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THE ORIGIN AND ENACTMENT OF THE CIVIL RIGHTS ACT OF 1964

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The Civil Rights Act of 1964 was the greatest legislative achievement of the civil rights movement. Enacted amid extraordinary public attention, it is arguably the most important domestic legislation of the postwar era. The Act was broader and stronger than informed observers had expected at the onset or during most of the twelve months of its consideration by the Congress which, since Reconstruction, had failed to enact any but the most feeble legislation against racial discrimination.

There was, of course, precedent for the 1964 Act. A number of states and cities already had legislation prohibiting discrimination in employment and/or public accommodations. These laws, however, were of mixed effect and confined to the North, where overt discrimination was thought to be a lesser and more easily remediable problem. At the federal level, advances had

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[1]Filvaroff was a Special Assistant to the Deputy Attorney General in 1963-64. On leave from Stanford University in 1964, Wolfinger was an assistant to Hubert Humphrey, the Senate majority whip. After the bill's passage Wolfinger interviewed most of the major participants.

been limited largely to the judicial arena. The series of lawsuits initiated by the NAACP Legal Defense and Education Fund brought important victories declaring racial discrimination to be unconstitutional when engaged in by government. The Fund's step-by-step strategy, culminating in 1954 in Brown v. Board of Education, succeeded in overturning the once firmly-established "separate but equal" doctrine and created a clear constitutional base for further legal claims. No less important, it put the issue of race on the national agenda and renewed hope of progress toward a desegregated society.

But the Brown invalidation of legally mandated segregation in public schools engendered substantial and threatening opposition. Southern officials, including some state judges and even a few federal ones, worked to limit the application of Brown and denied that it was the "law of the land." Attempts were made to resurrect, as recognized law or as political rhetoric, the discredited 19th century doctrine of interposition--the right of states to interpose their own sovereignty to vitiate federal authority within their borders.[2] And, most ominously, southern leaders were busy organizing "massive resistance" and promising

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[2]Demands to impeach Chief Justice Earl Warren, author of the unanimous Brown opinion, were frequent, most notably perhaps on billboards across the country. They were endorsed not only by opponents of the Brown decision, but also by many conservatives who disliked other Court interpretations of the Constitution, especially those dealing with criminal justice.

that school desegregation would never be allowed to happen.[3] Attempts to keep Black students from entering schools under court orders to desegregate had brought on riots, beatings, and the intervention of federal troops.

Friends of the Court worried not only that its rulings would be frustrated, but that its very authority and legitimacy were in jeopardy. The Justices nonetheless continued to expand the reach of the Constitution. By the early 1960's the concept of state action had been broadened to bring some aspects of governmentally-supported private discrimination within the ambit of the Fourteenth Amendment. But, given both the limits of existing constitutional doctrine and undiminished southern resistance to the Court's decisions, hopes of achieving further significant advance through litigation seemed slim.

At the same time, the federal executive branch was far from resolutely committed to ending segregation. It was, for example, only with great reluctance that President Eisenhower sent troops into Little Rock in 1957 to quell mobs blocking school desegregation and to ensure enforcement of a federal court order. On the legislative front, attempts to enact civil rights bills in 1957 and 1960 resulted only in watered-down legislation of limited effect. Liberals in both houses of Congress often acted as if

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[3]The pace of school desegregation was slow, if not glacial. In the fall of 1964, a full decade after Brown, just two percent of all Black students in the South were attending school with whites (Jaynes and Williams, 1989, p. 75).

they did not expect significant legislation to pass and President Eisenhower

> provided confused or minimum support, lukewarm at best. The civil rights forces themselves in the Senate were also confused and ineffectual. Only the southern Democrats looked like they knew what they were doing (Stewart, 1991, p. 30).

One sequel to the Brown decision was a partial revival of the Black attraction to the Republican party that had faded with the New Deal. Two out of five Black votes in 1956 went to the Republican presidential ticket. The memorable image remaining from Eisenhower's dispatch of troops to Little Rock was paratroopers dispersing segregationist rioters at bayonet point. Both parties' platforms in 1960 had their strongest-ever civil rights planks. John F. Kennedy went a step further by promising that one of his first acts in the White House would be to ask a Democrat in each house of Congress to introduce the entire plank. He also assailed continued federal aid for the construction of segregated housing and declared that as President, he would end the practice "with one stroke of the pen." A highly-publicized telephone call when Martin Luther King was jailed in a small Georgia town helped Kennedy win 75 percent of the Black vote.

Once in office, Kennedy initially did little on civil rights and proposed no legislation. (One of the congressmen he named in

his campaign promise told us that he had never expected to receive a presidential request to draft legislation once the election was over.) At the President's urging, however, some federal agencies took administrative steps against racial discrimination and his brother's Justice Department stepped up the pace of litigation. Nearly two years went by before President Kennedy signed the order that ended federal funding for segregated housing. Kennedy's reluctance to keep his promise to propose legislation came from his belief that doing so would be unsuccessful and would incur the hostility of southern committee chairmen whose cooperation was essential to passage of measures with higher priority.

In 1962 the Administration gave lukewarm support to a bill providing that completion of the sixth grade would satisfy any state literacy test for voter registration, an idea first suggested in the 1960 Republican platform. The House took no action on this measure and in the Senate two cloture petitions to stop a desultory filibuster each failed by twenty-one votes, garnering the support of just thirteen Republicans. Kennedy did send modest civil rights legislation to the Congress early in 1963, but the prospects of passage were not great.

What changed to allow enactment of the monumental provisions of the Civil Rights Act of 1964?

