

Justice for All

Aftermath of the Civil Rights Act

BY ERIC TEGLER

FIFTY YEARS IS A LONG TIME. And it's a rather short time relatively speaking. Still, America has seen change at a greater pace over the past five decades than at any time in its history. Since 1964, the agents of change have been many but among the major drivers is the Civil Rights Act.

The energy channeled into the civil rights movement took decades to build, starting not long after the Civil War. By the mid-1950s, it began to reach critical mass, and a combination of legal precedents, inspired leadership, and events on the ground yielded the legislation that became the Civil Rights Act of 1964 (CRA).

The groundwork laid by civil rights leaders, and Presidents John F. Kennedy and Lyndon B. Johnson, was just that – groundwork. But in 2014, we can look back and say that while the aims of the CRA may have yet to be completely fulfilled, the foundation laid by the act has proven an effective one upon which to build.

Perhaps the best way to arrive at this conclusion is to ask the most authoritative body that can opine on the subject – the American people.

The Gallup company did just that in fall 1964, finding, via two polls, that clear majorities (58 percent and 59 percent) of Americans responded positively when asked this question: “As you know, a civil rights law was recently passed by Congress and signed by the president. In general, do you approve or disapprove of this law?”

In 1999, Gallup polling revealed that Americans regarded the passage of the 1964 Civil Rights Act as the fifth-most important event of the entire 20th century. Passage of the CRA was rated lower in importance than only World War II, women gaining the right to vote in 1920, dropping the atomic bomb on Hiroshima in 1945, and the Nazi Holocaust of World War II. The CRA was rated as more important than such events of the last century as World War I, landing a man on the moon, and the assassination of Kennedy.

In 2013, Gallup conducted two further separate surveys in which it found that 25 to 29 percent of blacks said that civil rights for blacks had “greatly” improved while 52 to 53 percent said civil rights had somewhat improved over their lifetimes. That left just 7 to 9 percent who said that civil rights for blacks had worsened over their lifetimes. Whites were significantly more positive in their views of the state of civil rights for blacks.

The polling, then and now, reflects what a landmark event passage of the CRA was. Most recognized it from the start, including Julian Bond. Now a distinguished professor in residence at American University in Washington, D.C., in 1964, Bond was working as communications director for the Student Nonviolent Coordinating Committee (SNCC). His reaction at the time was a mixture of accomplishment and anticipation, he said.

“It was one of joy and excitement and the feeling that if you work hard and you do the things we did, and which other people did, then you can be victorious. It was a great feeling of success. There was momentum but we had the feeling there was more to be done, there was more for Congress to do. It was only a beginning.”

Johnson agreed. In remarks for a nationwide television and radio audience upon signing the Civil Rights Act in July 1964, he advised: “We must not approach the observance and enforcement of this law in a vengeful spirit. Its purpose is not to punish. Its purpose is not to divide, but to end divisions – divisions which have all lasted too long. Its purpose is national, not regional.”

Passage of the act signaled certain change, but change always garners resistance and provisions of the CRA met immediate resistance, particularly where desegregation was concerned.

In 1964, Atlanta motel owner Moreton Rolleston challenged the CRA on the grounds that Congress did not have



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the authority to force a private-sector business to serve blacks. The case, *Heart of Atlanta Motel v. United States*, went to the Supreme Court, which held in a landmark ruling that Congress drew its authority from the Constitution's Commerce Clause, rejecting Rolleston's claims.

"In all of these movements, there are leaps forward and then stalls," Juliet R. Aiken said. Aiken is deputy director of the Center for the Study of the Legal Profession at Georgetown University, where she is also an adjunct professor of law. She recently co-authored an essay in the *Journal of Business Psychology* on the origins and legacy of the CRA.

"I think the success of acts like the CRA can actually be handicapping because you end up with a lot of pushback

President-elect Barack Obama greets venerable civil rights activist and current U.S. Congressman John Lewis, D-Ga., on the U.S. Capitol steps prior to taking the oath of office in Washington, D.C., Jan. 20, 2009.



against these rights groups.” She added that, “Within a group, you work for a particular right, say voting rights, and you achieve the goal. Then you have the question within the group of what’s next. What will we focus on? You also get pushback from those outside saying, ‘You’ve gotten what you wanted.’”

And yet, the precedent set by the CRA carried with the American people. Despite a warning from Georgia Sen. Richard Russell Jr. to Johnson that his strong support for the civil rights bill “will not only cost you the South, it will cost you the election,” Johnson went on to win the 1964 election by one of the biggest landslides in American history.

