, as Northup did; he recognized the undeniable truth that “the enslaved African race were not intended to be included, and formed no part of the people who framed this declaration.”¹¹

The Constitution also grappled with defining who was truly American. In 1987, Justice Thurgood Marshall pointed out the deficiencies in the original United States Constitution’s vision of equality for all of the nation’s people.

“We the People.” When the Founding Fathers used this phrase in 1787, they did not have in mind the majority of America’s citizens. “We the People” included, in the words of the Framers, “the whole Number of free Persons.” On a matter so basic as the right to vote, for example, Negro slaves were excluded, although they were counted for representational purposes at three fifths each. Women did not gain the right to vote for over a hundred and thirty years.

The omissions were intentional. The record of the Framers’ debates on the slave question is especially clear: the Southern States acceded to the demands of the New England States for giving Congress broad power to regulate commerce, in exchange for the right to continue the slave trade.¹²

On the eve of the Civil War the United States of America was firmly set in its system of exclusion, its consciousness shaped by a narrative of supremacy. A century after the Civil War, the CRA would ultimately seek to fill the gaps in the definition of American citizenship that had been intentionally created and zealously maintained.

¹⁰ Solomon Northup, Twelve Years a Slave: Narrative of Solomon Northup, a Citizen of New-York, Kidnapped in Washington City in 1841, and Rescued in 1853: Electronic Edition 56 (1997), available at <http://docsouth.unc.edu/fpn/northup/northup.html> (last visited July 17, 2014).

¹¹ Scott v. Sandford, 60 U.S. 19 How. 393, 410 (1856). Taney was the author of the “Dred Scott Decision,” which is heralded as the worst decision in the history of the Supreme Court.

¹² Justice Thurgood Marshall, Remarks at the Annual Seminar of the San Francisco Patent and Trademark Law Association (May 6, 1987), available at http://www.thurgoodmarshall.com/speeches/constitutional_speech.htm (last visited July 17, 2014).

III. Federal Government as Protector of African American Life and the State Response

In 1935, African American political scientist and scholar Ralph Bunche aptly characterized the relationship between African Americans and the federal government by stating that “[t]he Negro in the United States is a special ward of the Supreme Court.”¹³ His words highlight the way African American life and dignity has been at the whims of the Court and the other branches of the federal government, whose role has historically swung back and forth from protector to unwilling participant. When the federal government has acted as protector, however, the measures put in place have often been effectively counteracted by the states. This oscillation between federal protection and withdraw, and the related tension between federal action and hostile state response, provide a useful framework for illustrating the American legal and social climate leading up to the enactment of the CRA.

A. Federal Protective Measures

- ***Emancipation Proclamation:*** In 1863, as a last-ditch effort in his strategy to reunite the fractured polity, President Lincoln issued an executive order, the Emancipation Proclamation; it purported to emancipate all people enslaved in rebelling states.¹⁴
- ***Reconstruction Amendments:*** After the Civil War, Congress passed the three “Reconstruction Amendments.”
 - The **Thirteenth Amendment** abolished slavery and involuntary servitude, except as a punishment for crime. States responded by passing laws that sharply limited any newly-realized freedoms.¹⁵
 - The **Fourteenth Amendment** provided citizenship rights for all persons born or naturalized in the United States; guaranteed “equal

¹³ A Critical Analysis of the Tactics and Programs of Minority Groups, J. Negro Educ., July 1935, at 308, 317.

¹⁴ See Robert Fabrikant, Emancipation and the Proclamation: Of Contrabands, Congress, and Lincoln, 57 How. L.J. 1, 58 (2013); see also Aiken, Salmon, & Hanges, supra note 5, at 385. The Proclamation “[was], however, largely redundant with the Emancipatory Legislation already enacted” by the Civil War Congress. Fabrikant, supra, at 59.

¹⁵ Aiken, Salmon, & Hanges, supra note 5, at 385.

protection of the laws,” in response to treatment of “freedmen” after the War; and applied “due process” guarantees to the states. The southern states refused to ratify the Amendment. Through its **Reconstruction Act of 1867**, Congress established five military districts in the South with temporarily military governments that required the southern states to write new constitutions and ratify the Fourteenth Amendment in order to be readmitted to the Union. This coercive context and the Fourteenth Amendment’s direct reach to the states made it one of the most bitterly contested constitutional amendments.