The Birmingham Demonstrations and their Consequences

The precipitating event was the confrontation in Birmingham, Alabama, in the spring of 1963 between the forces of Rev. Martin

Luther King and those of Eugene "Bull" Connor, the city's police commissioner. Repeated street demonstrations led by King's Southern Christian Leadership Conference (SCLC), seeking desegregation of Birmingham's lunch counters and other public accommodations, vividly portrayed not only the extent to which racial injustice permeated the city's social and legal structure, but also the commitment to its maintenance, as evidenced by Connor's ready use of violence to put down any challenge. Pictures of peaceful marchers, many of them school children, being met with firehoses and attack dogs were spread across front pages throughout the country and projected each evening on national television. The compelling images brought the reality of the South's racial caste system into popular consciousness and posed a pressing legal and moral issue: whether the American ideal of equality and justice for all could be given practical meaning for southern Blacks.

More particularly, Birmingham generated a new spirit and a new vigor in civil rights organizations which, individually and combined with allied interest groups in the Leadership Conference on Civil Rights, came to play an influential role in development and passage of the 1964 Act. Labor, religious, and other groups joined traditional civil rights organizations in an intense lobbying campaign, both in Washington and at the grass roots. Given the impact of Birmingham, they were able to convert a generally sympathetic public response into what Congress came to feel as widespread constituent demand for action.

These results were not accidental. Andrew Young, a key aide to King, explained that

> We understood television at that time to be educational TV . . . . to enlighten white Americans . . . . to take an eleven percent Black population and find a way to get forty percent of the white population to add on and to create a majority . . . (Young, 1991, p. 30).

SCLC representatives met with the media regularly to brief them on plans for the day. The strategy worked; as demonstrations and violence spread, press and public demands for action grew.

Realizing that the stakes were rising, the President at first tried mediation. A series of intermediaries sent to Birmingham failed to resolve the situation. Early in May, the situation took a momentary turn for the better. Black leaders and white businessmen reached agreement on some of the demonstrators' demands; restrooms, drinking fountains, and restaurants were to be desegregated by midsummer. King issued a victory statement and left town. But the respite lasted only a day. The next night one bomb exploded beneath the local motel room King had used and another went off at his brother's home in Birmingham. After Connor's firehoses and attack dogs, this was too much for some local Blacks who had never subscribed to King's Gandhian philosophy. That Saturday night rock-throwing Blacks made it clear that racial violence might not continue to be a one-way

street. The civil rights crisis entered a new phase in which the Administration lost its reluctance to press for significant legislation.

Burke Marshall, the widely-respected Assistant Attorney General in charge of the Civil Rights Division, returned from another trip to Alabama convinced that Birmingham was only the beginning of expanding demonstrations and consequent disruptions that made federal legislation essential. He recommended that a new law must at least deal with segregation in public accommodations--restaurants, lunch counters, hotels, theaters, and the like. Marshall persuaded the Attorney General and they carried the argument to the White House, where a heated dispute was in progress about how the President should respond to Birmingham and the broader crisis it symbolized.

The proponents of legislation urged both the strong moral base for action and the increasing public pressure for an affirmative response to the marchers' demands. There was, in addition, concern that the White House could not let the Republicans appear to take the lead on civil rights. Those opposed to a major legislative initiative pointed out that strong support for civil rights would not only gravely alienate the President's southern support, both in and out of Congress, but would likely result in serious delay, if not defeat, of key parts of his legislative program, most importantly his tax and farm bills.

The trumping argument was that without action to create new legal remedies, demonstrations would continue to expand throughout

the South, and even into the North; the country would be torn by widespread civil disruption, if not by racial violence. The President and his party would be blamed. Running for reelection in 1964 in such a climate would be no less disastrous for the incumbent than if the United States were mired in an economic depression. In order to avoid presiding over a divided and violence-racked nation, Kennedy had to make a serious attempt to deal with the demonstrators' grievances.

Birmingham thus had two important consequences. First, the graphic and repeated images of peaceful demonstrations being brutally suppressed heightened public receptivity to civil rights legislation. Second, the first signs of Blacks' violent reaction to white violence strengthened the Administration's growing belief that inaction would be harmful to the nation and electorally damaging in 1964. While the Justice Department was drafting a bill, the President told a national television audience that he would submit strong proposals to Congress to fulfill the long-postponed promise of racial equality. That same night, Medgar Evers, the leader of the Mississippi NAACP, was assassinated on his doorstep.

Drafting the Bill

Deciding on the specific content of the bill involved a careful balance. An overly strong measure would win the immediate praise of civil rights groups and liberals, but would languish and die after a long struggle. Worse than sending no bill at all, it would reap all the resentments of success without any of the

rewards. Moreover, it would do nothing to solve the underlying substantive problems. Too weak a bill, on the other hand, would signal the Kennedys' lack of seriousness and do little to moderate future demonstrations.

In addition to desegregating public accommodations, the major public focus of the Birmingham marches, legislation was needed to enforce the voting rights of southern Blacks. The Department of Justice's experience in litigating this issue one county at a time had taught that a more expansive approach was essential to overcome the discriminatory administration and intimidation that had kept millions of Blacks from registering and voting.[4] The Administration agreed with civil rights leaders that access to the polling booth was a prerequisite of broader change in the South.

Another title in the bill would prohibit discrimination in access to any federally-funded benefits and activities. The Administration did not at first attach much substantive importance to this provision, which became Title 6. Many Members of Congress held a different view: because of their avid pursuit of federal grants, even in the early 1960's, our congressional sources, especially Southerners, expressed no doubts about the importance of Title 6. To the Administration and the House leaders who urged its inclusion, the title's main virtue was the protection it would give against Powell Amendments, until, if necessary, it could be traded away during the anticipated long legislative struggle.[5]

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[4]Although the 1964 Civil Rights Act included provisions on voting, it was the Voting Rights Act of 1965 that responded most effectively to Black disenfranchisement in the South.