When violence again erupted in Selma, Ala., in response to a strong drive to register African-American voters, resistance to the CRA was evident. But distaste for the opposition prompted the drive for the Voting Rights Act of 1965. Subsequent strengthening of the CRA through Johnson’s executive orders requiring federal contractors to incorporate equal opportunity claims in contract bids and the establishment of the Equal Employment Opportunity Commission (EEOC) furthered the reach of the CRA.

The momentum created by the act and its provisions sustained, unevenly, through the following decade, though Dr. Martin Luther King Jr. felt compelled to remind America in 1968 to “be true to what you said on paper.”

Bond described progress stemming from the CRA through the 1970s as positive but not positive enough.

“On the one hand, we were happy that the bill had passed. On the other hand, it was insufficient. It was not what it could be and all of its components were not as strong as they could have been.”

Nevertheless, its effect could be seen in the 1972 Equal Employment Opportunity Act, which amended Title VII of the CRA by extending the coverage of the EEOC to small employers and providing the commission with direct enforcement powers. In 1978, the Civil Rights Reform Act



Participants, some carrying American flags, walking in the civil rights march from Selma to Montgomery, Ala., in 1965.

“It’s interesting because the CRA doesn’t mention affirmative action. The concept of affirmative action certainly existed before the CRA and it appears in executive orders written after the act was passed. The CRA probably resulted in part from discussions of affirmative action. On the other hand, it laid the groundwork for future discussions of affirmative action.”

The 1980s saw a less active approach to enforcement of the CRA and subsequent provisions. With the appointment of Clarence Thomas as its chairman by President Ronald Reagan, the EEOC became more focused on organizational efficiency, less active in filing lawsuits. The shift reflected

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further strengthened the EEOC, assigning it responsibility for enforcing Title VII, the Equal Pay Act, and the Age Discrimination in Employment Act, as well as ensuring Equal Employment Opportunity for federal employees.

Affirmative action policies, which resulted in significant increases in African-American employment, particularly in federal employment, were upheld in the late 1970s, with the Supreme Court ruling in *Regents of the University of California v. Bakke* (1978) that affirmative action was legal; race could be considered in admissions decisions as long as it was not the only criterion, but that racial quota systems were not.

Contrary to popular perception, affirmative action was not written into the CRA, though, practically speaking, they go hand in hand, Aiken pointed out.

a broader conservative sentiment in American society and both the reality and perception of greater representation of African-Americans at different levels of socioeconomic prominence. Two decades beyond passage of the CRA, Aiken observed, the contemporary question, “Is the goal equal representation or equal opportunity?” arose. That question persists today.

The next major legislative extension of the CRA came with the 1991 Civil Rights Act, which sought to reverse the impact of Supreme Court rulings regarding affirmative action. Aiken judges the 1991 act to be the most beneficial subsequent legal follow-on of the 1964 CRA, particularly with respect to employment (Title VII), upholding the right to trial by jury in discrimination claims and introducing the possibility of emotional distress claims.



Fifty years on, the impact of the CRA goes well beyond its legal precedents, however. Its symbolism has been equally, if not more, important. Many have pointed to the election of Barack Obama as the 44th U.S. president as evidence of the symbolic power of the civil rights movement and the landmark legislation that stemmed from it. But the question of whether Obama would be in office without the CRA is not necessarily a straightforward one, Bond cautioned.

"I'm a history teacher and we're not supposed to 'what if?' If President Kennedy hadn't been killed, what would have happened? I have no idea and none of us does. I think President Obama's election is due, not 100 percent, to the passage of the Civil Rights Act and the Voting Rights Act and the successful civil rights bills after that. I do think [his election] would not have happened as quickly as it did had it not been for these civil rights laws."

League of Women Voters members participate in the Voting is People Power Project, circa 1960.

Aiken opined that Obama's election would realistically have been less likely without the CRA or something like it.

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It would be difficult to argue that the act's legislative and symbolic power affected African-Americans alone. Every rights group in America has likely drawn inspiration, energy, and guidance from the CRA and civil rights movement that produced it.

The women's movement cannot be separated from the CRA. All too often forgotten is the wording of Title VII of the CRA that made it unlawful for employers to discriminate based on an individual's race, color, religion, national origin, or sex. The contemporary National Women's Party had lobbied to include sex discrimination in law and policy for years and an equal rights amendment had long been advocated.

However, enforcement of anti-discrimination policy based on sex provided for in the CRA lagged. While most observers credit the CRA for including women and transferring some energy and attention to the women's movement, they allow that its success did not immediately translate to women and other rights groups.