- Finally, the **Fifteenth Amendment** prohibited denying citizens the right to vote on the basis of race, color, or previous condition of servitude.
- **Enforcement Acts of 1870 and 1871**: Using its new power under the Fourteenth Amendment, Congress passed these acts to ban state laws denying African Americans the right to vote, prohibit voter fraud, and authorize federal court supervision of dubious elections.¹⁶
- **Civil Rights Act of 1875**: Congress enacted the Civil Rights Act of 1875 to guarantee for all citizens, regardless of race, their access to public accommodations, including “inns, public conveyances and public places of amusement,” anticipating what the CRA would do almost a century later.¹⁷ It also guaranteed the right to serve on juries, an important protection against the rampant corruption of the southern legal system.¹⁸

B. State Responses

¹⁶ See Jack M. Balkin, *History Lesson*, Legal Aff., July/Aug. 2002, at 44-49.

¹⁷ See *id.*

¹⁸ *Reconstruction: The Second Civil War--The 1875 Civil Rights Act*, PBS.org (Dec. 19, 2003), http://www.pbs.org/wgbh/amex/reconstruction/activism/ps_1875.html (last visited July 17, 2014). The Civil Rights Act of 1875 would not put an end to judicial corruption, however. In particular, all-white juries, strikes of African American jurors, and juror intimidation are problems that extended well beyond 1875 and even beyond the CRA. See generally, Gilbert King, *Devil in the Grove* (2012) (recounting the stories of several southern cases handled by the NAACP and its star attorney, Thurgood Marshall, and the challenges of corrupt justice); Bruce Wright, *Black Robes, White Justice* (1987) (discussing the racial biases of white jurors, among many other racial problems pervading the judiciary).

- **Compromise of 1877:** Various states, angered by the presence of federal troops in the South and Congress' mission to "institute black rule," sought to end Reconstruction.¹⁹ This was eventually achieved through congressional compromise whereby southern Democrats agreed not to block the presidential victory of Republican Party candidate Rutherford B. Hayes on the condition that Republicans withdrawal federal troops from the South. This compromise effectively ended Reconstruction and returned the south to a system of "home rule." Southern states were now free to reconstruct their own legal and social system, one that reflected white supremacy and replicated enslavement—this time with even less regard for the value of African American life.²⁰
- **Violence:** This climate lent itself to the rise of white supremacist groups like the Ku Klux Klan.²¹ Mob violence and lynching became commonplace occurrences, not only in the South but around the country.²²
- **Jim Crow Laws:** Responding to the Thirteenth and Fourteenth Amendments and the end of enslavement, many states erected a system of separating the races by formally segregating public facilities and schools. Agricultural labor contracts reduced newly-freed farmers to an economic system that mirrored enslavement.²³
- **Voting Restrictions:** Responding the Fifteenth Amendment, many southern states "shut racial minorities out of the political process altogether by withholding the right to vote."²⁴ Southern states used various mechanisms to curtail the right to vote, such as literacy tests, good character requirements, poll taxes, gerrymandering and other strategies of fraud, intimidation, and outright violence.²⁵

C. Judiciary as Unwilling Participant: Withdraw of Protections

¹⁹ Aiken, Salmon, & Hanges, *supra* note 5, at 385.

²⁰ See, e.g., *Compromise of 1877*, History.com, <http://www.history.com/topics/us-presidents/compromise-of-1877> (last visited July 17, 2014).

²¹ Aiken, Salmon, & Hanges, *supra* note 5, at 385.

²² *Id.*

²³ See *id.*

²⁴ *Schuetz*, 134 S. Ct. at 1652 (Sotomayor, J., dissenting).

²⁵ See *id.* at 1655.

Several cases at the end of the nineteenth century limited congressional power under the Fourteenth Amendment, making it more difficult for Congress to act as protector of African Americans in the south.