[5]Named after Adam Clayton Powell (D-NY), such an amendment to

The Administration's proposal on employment discrimination was modest. It did no more than authorize the President to create a commission of unspecified power to deal with job discrimination by federal contractors and firms in programs financed by the federal government. In the past dozen years several much broader fair employment bills had been introduced by liberal Democrats or Republicans. None had passed even one house of Congress and the Administration believed that including a fair employment title might signal an intention to "demagogue the issue" rather than pursue feasible legislative goals.

Strategic Calculations

As the bill was being drafted, the White House pondered how to get it passed. Virtually no southern Democratic legislator would vote for any measure identified as a civil rights bill. Without their southern contingent, the Democrats were a decided minority in both houses of Congress. The need for Republican support was obvious. But aside from a handful of liberals--who were also known to play politics with civil rights--the prospect of getting enough Republican votes was far from clear. The plain fact was that the Kennedys wanted a civil rights act to cool the

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a liberal bill would prohibit any expenditure of federal funds authorized by that bill for segregated activities. Powell Amendments invariably attracted the votes of many Republicans who, when the amendment passed, would then vote against the underlying bill. At the same time, moderate Southerners who might vote for a measure without this prohibition could never do so once it was part of the legislation. Powell Amendments thus were a thorn in the side of Democrats with a liberal agenda that did not include civil rights, i.e., the Kennedy Administration.

racial climate and many Republicans did not see why they should bail out a Democratic President on the eve of his reelection campaign.

There were additional problems in the Senate, where a hard core of a dozen and a half southern Democrats could be expected to use their traditional weapon of unlimited debate. The only counter to a filibuster was cloture, which required a two-thirds vote, a goal that had never been approached on a civil rights bill.[6] Civil rights supporters had come closest to success in 1946 and still had fallen nine votes short. No cloture petition since 1950 had even received a simple majority of senators present and voting.

The 1957 and 1960 efforts to enact meaningful legislation had foundered in the face of real or threatened filibusters. Civil rights advocates had to settle for weak measures worked out with southern opponents by Senate Majority Leader Lyndon Johnson. And the failure of recent attempts, including one earlier in 1963, to reduce the number of votes needed to invoke cloture from two-thirds to three-fifths gave little hope of finding help in a change of Senate rules. Moreover, the Senate Judiciary Committee, to which any important civil rights bill would have to be referred, was chaired by Mississippi segregationist James Eastland, who would do his best to keep the proposal from the Senate floor.

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[6]In addition to opposition from southern members, a few other senators who might have voted for civil rights legislation opposed cloture on grounds of principle, viewing unlimited debate as a protection against majoritarian abuse.

Beginning in the House offered two clear advantages. First, and most important, only a simple majority was needed for passage. Second, the bill would go to the House Judiciary Committee, chaired by Brooklyn Democrat Emanuel Celler, a liberal Administration loyalist who had been in Congress for forty years and head of the committee for much of that time.

But there were sharp disagreements over the strategy to be followed in the House. Experience suggested to many civil rights supporters that the goal should be to seek the strongest possible bill at every stage of the legislative process. In 1957 and 1960, fairly strong House bills had been whittled down almost to nothing as part of the deals worked out by Lyndon Johnson to secure passage in the Senate. Thus one apparent lesson of history was to begin with a very tough bill in the House Judiciary Committee so that some effective provisions would remain after necessary compromises were made later on. This approach had great appeal for civil rights groups, not only because they wanted everything they could get, but also because they had reason to doubt the Administration's commitment. Going all out was also favored by many congressional liberals, mostly Democrats. Apart from political considerations, some were inclined to this position for ideological reasons, others perhaps as a result of constituent pressures.

This approach alarmed members who read 1957 and 1960 differently. Some worried that they would be taking a needless political risk if they voted for a strong bill only to see it weakened by major compromises necessary to win Senate passage.

Moreover, many Republicans were unsure that the Administration really wanted a meaningful law rather than a political issue. They feared being put in a position where Democrats would present them with legislation they considered onerous and then attack their party for selling out the cause of civil rights if they opposed it. Indeed, Republicans were unsure not only about the President's real goals (which, of course, might change as the situation changed) but about the development of white opinion. Bailing out the Kennedy Administration was one consideration; flouting a national majority on civil rights was another.

The Kennedys drew a different lesson from the history of the 1957 and 1960 bills and charted a course that diverged from the prescriptions of civil rights lobbyists and many liberals in both parties. Recognizing the need for considerable Republican help to pass an effective bill even in the House, the Administration aimed to develop a set of strong but reasonable bipartisan provisions. Republican cooperation would be crucial to defeat the inevitable southern filibuster in the Senate. If the House passed a bill with substantial Republican support, the likelihood of emasculation in the Senate would be reduced and pressure on Republican Senators to support the bill and vote for cloture would increase. If a bipartisan bill was to be worked out, the place to do it was the House Judiciary Committee. It could not be done on the House floor, where the disparate views of 435 members would come into full play.

The House Judiciary Committee

Submitted on June 19, 1963, the Administration's bill was referred to the House Judiciary Committee and thence to its Subcommittee No. 5, the only body to consider the bill that had a majority of northern Democrats.[7] Celler headed this panel as well as the full committee. His Republican counterpart, William McCulloch, was the ranking minority member on both committee and subcommittee.

During the year the bill was before Congress the Justice Department had primary executive branch responsibility for it as well as for civil rights generally. The lead negotiator, spokesman, and strategist was Deputy Attorney General Nicholas deB. Katzenbach, seconded by Burke Marshall. The substance of what became the Civil Rights Act of 1964 was developed in a series of discussions between Katzenbach and McCulloch, whose critical role in achieving passage of the bill has gone almost wholly unrecognized. An unlikely major contributor to the destruction of segregation, McCulloch, from Piqua, Ohio, had represented a white small-town and rural district since 1947. Respected by his party's mainstream, he had impeccable conservative credentials, seemingly inconsistent with his promotion of legislation that expanded federal power at the expense of local authority and private property rights.

