The Case against the Civil Rights Bill (1963)

This speech was delivered at the State University of New York's Rockland Community College in Suffern, New York, on Monday, November 11, 1963. Schuyler was arguing against the Civil Rights Act that would be passed in 1964. According to Professor John Hope Franklin, the act comprised the "most far-reaching and comprehensive laws in support of racial equality ever enacted by congress." Schuyler believed, however, that it would foster white resentment rather than racial equality. Although unpopular, Schuyler's argument was in the main balanced, absent of the conservative polemics that would characterize most of his civil rights essays. As a conservative, Schuyler resisted the notion that government should assume such a pivotal role in matters of conscience. If America were to embrace such a position, it would constitute, according to Schuyler, a "blow at the very basis of American society which is founded on state sovereignty and individual liberty and preference."

A proliferation of largely unenforceable legislation has everywhere been characteristic of political immaturity. As a young nation, the United States has in this regard been a particularly great offender with a decided penchant for enacting laws regulating social conduct. Moral indignation coupled with a passion for social reform has induced us to pass laws without too much attention to consideration of how and at what cost they are to be enforced, and with more attention to politics than to statesmanship.

Historically we have not been unique in this connection. Every new, developing country has rapidly amassed mountains of laws which read well but are unrealistic, fly in the face of the facts of life, and later have to be revised or abandoned in the light of experience, often painful and expensive. New countries have a passion for novelty, and a country like America, which grew out of conquest, immigration, revolution and civil war, is prone to speed social change by law, or try to do so, on the assumption that by such legerdemain it is possible to make people better by *force*. This seems possible because it is deemed to be right. This has been the cause of much misery and injustice throughout the ages.

It is almost axiomatic that it takes lots of time to change social mores, especially with regard to such hardy perennials as religion, race and nationality, to

say nothing of social classes. There never being any unanimity about such things, sumptuary laws almost invariably become unpopular and the police power inevitably must be used to enforce compliance. The less popular they become, the more difficult and expensive is enforcement, and the less popular becomes the government which tries to enforce them because it is running counter to the wishes of a growing number of people.

Ferrero, the famed Italian historian, points out that the legitimacy of a government is gauged by the willingness of the people to accept and obey its acts and decrees, as shown by the ease or difficulty of enforcement. Widespread flouting of laws that are unpopular have frequently led to the downfall of governments; and as in a democracy this means the ultimate ousting of the political group in power—if it refuses to bow to the popular will. This is particularly true where the laws attempt to alter the public tastes and attitudes.

Millions of Americans believed that consumption of alcoholic beverages was wrong and physically injurious, and the temperance forces carried on a long and spirited campaign of an educational nature against indulgence. This was not entirely successful, and by World War I the liquor industry was on the defensive. It became regarded as "bad" to have and serve hard liquor in the home; the saloon was regarded as a den of iniquity and breeding ground for crime and destitution. Millions wore the white ribbon of temperance.

Then came the political triumph of the temperance forces with the passage of the Eighteenth Amendment. Education was not swift enough for them, so they turned to force. The saloon disappeared to make way for the speakeasy. Bootleggers came out of the mountains and invaded our cities and towns. Violations of the enabling laws became so frequent that law enforcement was crippled, and bribery and graft became endemic. Strengthened by easy money arising from whole sale violation of the law, the criminal element became so rich and powerful that it soon controlled what had hitherto been legitimate businesses; and now, thirty-odd years after Prohibition's end, it still does. Alcoholism is more widespread than it was in 1918, and its by-products today constitute a social problem and health hazard, despite Alcoholics Anonymous.

The Civil Rights Laws are another typically American attempt to use the force of law to compel the public to drastically change it attitude toward and treatment of a racial group, the so-called Negro, which the overwhelming majority population does not care to associate itself with, does not in the main wish to attend school with, does not chose to share its white collar and technical jobs with, and is opposed to sharing lodging with, and all the social contacts these involve. This has been the majority attitude since the earliest colonial days. It is morally wrong, nonsensical, unfair, un-Christian and cruelly unjust, but it *remains* the majority attitude.

This attitude has been progressively modified, however, especially with regard to individuals of color with the passage of time and continued intercourse and

juxtaposition of the two groups. Anybody who has observed race relations during the past quarter century knows this to be true. Prior to the Civil War the position of the free Negro outside the slave area was most enviable, and Judge Taney was merely stating the truth that "the Negro has no rights that the white man was bound to respect." Indeed, the free Negro, North and South, was in about the same position, socially and economically. He was socially ostracized and severely restricted in employment. He was voteless in both areas until the 15th Amendment was enacted after the Civil War, and he was no more welcome in hotels, restaurants and first-class railway carriages in the ante-bellum North than in the South. He was denied an education in both areas, except in Massachusetts, Rhode Island, and Vermont, save for a few private schools, while college doors were generally closed. The North had less excuse in this connection than did the South, and yet there was little to choose between the two areas in day-to-day treatment.