- ***The Slaughterhouse Cases (1873)***: After Congress used its broad Fourteenth Amendment power to enact various statutes helpful to African Americans during Reconstruction, the Supreme Court partially limits this power, effectively writing the Fourteenth Amendment Privileges and Immunities Clause out of existence.²⁶
- ***The Civil Rights Cases (1883)***: The Supreme Court strikes down “the last great achievement of the Reconstruction Congress,” the Civil Rights Act of 1875, in the *Civil Rights Cases*, holding that protecting blacks from private discrimination violated the notion of state sovereignty.²⁷
- ***Plessy v. Ferguson (1896)***: The Supreme Court upholds the “separate but equal” doctrine already practiced in many states, thereby further entrenching segregation (in employment, housing, education) that had become well-established throughout the country.²⁸ Violence against African Americans persists.²⁹

IV. A Shift: Turning to the Commerce Clause

- ***Experiences in World War I, the Great Depression, and World War II*** spur the nation to increasingly resolve challenges affecting commerce. Through the Great Depression, African Americans continue to face “discrimination in hiring, pay, and the receipt of welfare assistance, despite some relief from the New Deal.”³⁰
- ***The Commerce Power***: A series of cases reaching the Supreme Court in the early 1900s shape Congress’ broad power under the Commerce Clause, which, in turn, allowed it to address various interstate and even intrastate

²⁶ See Balkin, *supra* note 16.

²⁷ See *id.*

²⁸ Aiken, Salmon, & Hanges, *supra* note 5, at 385.

²⁹ *Id.*

³⁰ *Id.*

economic and moral concerns, especially by the New Deal era.³¹ Congress was therefore able to pass laws concerning anything that traveled through or used interstate commerce (e.g. highways, trains, phones, or mail) and anything substantially affecting interstate commerce.³² This expanded power set the stage for legislation like the CRA.

V. Legal Strategies and Grassroots Movements

A. The Legal Strategy and Example Cases

- ***The NAACP and Other Legal Movements:*** The National Association for the Advancement of Colored People (NAACP), through its Legal Defense Fund, launched an extensive and strategic litigation campaign to fight various social injustices faced by African Americans in the country. The organization led a strong anti-lynching campaign and also focused on attacking segregation. Charles Hamilton Houston, “former Dean of Howard University’s law School . . . was the architect and chief strategist of the NAACP’s legal campaign to end segregation.” The NAACP’s legal team, often led by Houston’s protégé Thurgood Marshall, sought to create broad change by creating a strong trial record and targeting legal change at the appellate level.³³ Several seminal cases resulted, including but not limited to Murray v. Maryland (1936); State ex rel. Gaines v. Canada (1938); and Morgan v. Virginia (1946).
- ***Sweatt v. Painter (1950):*** Under the precedent of Plessy v. Ferguson, the Supreme Court holds that the Equal Protection Clause required Heman Marion Sweatt, an African American man, to be admitted to the University of Texas Law School. This result occurred because the Court found that the separate African American law school, which Texas was purportedly going to open in 1947, would not be anywhere near equal to University of

³¹ See Anna Johnson Cramer, The Right Results for All the Wrong Reasons: An Historical and Functional Analysis of the Commerce Clause, 53 Vand. L. Rev. 271, 277-80 (2000).

³² See Balkin, supra note 16.

³³ See Thomas A. Saenz, Mendez and the Legacy of Brown: A Latino Civil Rights Lawyer’s Assessment, 11 Asian L.J. 276, 277 (2004). See generally King, supra note 18 (providing accounts of several NAACP cases throughout the South and detailing the strategy of the Legal Defense Fund).

Texas Law School.³⁴ Another similar case brought by the NAACP was McLaurin v. Oklahoma (1950).