Although McCulloch shared the Administration's view that

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[7]Judiciary subcommittees at that time were numbered rather than named in order to expand the full committee chairman's discretion in bill assignment. A decade would pass before the "Subcommittee Bill of Rights" established fixed subcommittee jurisdictions.

legislation was both justified and necessary, he felt responsible to protect the interests of his party and his fellow Republicans. While his committee position made him the point man on substance, Republican practice called for the issue specialist to stay in touch with the party leadership. On a matter as salient and explosive as civil rights, McCulloch would not operate independently of the House minority leader, Charles Halleck of Indiana. As early as 1947 Halleck had been majority leader (ranking below the Speaker) when his party controlled the House. In 1959 Halleck had become his party's top man in the House by deposing the incumbent, whom he attacked for being insufficiently partisan. Not much in Halleck's long career would justify charging him with this failing. Newspaper profiles commonly branded him a "gut fighter".

In addition to Halleck, McCulloch possibly consulted with Everett Dirksen, the Senate GOP leader, not only to keep him informed but, more important, to lessen the likelihood that House Republicans would be left exposed if the bill they supported was seriously weakened in the Senate. Notwithstanding the need for such dual coordination, McCulloch had considerable leeway, which was fortunate for the civil rights cause. If McCulloch had been less sympathetic, he would have been more responsive to those Republicans who were willing to do something on civil rights, but not very much. He had played a constructive role on the 1957 and 1960 bills and was open to improving the lot of southern Blacks. But he was also skeptical of Democratic motivations. He believed that his efforts in those earlier years were ill-repaid, that he

and other Republicans who had joined in support of the House bills were then sold out by Senate Democrats.

House Republicans as a whole were sharply split on how to respond to the events in Birmingham and, more specifically, to the Kennedy proposals. One faction, northern liberals (who had earlier taken no small pleasure in attacking Kennedy for not acting vigorously enough on civil rights) favored strong legislation and feared that if their party held back it could be blamed for blocking House action on a bill which, viewed as raising moral issues, was generating an increasingly powerful public response. Even an appearance of reluctant support, much less overt opposition, they argued, would doom any hope of attracting more Black voters to the GOP.

On the other wing of the party were ultraconservatives who, out of prejudice or aversion to any expansion of the federal role, could be counted on to oppose almost any bill. This left the broad mainstream of the party. Apart from substantive differences, Republican strategists considered other political questions: Should they give the Kennedys a legislative victory that would redound to the benefit of Democratic candidates in 1964? If the bill failed and racial violence spread, would they be blamed? Could they bring about the bill's defeat without being blamed for it? Should they try to appeal to white Southerners whose ancestral Democratic loyalties might vanish if a Democratic President chose Black interests over theirs? Republican House leaders, forced to confront the problem before their Senate counterparts, had a lot to think about.

McCulloch and Katzenbach fairly quickly worked out a bill that deviated from the Administration's draft chiefly by weakening the voting rights title. McCulloch evidently feared that removing barriers to Black voting would benefit the Democratic party. These negotiations, faithful to the Administration's bipartisan strategy, had the great disadvantage of ignoring northern Democrats on Subcommittee No. 5, which was busy holding hearings. Dubious alike of the Administration's bipartisan strategy and the strength of its commitment, egged on by interest groups that shared their views, and resentful at being excluded, the subcommittee's liberal Democratic majority seized the initiative in spectacular fashion. One morning they produced a bill that took a bolder approach than most of the Administration proposals and added, among other things, a fair employment practices provision to be enforced by an appointed commission. In complete control of the subcommittee, they then reported this bill to the full committee.

McCulloch was furious. The majority party was up to its old tricks, trying once again to embarrass the Republicans. If the subcommittee bill reached the floor, he told Katzenbach, it would be cut to pieces, nothing would be left, and he would not lift a finger to stop the debacle. Hearing protests that the Administration was blameless, McCulloch replied that, nevertheless, it would have to take the lead in the full committee to cut back the bill. No Republican committee member would introduce an amendment to restore any or all of the bipartisan compromise. Nor would any Republican vote for such motions made

by Southerners. Republicans would back moderating amendments only from northern Democrats. They would not allow themselves to be portrayed as weak on civil rights.

These were tough terms. Northern Democrats had created the problem and few of them were likely to help solve it. But the White House found one who was persuaded to introduce the first of a series of moderating amendments. This was Roland V. Libonati, a product of Chicago's Democratic organization. Reputed to have ties to the underworld, Libonati had recently proposed to investigate the Justice Department's prosecution of Teamsters Union President James Hoffa. With Libonati's amendment introduced in the full Judiciary Committee, a start was made on restoring bipartisanship.

Committee members, Republicans and northern Democrats alike, remained skittish. Libonati's amendment was not certain to pass. McCulloch asked that the Attorney General reappear before the committee and "take responsibility for cutting the subcommittee bill back." The Administration faced a hard choice. It could give up on bipartisanship, win the acclaim of civil rights groups by supporting the strong subcommittee bill, and when that was shredded on the floor of the House, try to blame the Republicans. Or it could try to restore relations with McCulloch and continue working for a compromise measure that seemed to offer the only chance of passage. This course would provoke a direct confrontation with civil rights groups and their liberal supporters. The President decided that his brother would make it clear to the committee that moderating the subcommittee bill

reflected Administration policy. Several days of grueling testimony by Robert Kennedy were answered, as expected, by a chorus of accusations that the Administration was selling out the cause. Civil rights lobbyists stepped up their pressure to preserve the strong subcommittee bill.