Changes have been very slow since 1865, but there have been marked changes; and civil rights laws, state or federal, have had little to do with it. They have been enforced and accepted only when the dominant majority acquiesced, and have generally lain dormant in the law books. In short, custom has dictated the pace of compliance. The exception emphasizes the rule. Indeed, the complaint of the more impatient Negroes is that the pace of social and economic acceptance has been so slow that it is necessary to use extra-legal force, such as picketings, demonstrations and boycotts to speed the pace of their progress.

Following the Civil War we had two civil rights laws and a Reconstruction Act to enforce the citizenship status of the Negro. The court calendars were full of cases of discrimination brought by Negroes until finally in 1883, the U.S. Supreme Court outlawed such legislation. The immediate reaction was the passage by former state legislatures of punitive laws which almost returned the Negro to slavery. This process was speeded in 1896 when the U.S. Supreme Court again bowed to the public will and handed down its infamous "separate but equal" decree. As Mr. Dooley observed, the Supreme Court always follows the election returns, and until 1915 when it outlawed the notorious Grandfather Clauses in Southern state constitutions designed to disfranchise Negroes, it had done nothing to repair the evil wrought by its 1896 decision. The nation was unready.

From 1922 onward various Congressmen introduced anti-lynching bills in almost every session. Not one was passed and there is none now, but lynching has become a rarity; whereas when I was a boy there were about two lynchings every week on the average, and terrorism was much more common. But times have changed along with public opinion, thanks to an aroused public conscience and the educational activities of the National Association for the Advancement of Colored People and numerous white agencies and individuals. Of course this change was not and could not be wrought overnight. It had to be educative and gradual.

As respect for and understanding of the Negro, and appreciation of his contributions and his patience increased, national opinion softened as the cultural gap between the two "races" narrowed. This was reflected in the American press, in the literature, in the common experiences of World Wars and the vicissitudes of the economic depression, in the influence of Negro music and the whole changing cultural community. Scores of white novelists, short story writers and playwrights (South and North, but mainly Southern) took the Negro and his tribulations as their theme and molded a more advanced public opinion through the years. Sociologists and economists joined forces with the fictionists to help create an atmosphere of social understanding and acceptance. The public image of the Negro slowly changed. This was not lost on the U.S. Supreme Court which from the late Thirties has successively issued opinions with regard to the franchise, property, education, transportation and tax-supported recreation which are memorable, unprecedented, and unequaled anywhere else in the world.

It might be said here parenthetically that nowhere else on earth has the progress of a dissimilar racial minority been so marked in education, housing, health, voting and economic well-being. Not one of the foreign countries whose spokesmen criticize and excoriate the United States can equal its record in dealing with a minority group. After 4,000 years, India still has its cruel caste system with 70 million Untouchables. Soviet Russia has enslaved and decimated its racial minorities, and to this day has segregated schools and segregated housing for them. Japan retains its Etas and Ainus. Indonesia has appropriated the property of its three million Chinese and put them into restricted areas. Australia has its blacks on reservations. The social ostracism of the Negroes throughout Latin America is well known, and the most exploited Negro in rural Mississippi is better of than they.

Perhaps the most drastic coercive legislation to insure the Negro the vote was written into the 14th Amendment, Second section, in unequivocal language. That section reads:

"Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial Officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state."

This means that wherever a Negro or anybody else is denied the right to vote, the representation on the basis of population will be to that extent reduced.

Thus, should a quarter million Negroes of a state be denied the vote in any election, the State's representation in Congress would to that extent be reduced.

This 14th amendment was proclaimed in 1868, nearly one hundred years ago. To date it has been a political dead letter because no enabling legislation has been passed, no matter which party controlled the Congress. An attempt was made by Henry Cabot Lodge, Massachusetts Senator, over seventy years ago, and it was defeated. No other attempt has been made until 1957, 1960, 1964, and if such legislation had been passed, the political power of the south would have been sharply reduced because the vast majority of Negro citizens in effect had been disfranchised.

This would have weakened the South politically and strengthened the North and West in Congress. The South could only have regained its lost seats by re-enfranchising the Negroes so that they could be counted in the apportionment. Because of the failure of Congress to implement the 14th Amendment, the political enlightenment of the section was retarded almost to a standstill, the Negro's progress was held back and the South (which counted his numbers but stole his vote) was enabled to wield a disproportionate influence in the national legislature, and on the political course of the nation.

The present Civil Rights Law which would attempt cumbrously to enable Negroes to vote where registrars now deny them is thus quite unnecessary because the same thing can be accomplished by implementing the 14th Amendment. But Congress will not pass either the one or the other. Why? Because majority public opinion will not back such a law. It is more interested in white racial unity than interracial justice, and has no desire to punish the disfranchising of Negroes by penalizing the South.