- ***Mendez v. Westminster School District (1947)***: The Ninth Circuit in Mendez held that segregation of Mexican-American students in Orange County, California, was unlawful. While Mendez was not part of the NAACP's "concerted litigation campaign to achieve the reversal of the broad and pernicious Plessy," it serves as one example of legal desegregation efforts prior to Brown outside of the NAACP.³⁵

B. The Grassroots Movements

- ***A. Philip Randolph and Executive Orders 8802***: In 1941, Asa Philip Randolph, leader of the Brotherhood of Sleeping Car Porters, began organizing a mass march on Washington to protest employment discrimination in defense industries and address various other injustices—from lynchings to segregation in the Armed Forces. The threat of the march spurred President Roosevelt to issue Executive Order 8802, which prohibited racial discrimination in the national defense industry and established the Fair Employment Practice Committee.³⁶
- ***A. Philip Randolph and Executive Order 9981***: In 1947, Randolph begins organizing and threatens a draft boycott. In response, President Truman creates a special committee on civil rights and issues Executive Order 9981, which prohibits racial discrimination in the United States Armed Forces and effectively integrates the military.³⁷

VI. Brown as the Court's Shift to Federal Protector and Ensuing State Response

A. Brown v. Board of Education (1954)

- The story of Brown, which resulted from a series of cases in the NAACP's legal campaign, is greatly abbreviated here, but it is significant to this

³⁴ Sweatt v. Painter, 339 U.S. 629 (1950); see Sweatt v. Painter, Oyez.org, www.oyez.org/cases/1940-1949/1949/1949_44 (last visited July 18, 2014).

³⁵ Saenz, supra note 33, at 276-77.

³⁶ See Aiken, Salmon, & Hanges, supra note 5, at 385.

³⁷ See id. at 386.

particular history.³⁸ Brown did not simply end segregation in public schools, but it overruled Plessy v. Ferguson and thus terminated the legal justification for segregated facilities in America: “Insofar as [Brown] held that American state sponsored racial apartheid was inconsistent with the Constitution’s Equal Protection guarantees, the Court implicitly repudiated the moral obscenity of Plessy v. Ferguson’s separate but equal doctrine.”³⁹ Furthermore, with Brown, the Supreme Court’s role shifted from unwilling participant to federal protector. The new leadership of Chief Justice Warren would prove to be helpful throughout the civil rights movement.

- ***Southern Response:*** Citizens of the southern states quickly reacted to Brown by forming White Citizens Councils that vowed to defend segregation. In 1956, the “Southern Manifesto” was written and issued by a group of Republican and Southern Democrats to assert their opposition to federal integration efforts and defend the notion of states’ rights.⁴⁰

VII. Another Round of Grassroots Movements and Federal Protections

- ***Montgomery Bus Boycott:*** After the arrest of Rosa Parks, what started as a one-day protest would become a year-long boycott of the bus system in Montgomery, Alabama. This demonstration, driven by the solidarity of the African American community, proved an effective challenge to segregation in transportation.⁴¹

³⁸ See Okianer Christian Dark, Lisa Crooms-Robinson, & Aderson B. Francois, Commemorating Brown at 60, Pursuing Our Unfinished Agenda, Howard University School of Law (May 19, 2014), <http://www.law.howard.edu/1811> (last visited July 17, 2014). It is important to note that Brown was the result of many people working on legal strategies and cases over a long period of time: “Charles Hamilton Houston devised the legal strategy for, and initiated the early cases that led to, Brown while serving as [Howard University School of Law] Dean. Many of Houston’s colleagues and students, including George E.C. Hayes, Oliver Hill, Spotswood Robinson, James Nabrit, Leon Ransom, Robert Carter, Harold Boulware, and Thurgood Marshall, went on to serve as lead lawyers in Brown and related desegregation cases.” Id.

³⁹ Id.

⁴⁰ Aiken, Salmon, & Hanges, supra note 5, at 386.

⁴¹ Id.

- ***Resistance to School Integration in Little Rock:*** In 1957, the enrollment of a group of African American students at the all-white Little Rock Central High School in Arkansas resulted in crisis and national attention. Governor Orval Faubus attempted to prevent the students from entering the school by ordering the Arkansas National Guard to block the entrance. President Eisenhower called in the 101st Airborne Division of the Army to escort and protect the students as they attend the school.⁴²
- ***Civil Rights Act of 1957:*** During Senate debate for passage of a new civil rights act, South Carolina Senator Strom Thurmond delayed the Senate vote on the bill by speaking for 24 hours and 18 minutes, the longest filibuster by a lone senator in U.S. history.⁴³ The Civil Rights Act of 1957 established a civil rights section within the Department of Justice and a Commission on Civil Rights, whose purpose was to investigate discriminatory conditions.⁴⁴
- ***Executive Order 10925:*** In 1961, President Kennedy issues Executive Order 10925, which targeted racial discrimination in employment (particularly by contractors) and created the President's Committee on Equal Employment.
- ***Purported Desegregation of Bus and Train Stations:*** In 1961, the Interstate Commerce Commission (ICC) issued regulations that prohibited segregation in interstate bus travel.⁴⁵ Whether these regulations would actually be enforced was an open question.⁴⁶