When the Committee reconvened to consider modifying the bill in accord with Kennedy's recommendations, Libonati dropped a bombshell by withdrawing his amendment.[8] After some parliamentary wrangling, a Republican opposed to the bill moved to report the strong subcommittee version. In the circumstances, this was an act of attempted sabotage. As the clerk called the roll, most members voted for this motion: liberal Democrats, eager to see their handiwork moving toward the floor; Republicans, feeling betrayed, reluctant to be called bigots, or wishing to kill the bill without blame; and Southerners, happy to send forth a version they considered too strong for the House to swallow. The bill was headed for disaster. Before everyone had voted, however, bells rang signifying that the House was in session and a quick-witted Administration supporter stopped the roll call with a point of order. Catastrophe had been averted, but whether bipartisanship could be revived was questionable.

Again deeply angered, McCulloch saw still another Democratic

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[8]Various explanations were offered for Libonati's sudden change of heart, but there was no mystery behind his next appearance in the news: an announcement that he would not be a candidate in 1964 for the Democratic nomination for his safe seat. This was a result of Mayor Richard Daley's fury at what he considered a personal betrayal, for the mayor had been the vehicle by which the White House had secured Libonati's temporary cooperation.

double-cross; he could not believe that Libonati would take such a fateful step on his own initiative. Katzenbach once again asserted both the Administration's innocence and its commitment to a bipartisan bill. McCulloch reluctantly agreed to try once more, but this time the Republicans would take no chances; their support would depend on firm guarantees that the committee Democrats would supply their full share of the votes to report a compromise bill. Those assurances could not readily be given. The civil rights groups' attacks on the Administration and their continued lobbying of northern Democrats had left the committee in disarray. The President's personal intervention was necessary to restore the situation. Kennedy now became fully and directly engaged in the effort to secure a bill that could pass. In a series of sometimes heated meetings and phone calls he pressed both committee Democrats and House Republicans for commitments. Halleck was called to the White House in an effort to seal the deal and guarantee the requisite number of Republican votes.

At the same time, it was necessary to renegotiate the bipartisan agreement on the substance of the bill. The subcommittee revolt and the fiasco in the full committee, coupled with the Leadership Conference's pressure, had altered the political terrain. The circle of negotiators widened to include other committee members whose demands enlarged the boundaries of what was needed to build a majority. McCulloch and the Administration had to give ground. The bill that they now agreed to was significantly broader than the previous draft. Most important, it had gained a significant fair employment title, the

liberals' biggest prize for accepting the bipartisan compromise.

After several postponements to reestablish the understandings shattered by Libonati's betrayal, the Judiciary Committee finally met again. In an atmosphere of sharp tension, a motion was made to substitute the latest compromise for the subcommittee bill and to report it. McCulloch and Celler each spoke for one minute and the roll was called. This time the deal stuck. Northern Democrats and most Republicans joined to provide a healthy majority for what became, in almost every important respect, the Civil Rights Act of 1964. This crucial meeting came on the afternoon of November 20, 1963, two days before President Kennedy was assassinated.

Although McCulloch's role was pivotal, he could not have played it without Halleck's support throughout and, in the endgame, his active participation. Behind this seemingly consistent collaboration was a continuing argument among mainstream Republicans about whether they should help solve a problem that could embarrass the President. Each derailment in the Judiciary Committee opened up the question once again. In each crisis, Republicans and Democrats alike were preoccupied with how credit and blame would be apportioned for whatever happened. The question was particularly difficult because the bill's fate was so uncertain. As several leading Republicans later explained it, their final calculation became very simple: unable to discern the politically preferable position on the bill, they considered it better for their party to be as united as possible. Halleck's goal, then, was a compromise that could be supported by all

Republicans except those who could not be expected to vote for civil rights under any circumstances. The plan worked. As the vote on final passage revealed, House Republicans were far more united than the Democrats, whose many southern members opposed the bill.

Halleck's search for party unity was not universally popular among Republicans. When he went to the floor after agreeing to the climactic compromise in November, he found at his desk a furled umbrella, the symbol of appeasement. Following the 1964 election, Halleck lost his leadership position to Gerald Ford. His position on the civil rights bill may have contributed to his defeat.

The amendments offered in committee by liberals had been viewed by McCulloch and the Administration as disruptive of the effort to develop a bipartisan bill and therefore threatening to the passage of any effective legislation. Yet the pressure generated by the liberals and the Leadership Conference on Civil Rights had expanded views of what might actually be done. The bill that emerged from the full committee went well beyond both the Administration's original draft and what McCulloch had at first deemed acceptable to most Republican members. The most significant change was the addition of Title 7, with its broad prohibition of discrimination in employment. The version of Title 7 in the final compromise was taken from a bill that had been introduced previously by moderate and liberal Republicans. This sponsorship was an important factor in securing GOP support for the committee bill and, it was hoped, would help with other

Republicans on the floor. Other noteworthy changes included strengthening Title 6, which prohibited discrimination in federally-funded programs, and authorizing the Attorney General to initiate lawsuits vindicating civil rights.

On the Floor of the House

When the bill came to the House floor in February debate was lengthy and vigorous. Specific provisions, and often the bill as a whole, were attacked by conservatives as excessive regulation that would disrupt the proper balance of power between federal and state governments. Unhappy Republicans and Southerners often described the bill as a "Kennedy power grab." On a number of such occasions, McCulloch would, without rancor, express his view that the provision in question was responsible, reasonable and necessary. Given his standing as a conservative, his brief statement generally sufficed to vitiate such ideological opposition. Almost all southern members were unalterably opposed to the bill in its entirety. They resisted by exaggerating its scope and impact, thereby risking creation of legislative history that could strengthen the bill's effect.[9] They particularly objected to Title 6, foreseeing this provision's potential breadth and force more clearly than many others. Sensitivity to the leverage provided by federal grants was almost universal on Capitol Hill and in the case of the Southerners reflected the extent to which their seniority had helped garner money from

[9]Southerners used the same rhetoric in Senate debate. In both houses, opponents argued that major parts of the bill were unconstitutional.