However, without any Civil Rights Law more than 1,500,000 of the potential 5,000,000 Negro voters in the South are registered and voting today. In the next ten years (unless some great reaction sets in—perhaps because of just such a Civil Rights Law) I predict that almost all Negro potential voters in the South will be voting, and that numerous Negroes will be holding public office and civil service jobs, just as they are holding them here and elsewhere. The process is slow, of course, but it will be solid because it is based on a true public will.

Already there are dozens of cities in the South where Negroes are finding accommodation in hotels, motels, and tourist camps. Most of this has come about without any picketing or demonstrations. There will be more changes with time and education. For this we do not need any federal legislation. Such might very well react to the Negro's disadvantage as in the past. When the big hotels everywhere accept Negro guests and serve them in their dining rooms, the little establishments will shortly follow suit in the best interests of free enterprise. The number that does not will be so small as not to matter much. When Miami, Houston, Atlanta, Dallas and Nashville are doing this, can others be far behind?

The Civil Rights Law attempts to force fair employment practices, barring iscrimination against Negroes in all jobs and professions, and guaranteeing ir employment to all qualified. Under pressure President Roosevelt issued an xecutive order on the eve of World War II which was designed to bring this bout. After about four years it had to be permitted to die because it was found o be unworkable. It was complied with to a certain degree in precisely the reas one would expect, and ignored or evaded elsewhere. At the end, the FEPC pparatus was openly defied by the railroads and associated labor unions. After that it was quietly dropped down the drain. This was reminiscent of the utraged agitation following World War I against women bobbing their hair. The bellows could be heard from Coast to Coast but it simply made women more defiant, and within a couple of years it was rare to find a woman whose hair was not trimmed or bobbed, whether attractive or not.

Color discrimination in employment in mills, mines, commerce and transportation was nationwide when Wilson entered World War I. There was no FEPC law nationally or in any state. By war's end Negroes were working in almost every branch of industry and commerce, and had the conflict lasted as long as World War II did, the economic life would have been completely integrated, racially as well as sexually, by virtue of necessity. Incidentally, without any compulsory law, the Ford Motor Company integrated its operations racially even before World War I, a "first" for private enterprise.

Widespread popular education, industry, transportation and communication in the past century have wrought a real revolution in American thinking on the race question in this country. I have already mentioned the growth of liberal literacy output on this question from *Uncle Tom's Cabin* to the present. The transformation in periodical and press handling of this question has been phenomenal. A century ago supposedly educated people were debating whether Negroes were men or animals, inferior or superior by virtue of skin pigment; and whether or not they could survive in this civilization. This is today no longer a moot question, and the former cruel educational discrimination against Negroes in per capita school expenditures has progressively disappeared. Laws which have been passed to expedite this progress have followed rather than led public opinion.

Do we therefore need a federal punitive law to enforce civil rights Negroes already have? Have not the American people advanced sufficiently to let them decide in their several areas the pace at which Negro social acceptance is to move? Every recent poll of the nation shows that the white people are generally agreed on equal education, equal housing, equal travel and recreational facilities, and equal job opportunities for Negroes. Every important church group has gone on record officially in favor of these goals. Pockets of resistance there are bound to be, because everybody does not change at the same pace, time, and degree. But what reason is there to suppose that this pace will be

really expedited by the passage of the federal law with its inevitable army of enforcers?

How much nationwide good will between the races is going to be engendered and enhanced by a punitive campaign against those who remain unconvinced? What will be the ultimate influence of the rise in Negro expectations? As I have pointed out, there is not a Jim Crow law on the books of any nation south of the Rio Grande, but all who have traveled know that the U.S. Negro is better off in every way than any Negroes anywhere else in the world. There are more college graduates among them than in the rest of the colored world combined. With ten percent of the U.S. populace, they have thirteen percent of all federal Civil Service jobs. By a simple directive of the President, the entire armed forces of the United States have been racially integrated in every branch the world over within the past fifteen years in both the enlisted and commissioned ranks. Hundreds of Negroes are in the U.S. Foreign Service, U.S.I.A. and A.I.D. Seven Negro judges sit in the federal courts and sixty-two are in lower courts across the country. There is not an important city in the United States without Negro police and firemen, to say nothing of hundreds in appointive and elective posts. There are an estimated two million Negro-owned homes and even a greater number of automobiles. This disproportionate number of unemployed Negroes reflects more than anything else the educational and cultural lag that still exists as a heritage of the past, and the demise of labor rights by organized labor.

The principal case against a federal Civil Rights law is the dangerous purpose it may serve. It is still another encroachment by the central government on the federalized structure of our society. Armed with this law enacted to improve the lot of a tenth of the population, the way will be opened to enslave the rest of the populace. Is this far fetched? I think not. Under such a law the individual everywhere is told what he must do and what he cannot do, regardless of the laws and ordinances of his state or community. This is a blow at the very basis of American society which is founded on state sovereignty and individual liberty and preference. We are fifty separate countries, as it were, joined together for mutual advantage, security, advancement, and protection. It was never intended that we should be bossed by a monarch, elected or born. When this happens, the United States as a free land will cease to exist.