A. Protest and other Strategies Continue

- ***Organization and Protest Continues:*** Seven large organizations within the African American community continued to focus on nonviolent protest,

⁴² *Id.*

⁴³ Mark Memmott, [How Did Strom Thurmond Last Through His 24-Hour Filibuster?](http://www.npr.org/blogs/thetwo-way/2013/03/07/173736882/how-did-strom-thurmond-last-through-his-24-hour-filibuster), NPR.org (Mar. 7, 2013, 2:53 PM), <http://www.npr.org/blogs/thetwo-way/2013/03/07/173736882/how-did-strom-thurmond-last-through-his-24-hour-filibuster> (last visited July 17, 2014).

⁴⁴ [Civil Rights Act](#), *supra* note 2.

⁴⁵ U.S. Dep't of Transp. Fed. Highway Admin., [The Road to Civil Rights: the ICC Ruling](http://www.fhwa.dot.gov/highwayhistory/road/s31.cfm), Highway History, <http://www.fhwa.dot.gov/highwayhistory/road/s31.cfm> (last visited July 18, 2014); [Freedom Rides](http://www.history.com/topics/black-history/freedom-rides), History.com, <http://www.history.com/topics/black-history/freedom-rides> (last visited July 17, 2014).

⁴⁶ U.S. Dep't of Transp. Fed. Highway Admin., *supra* note 45.

legal strategies, and pursuit of civil rights legislation to guarantee effective implementation of desegregation and challenge discrimination in employment. These six organizations were the Congress of Racial Equality (CORE), the Southern Christian Leadership Conference (SCLC), the Brotherhood of Sleeping Car Porters, the NAACP, the National Urban League, and the Student Nonviolent Coordinating Committee (SNCC). These groups would ultimately organize and participate in the March on Washington in 1963 to shed light on civil rights challenges in America.⁴⁷

- **Sit-Ins:** Students in over 80 communities participated in sit-ins in early 1960 as a strategy to gain national attention and force integration in public facilities. Over 500 students in SNCC participated in the Nashville sit-in, which resulted in integration of the city's lunch counters.⁴⁸
- **Freedom Riders:** In 1961, members of CORE and SNCC decided to test the ICC desegregation regulations. They engaged in a non-violent strategy to draw national attention and pressure the federal government. By travelling by bus in interracial groups through the South and sitting in bus station waiting rooms and lunch counters, these Freedom Riders exposed themselves to intimidation, violence, and risk of death. When violence did in fact result, the Freedom Riders did not fight back or defend themselves, a strategy that—when exposed to the national and international community—emphasized the brutality and ruthlessness out racist southerners.⁴⁹
- **Freedom Summer:** CORE and SNCC organize a voter registration drive over ten weeks in 1964, known as the Mississippi Summer Project, or “Freedom Summer.” African American Mississippians and over 1,000 out-of-state, predominately white volunteers convened in Mississippi for the massive project. The organizers and volunteers faced harassment and violent attacks. Three civil rights activists—James Chaney, Michael

⁴⁷ See, e.g., March on Washington, History.com, <http://www.history.com/topics/black-history/march-on-washington> (last visited July 17, 2014).

⁴⁸ Aiken, Salmon, & Hanges, supra note 5, at 386.

⁴⁹ See, e.g., Freedom Riders (PBS television broadcast), available at <http://www.pbs.org/wgbh/americanexperience/freedomriders/> (last visited July 18, 2014).