Washington.

Southern efforts to defeat or weaken the bill on the floor extended beyond merely attacking its provisions. They sought to add to the bill in ways that would make it unpalatable to Republicans. A prime example of this approach was the amendment offered by the southern leader, "Judge" Howard W. Smith of Virginia, to add sex as a prohibited ground of discrimination in employment.[10] The few women representatives were divided in their response. Some offered vigorous support. Others, although recognizing the reality of discrimination against women in the workplace, feared that the amendment would overload the bill and argued that the matter ought to be treated separately. From a variety of motives, northern male representatives were also split and so, with the votes of southern civil rights opponents, the important change was made to Title 7 and "sex" for the first time was incorporated into the traditional litany of impermissible grounds of discrimination. Contrary, perhaps, to the belief of following generations, it had not always been so. It was only by virtue of a segregationist's attempt to work serious mischief that "race, color, religion, and national origin" grew to "race, color, religion, sex, and national origin."[11]

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[10]If all else failed and the bill were enacted, Judge Smith's amendment might lead to a host of complaints from women, thus reducing the attention that enforcement officials could give to cases involving Blacks.

[11]Taken by surprise when Title 7 became part of a broadly supported bipartisan bill, Washington representatives of big business nevertheless were not too disturbed by the prospects of its passage. Most national corporations had adjusted to doing business in states with fair employment laws. But the "sex amendment" had few state counterparts and its addition to the

The sex amendment was the most important change the House made in the committee bill. There were several close calls on proposed amendments whose adoption would not only have weakened the bill but, perhaps, signaled an unraveling of the shaky bipartisan coalition. After nine days of floor debate, an exceptionally long time for the House, the bill passed by a vote of 290 to 130. Seven southern Democrats voted yes and just 34 Republicans voted no.

The Senate

This overwhelming Republican vote was a valuable resource as the bill came to the Senate. Even so, speculation inside the Beltway (as it would now be called) focused on which of the bill's major provisions would survive the Senate, historically the graveyard of civil rights legislation. With twenty of the sixty-seven Democrats sure to oppose cloture, exactly the same number of Republican votes was needed. At most there were a dozen moderate to liberal Republicans who might be recruited. Cloture could succeed only with the help of conservatives representing plains and mountain states with few nonwhites, active liberals, or union members.

The key to their support was Everett Dirksen of Illinois. Minority leader and ranking Republican on the Judiciary Committee,

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House bill raised alarms at the National Association of Manufacturers. A NAM official explored with Senate Republican leader Everett Dirksen the chances of deleting Judge Smith's handiwork in the Senate. After consulting his colleagues, Dirksen reported that no Republican senator would introduce an amendment to strike "sex" from Title 7.

he combined in the Senate the roles played in the House by Halleck and McCulloch. Dirksen did not seem well-cast in the role of civil rights champion. Known during his long career as a wily and conservative partisan, he had been reelected easily in 1962 with a notably tiny share of Black votes. He was said to have once ordered Clarence Mitchell, the NAACP's genial and widely respected Washington representative, out of his office. Having earlier endorsed a voluntary approach to desegregating public accommodations, Dirksen was thought to be even less hospitable to Title 7. The proponents believed that Dirksen would decide the bill's fate, but they had no real idea about his intentions and no success in drawing him into early negotiations.

Civil rights lobbyists wanted to pressure Dirksen by denouncing his refusal to endorse the bill. The Senate floor manager, Majority Whip Hubert H. Humphrey, rejected this advice. Asked about Dirksen by reporters, Humphrey would express his confidence that "when the time comes," Dirksen would demonstrate what a great American he was. As one observer put it, "Humphrey built a niche for Dirksen's bust and shone a spotlight on it." This strategy was well designed to appeal to Dirksen's character and sense of drama. Secure in the knowledge that, if enacted, the bill would be judged a Democratic achievement, the Administration was unconcerned about giving Dirksen his time on the stage.[12] And

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[12]Doubtless Humphrey's anticipation of being rewarded with the vice-presidential nomination assuaged whatever discomfort he might have felt about Dirksen's starring role. Humphrey did become Vice President and Dirksen was celebrated in some circles as the savior of the bill. The week after final passage, Dirksen's picture appeared on the cover of Time. His celebrity contrasts with the

if Dirksen ultimately opposed the bill and it failed, his prominent role would make it easier to blame his party.

While Dirksen bided his time, the House bill came to the Senate and was "held on the table" instead of being referred to a committee. This procedure avoided Eastland's Judiciary Committee and set the stage for a motion to make the bill the pending business of the Senate. The Southerners exercised their right of unlimited debate to keep this motion from coming to a vote and the filibuster was on. Led by Georgia's Richard B. Russell, a formidable power who had been a senator since 1933, the filibusterers, organized in three six-man teams, displayed the discipline and mastery of rules that had marked their previous victories over the civil rights forces.

A new day had dawned, however, for Senate civil rights supporters. For one thing, they had learned the body's complex rules and in the coming months matched their antagonists' command of parliamentary procedure. In addition, the strong House bill was generally recognized as setting the outer limit of the feasible. Thus no serious demands were heard to strengthen it; no part of the coalition jeopardized its unity by demanding improvements. Nor were there calls for concessions. With the tax and farm measures out of the way, President Johnson, who had strongly endorsed the civil rights bill shortly after the assassination, announced that Senate passage of an intact House bill was his first priority. Washington analysis of Johnson's

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modest acclaim accorded McCulloch and Halleck, which exemplifies the traditional difference between the "showhorse" Senate and "workhorse" House.

political situation concluded that, coming from the South, he had more to prove about racial issues than had Kennedy and therefore needed to be seen taking a strong stand. The Justice Department, still headed by Robert Kennedy, who maintained a very low profile in the months following his brother's death, had demonstrated during House floor consideration its commitment to the bill, mastery of the substantive issues (Marshall's specialty), and political sensitivity (Katzenbach's department). This level of Administration dedication and talent was a new departure for civil rights legislation.