Bond said CRA was "generally positive for these other groups but [they were] slow to be absorbed in it. Although there was a strong women's movement then, it was nothing like the strength that gathered in future years. And there was nothing that occurred that changed the position of women any time soon."

The CRA and the civil rights movement fostered collaboration with other rights groups, Aiken pointed out, but also achieved precedence that, for a time, left others behind.

"Historically, you see a lot of coalition and competition between the women's and black rights movements. Frederick Douglas and Susan B. Anthony pushed hard for voting rights for African-Americans and women. But when it looked like African-Americans were going to get their rights heard and women were not, a divide opened. We see this over and over. When one group looks like they're



The challenges and successes of the civil rights movement have guided and inspired other rights groups seeking to have their rights recognized.

gaining in status, they distance themselves from other groups that might compromise their ability to attain that [status].”

The obvious progress that African-Americans saw almost immediately after the CRA, such as being able to patronize the same establishments and use the same facilities as whites, eluded women in general for whom the act had little immediate impact, reminded Aiken.

“The reason the gender rights movement maintained steam was because it was pretty clear after the CRA was passed that no one really intended to enforce the gender part. It wasn’t yet a complete victory for women. There were groups like NOW [National Organization for Women] that felt they would have to make [government] enforce [gender rights]. I think that helped keep the women’s movement going.”

She added that this competition creates an unfortunate distancing of groups that are at the intersection of these movements. “Black women for example, were not particularly well represented in either the African-American civil rights movement or the women’s rights movement.”

While the CRA may have increased competition for attention to discrimination based on race or gender, it also suggested a legislative model for other rights groups that frequently adopted the tactics and slogans used by the movement that yielded it.

“Groups that are seeking to have rights recognized frequently reference groups that were successful as a way of trying to [contend] that it is illogical that their own rights have yet to be recognized,” Aiken said. The gay rights movement (and contemporary LGBT movement) is a good example.

“I’m one of the people who says I’m happy that the movement I was in was able to serve as a spur to these other movements,” Bond enthused. “It became a matter of pride for [other rights groups] to say, ‘It is our turn now.’ If you were a black woman who had seen the women’s movement as a largely white movement, you said to yourself, ‘Now

I’m going to get something from this. This movement that says it’s for women is going to include me now.’ I can’t help but think that gay people were excited by the progress that black people had made. They thought, ‘they [African-Americans] did this, we can do it too.’ I think the [CRA] was a spur to all of these movements.”

Others observe that the CRA paved the way for the Americans with Disabilities Act (ADA) of 1990, drawing substantially from the 1964 Act. Writing in the American Bar Association’s *Human Rights* magazine in 2004, Robert D. Dinerstein maintained that the Americans with Disabilities Act paralleled the structure of the CRA, employing many of the same titles and statutes including Title I of the ADA, which bans employment discrimination on the basis of disability, and Title III, which “proscribes discrimination on the basis of disability in public accommodations.”

More broadly, the CRA appears to have cemented a strategy for rights groups to seek top-down change where previously social movements relied on legislative change at the state level to “bubble up.” Legal change at the state level remains important but, today, every rights group targets national change, consciously or unconsciously, with the Civil Rights Act in mind.

Of course, the CRA did not take place in a vacuum, and over time it has stood in the context of larger structural economic, demographic, and technological shifts in American and global society. The question of how the act has fared in light of these large trends is a difficult one, Aiken acknowledged.

“I think there can be no doubt that these things altered the impact of the CRA, but how? That’s difficult to say. But I do think its success is greater than those externalities.”

Five decades after its passage, the Civil Rights Act of 1964 continues to resonate, though the outcomes it generated may have yet to satisfy everyone. Bond noted that despite increased acceptance and socioeconomic success, African-Americans still face housing segregation whether overt or implicit.

Aiken observed that the most forceful impacts of the CRA were felt shortly after it became law then diminished in time as its symbolic power tended to increase. In 2014, she concluded, “I think the CRA and related acts have helped with objective types of discrimination. But we’re left with prejudices that aren’t covered very well by laws really. And, they’re very difficult to [address] with laws.”

With a nod to the man who taught the philosophy class he attended while at Morehouse College, Bond said of Dr. Martin Luther King Jr.: “I do think he’d be proud of the Civil Rights Act. I think he’d be wondering why we haven’t done more about housing, but generally speaking, I think he’d be very happy. He’d think, ‘Look at what we’ve done.’” ■