Schwerner, and Andrew Goodman—were kidnapped and brutally murdered, shocking the nation.⁵⁰

B. Segregation persists

The aforementioned federal measures and collective movements did not discourage continued resistance from the states. In his 1963 inaugural address, Alabama Governor George Wallace proudly declared, “Segregation now, segregation tomorrow, segregation forever.”⁵¹ In 1964, weeks before the CRA passed, Georgia Congressman Richard Russell promised to “resist to the bitter end any measure . . . to bring about social equality and intermingling . . . of the races in our states.”⁵²

VIII. Passage of the CRA

A. President Kennedy and President Johnson

- *Pressures Spur the President to Action:* President Kennedy initially delayed in pressing anti-discrimination legislation. However, the grassroots movements—particularly the protests in the south by the Freedom Riders—and resultant national and international attention, led the President to action.⁵³
- *President Kennedy Introduces the Legislation:* President Kennedy introduced “the most comprehensive civil rights legislation to date” in a series of speeches during the summer 1963.⁵⁴
- *The Commerce Clause Becomes a Useful Civil Rights Power:* With Congress’ Fourteenth Amendment powers being curtailed by 80-year-old precedents, the new civil rights bill had to take a new approach.

⁵⁰ Eric Foner & John A. Garraty eds., *Freedom Summer*, History.com (1991), <http://www.history.com/topics/black-history/freedom-summer> (last visited July 18, 2014).

⁵¹ Aiken, Salmon, & Hanges, *supra* note 5, at 384.

⁵² Leslie Goffe, *How the 1964 Civil Rights Act Cost Black America*, *New African*, May 2014, at 75.

⁵³ *Civil Rights Act*, *supra* note 2.

⁵⁴ Aiken, Salmon, & Hanges, *supra* note 5, at 388; *Civil Rights Act*, *supra* note 2.

Commerce Clause cases from the New Deal era provided broad federal authority to regulate “just about anything.”⁵⁵

- ***President Johnson Continues Efforts:*** President Kennedy was assassinated in Dallas in November 1963. President Johnson, during his first State of the Union Address, vowed to continue efforts to move the legislation along as a monument to President Kennedy: “Let this session of Congress be known as the session which did more for civil rights than the last hundred sessions combined.”⁵⁶

B. Legislative History

- ***The House:*** On June 20, 1963, Representative Emanuel Celler, a Democrat from New York, introduced the bill in the U.S. House of Representatives.⁵⁷ Southern congressmen vehemently opposed the bill, arguing that it “unconstitutionally usurped individual liberties and states’ rights.”⁵⁸
- ***The “Sex” Amendment:*** The CRA was a response to pressures resulting from the Civil Rights movement and its focus on racial equality. However, an amendment to ban employment discrimination against women was added to the bill by Representative Howard Smith.⁵⁹ Smith, a Virginia segregationist and “an avowed detractor of the act,” added the amendment in a sabotage effort to “kill” the bill.⁶⁰ By adding language to prohibit sex discrimination, the bill would be even more controversial and less likely to pass.⁶¹ This plan, however, backfired. Despite some resistance to the sex amendment, it was ultimately embraced.⁶² The House voted 290-130 in favor of the bill.⁶³

⁵⁵ See Balkin, *supra* note 16.

⁵⁶ *Civil Rights Act*, *supra* note 6; see Aiken, Salmon, & Hanges, *supra* note 5, at 388.

⁵⁷ Douglas R. Garmager, *Discrimination Outside of the Office: Where to Draw the Walls of the Workplace for a “Hostile Work Environment” Claim Under Title VII*, 85 Chi.-Kent L. Rev. 1075, 1078 (2010).

⁵⁸ *Civil Rights Act*, *supra* note 2.

⁵⁹ Aiken, Salmon, & Hanges, *supra* note 5, at 388.

⁶⁰ *Id.* There are some, however, who assert that Smith was indeed influenced by the National Women’s Party lobby to push for the amendment. *Id.* The motives of these lobbyists, however, is uncertain.

⁶¹ See *Civil Rights Act*, *supra* note 2.