The same was true of Senate floor leadership, in the hands of the two assistant party leaders, Humphrey and his liberal Republican counterpart from California, Thomas Kuchel. Every morning leading senators and their aides met with Katzenbach and Marshall. Staffs met again in the afternoon. Humphrey's office published a daily "Bipartisan Civil Rights Newsletter" both to keep friendly senators informed and to provide material for their speeches and news releases. Two senators, one from each party, served as leaders of floor debate on each of the bill's major titles. As it had in the House, the Department of Justice supplied detailed briefing books, including analysis of expected amendments. When serious debate began, it staffed an office just off the Senate floor with lawyers available to help the Senate proponents.

The actual proceedings during the filibuster provided little of the drama found in "Mr. Smith Goes to Washington" and PBS specials. Speakers on both sides kept to the issues; no one spun

stories or shared down-home recipes. There were no cots in the cloakrooms because there were no round-the-clock sessions. The leadership concluded that these practices had been essentially publicity stunts that would be counterproductive in 1964. The proponents' need for organization went beyond having well-briefed speakers ready to take the floor. A southern senator could always halt the proceedings merely by gaining recognition and saying, "Mr. President, I suggest the absence of a quorum." This stopped everything until fifty-one senators showed up. Because the Southerners stayed away, it was up to the proponents to provide the quorum; the alternative was public embarrassment. As media coverage and consequent public attention increased, some newspapers began to carry a front page boxscore showing daily quorum performance. Failure to produce a quorum one Friday led to a Saturday meeting for Democratic senators at which the normally taciturn Majority Leader, Mike Mansfield, shouted angrily at his colleagues.

For more than a month the filibuster was essentially a public relations duel. The proponents were waiting for Dirksen. It seems likely that he was lying low in order to take Johnson's measure and, perhaps, to get the best possible reading of public opinion after the strong House Republican vote for the bill. The Republican presidential nomination campaign also may have affected his timing. Barry Goldwater, the most likely nominee, was expected to vote against cloture and even the bill itself. At least some of his Senate supporters, worried that these positions would harm his chances of being nominated, might have been tempted

to vote the same way in order to give him some political cover. Prominent among these Goldwater backers were a number of the same senators whose votes were needed to end the filibuster. According to this line of thought Dirksen wanted to delay the cloture vote until the nomination was settled.

At the same time, the civil rights coalition concentrated on the dozen or so Republicans needed for cloture. Most of them represented states where Blacks were scarce and southern race relations largely a matter of indifference. Natural constituent pressures were minimal, one way or the other. Organized labor had only a modest presence in these areas, hence there was little leverage for the unions, usually the heavyweight element in the Leadership Conference. The advocates best suited for this region came from organized religious groups, a relatively new element in the Leadership Conference. Religious delegations came to Washington to lobby the relevant senators and held prayer meetings on the Capitol grounds. Kuchel's office, informed of Republican senators' travel schedules, would arrange for local ministers, priests, and rabbis to encounter them on their home ground. The president and chairman of the National Council of Churches, a prominent industrialist and a Presbyterian church leader, called on the strategic senators, each time accompanied by local religious figures.

The Leadership Conference, the Administration, and the Senate leadership were now on good terms. Satisfied with the House bill, the lobbyists had no thought of asking for more. And as long as the Administration and Senate managers seemed to be standing fast

on the House bill, there was no reason for disagreement. The NAACP's Mitchell and Joseph Rauh, a long-time Washington liberal and labor lawyer, attended Senate leadership meetings twice a week.

Eventually, Dirksen filed over one hundred amendments and indicated a willingness to talk. His amendments ranged from proposals to eviscerate each of the major titles to wholly trivial changes. His intentions remained unclear. Was he serious about the more drastic amendments or were they designed to stake out a strong bargaining position, probe for weaknesses among the bill's Senate sponsors, or merely test the Administration's resolve?

A series of meetings began that lasted for several weeks. Ostensibly they were between the minority and majority leaders, Dirksen and Mansfield. Actually there were multiple discussions, with widespread participation between the bill's supporters, including Justice Department officials, on one side, and Dirksen or his staff on the other side. The proceedings took on the character of the committee mark-up that had been missing in the Senate: line-by-line reading, discussion, and negotiation.

It soon became clear that Dirksen wanted most of all to have his name on a bill that would be a monument to his role in achieving bipartisan collaboration. In the end, Dirksen demanded comparatively few significant alterations. Most of the differences between the House bill and what was labeled the Dirksen-Mansfield Compromise were largely cosmetic; even redrafting major sections worked little, if any, substantive

change.[13] Once he decided to cooperate, Dirksen apparently was concerned mainly with being able to point to the many marks he had left on the bill. Notwithstanding their limited impact, the number and seeming importance of the concessions he had won were enough to justify the support of his more conservative Republican colleagues.

On June 10 the Senate imposed cloture by a vote of 71 to 29, four votes more than required.[14] The bill's supporters endured a few more anxious moments during the ensuing consideration of 104 amendments. Unacceptable amendments were voted down, but not always by comfortable margins. Nine days later the bill passed, 73 to 27. Six Republicans voted no both on cloture and final passage, and each time Goldwater was one of them. On July 2, with only six members voting differently than they had in February, the House accepted the Senate version. President Johnson signed the great bill into law later the same day.