⁶² See Aiken, Salmon, & Hanges, *supra* note 5, at 388. Some in the House felt that that the gender amendment was inappropriate. An interesting perspective came from Representative Edith Green of

- ***The Senate:*** Senate Majority Leader Mike Mansfield proposed to “place the bill on the calendar,” and the bill therefore strategically bypassed “a potentially hostile committee phase.”⁶⁴ Southern and border state Democrats fought the bill with a 75-day filibuster, during which Senator Robert Byrd of West Virginia, a former Ku Klux Klan member, spoke for over 14 hours.⁶⁵ Ultimately, the filibuster was broken and the Senate voted in favor of the bill, 73-27.⁶⁶
- ***Johnson’s Signature and Prediction:*** President Johnson signed the CRA into law on July 2, 1964.⁶⁷ Later that day, the President reportedly told one of his aides that the Act was “an important gain, but I think we just delivered the South to the Republican Party for a long time to come.”⁶⁸
- ***Supreme Court Approval:*** In the December 1964 case of Katzenbach v. McClung, the Warren Court upheld the CRA as a valid regulation of interstate commerce. “Congress, the Court ruled, could reasonably conclude that segregated restaurants and hotels used food shipped through interstate highways or railways, and that segregation discouraged blacks from spending money from traveling interstate.”⁶⁹ An account by Randall Kennedy in his essay, “The Civil Rights Act’s Unsung Victory And How It Changed the South,” supports the Court’s conclusion, explaining how his parents would meticulously prepare and load up their car with food during their trips down south to see relatives: “Having fled the Jim Crow South in the Fifties, my parents were seeking to limit our contact with filling stations, restaurants, motels, and other public accommodations along the way, where their children might be snarled at by white cashiers

Oregon, who argued that “for every discrimination that has been made against a woman in this country, there has been 10 times as much discrimination against the Negro.” Id.

⁶³ Garmager, supra note 57, at 1079.

⁶⁴ Id. at 1078.

⁶⁵ Civil Rights Act, supra note 2.

⁶⁶ Id.

⁶⁷ Aiken, Salmon, & Hanges, supra note 5, at 388.

⁶⁸ Civil Rights Act, supra note 2.

⁶⁹ See Balkin, supra note 16.

and attendants.”⁷⁰ Under the Commerce Clause, the CRA was able to change this situation.

IX. After the Act

- The CRA was later broadened to include protections for disabled Americans and the elderly.⁷¹
- **Title IX:** The CRA was later expanded to include “Title IX,” which establishes protections against discrimination against women in collegiate athletics.⁷²
- **Voting Rights Act:** The CRA paved the way for the Voting Rights Act of 1965 (VRA), which was ultimately prompted by horrific violence in Selma, Alabama after a large voter registration drive.⁷³ The VRA prohibited discriminatory voting practices and created several protections to ensure the right to vote was not curtailed.
- **Fair Housing Act:** The CRA also made way for the Fair Housing Act of 1968, which banned discriminatory housing practices, particularly with respect to financing, selling, and renting homes.⁷⁴

X. Conclusion

The Civil Rights Act of 1964 was not the panacea for all of America’s problems stemming from racism, sexism, and other deeply-held individual and institutional biases. The struggle against these threats to “life, liberty, and the pursuit of happiness” continues. Today, while some are convinced that American society has changed sufficiently to render certain federal measures unnecessary,⁷⁵ others assert that “effective legislation creates the false impression

⁷⁰ Randall Kennedy, The Civil Rights Act’s Unsung Victory And How It Changed the South, Harper’s Mag., June 2014, at 35.

⁷¹ Civil Rights Act, *supra* note 2.

⁷² Id.

⁷³ Aiken, Salmon, & Hanges, *supra* note 5, at 388.

⁷⁴ Civil Rights Act, *supra* note 2.

⁷⁵ See, e.g., Shelby Cnty., Ala. v. Holder, 133 S. Ct. 2612, 2616 (2013) (“Our country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.”)

that it is no longer relevant today.”⁷⁶ Whether that change has been sufficiently profound and what the answer suggests about the CRA’s lasting relevance and remaining value are questions to explore. Nevertheless, it is undeniable that the CRA brought legal segregation “to its knees” and profoundly and irrevocably changed American society.⁷⁷

⁷⁶ Aiken, Salmon, & Hanges, *supra* note 5, at 384.

⁷⁷ *Id.* at 383; *Civil Rights Act*, *supra* note 2.