In Retrospect

The 1964 Act is generally recorded as an accomplishment of the Johnson Presidency. And indeed it was: Johnson's prompt

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[13]The Dirksen-Mansfield measure was somewhat misleadingly named. To the extent they represented changes in the House bill, its provisions were mostly a product of detailed negotiations between Dirksen's Judiciary Committee minority staff and Department of Justice officials. Introduced in the Senate as an amendment in the nature of a substitute to the House bill, it ultimately passed with little change, largely unaffected by trivial floor amendments accepted by its bipartisan sponsors.

[14]The proponents believed that if his vote had been needed for cloture, Carl Hayden, an Arizona Democrat, would have provided it. Hayden was one of that dwindling band who, as a matter of principle, had never voted for cloture. He voted for the bill on final passage.

endorsement of the bill shortly after the assassination marked his determination to enact the measure his predecessor had negotiated to the House floor. The same was true of his unwavering commitment during the next seven months. Even marginally less forceful public support by the new President could have resulted in seriously weakening or even scuttling the legislation. Recognition of Johnson's importance, however, sometimes goes beyond recognition of his legislative skills to a suggestion that passage would not have occurred if President Kennedy had lived. There is, of course, no way to say with certainty what would have happened absent the assassination, whether the bill would have passed and, if so, in what form. But the assumption that Johnson's ascent to the presidency was a necessary condition of the bill's success is doubtful. The Kennedy Administration had committed itself to securing a new law and the strategy for passage was fixed before the assassination. The key element was the bipartisan bill in the House, developed in cooperation with Representative McCulloch, an approach designed to lock in Republican support and set the stage for Senator Dirksen to be cast as saving the legislation from death by filibuster. Kennedy's skill and steadiness made this strategy work during the perilous passage through the House Judiciary Committee. In the crisis after the subcommittee revolt Kennedy confronted groups comprising much of the Democratic party's core constituency by sending his brother to support the latest bipartisan compromise. And in the decisive period following Libonati's defection President Kennedy committed the authority of his office and his

own prestige to securing a bipartisan bill.

Kennedy's strategy was fulfilled, and the bill's content effectively established, in the measure reported by the House Judiciary Committee on November 20, 1963. There was no change in strategy or implementation from that point forward; the Justice Department continued to function as the Administration's leader on the bill, without a perceptible shift in role or in direction from the White House. In none of 164 interviews with congressional, White House, and Justice Department officials, as well as civil rights lobbyists and opponents, was President Johnson described as personally playing an active role.[15] In short, events leading to passage followed as planned prior to November 22, although few of those concerned expected quite such a complete success. We see no convincing reasons for thinking that the outcome would have been significantly different had Kennedy lived.

The 1964 Act, or something like it, was not inevitable. As unlikely as it may now seem, other administration responses to Birmingham were possible; not the least probable would have been one emphasizing civic peace rather than racial justice. Massive street demonstrations were new to recent national experience and many Americans would have responded affirmatively to a call for an end to the disruption in Birmingham and elsewhere. A respectable appeal to the need for restoration of order--deploring the brutality of Bull Connor's methods, acknowledging the marchers' grievances but decrying their methods and urging instead continued

[15]The exception might have been a concession on silver policy Johnson offered for what turned out to be the unneeded cloture vote of a Nevada senator.

reliance on the courts--might have won the day. At the time even some national leaders of the NAACP expressed disapproval of King's tactics, fearing that the marches would evoke a negative public response and adversely affect the overall struggle for civil rights. Once the bill was introduced, Administration and congressional leaders worried that expanding demonstrations into the North would jeopardize its chances. And, certainly, it was realistic to fear the consequences if even one demonstration had turned violent.

The nation was fortunate that the seminal Birmingham demonstrations were led by a student of Gandhi who was able to instill in his followers his own commitment to nonviolence. Even then, passage of the 1964 Act was never certain and one hesitates to contemplate what might have happened had the legislative effort failed and leadership of the civil right movement passed to others less clearly committed to peaceful methods. Even if viewed only as a change in rhetoric, the emerging Black Power movement generated serious unease among many Americans whose reactions to Black demands had been largely benign.

The movement's success did not turn simply on good fortune or the absence of generalized violence. The demonstrations in Birmingham reflected also a sophisticated understanding of the task facing the movement:

> Our appeal and all of our efforts were to deradicalize our efforts and make them mainstream religious Americana. . . . if we could use television and if we

> could work with the churches, if we could get key editorial writers to understand clearly what we were trying to do, that was the way to change America. . . (Young, 1989, p. 32).

Some of this same understanding helped inform the powerful and well-organized lobbying campaign conducted by the Leadership Conference on Civil Rights and its constituent members. National and local groups were kept informed about the bill's progress. In addition to working the halls and offices of the Capitol, the Leadership Conference promoted local talks and sermons and generated continuing grass-roots pressure on Members of Congress.

Civil rights forces organized the celebrated March on Washington in August 1963, while the bill was still before the House Judiciary Comittee. Administration and congressional figures at first argued against the idea, warning that it could lead to disruption or violence and have a negative effect on Capitol Hill. But careful planning and the eventual cooperation of federal and District of Columbia officials contributed to making the March a triumph. More than two hundred thousand people, Black and white, from across the country, walked down the Mall to the Lincoln Memorial. The climax was King's "I have a dream" speech, the most famous of all his spoken words. Far from the unfortunate event that many feared, the March was a powerful indicator of the broad base of support for the bill.

When the bill reached the Senate and attention focused on the pivotal vote for cloture, the Leadership Conference worked closely

with the bill's supporters who, led by Humphrey and Kuchel, displayed unprecedented unity and sophistication.

The Adminstration's consistency in pursuing Republican support, its refusal to seek momentary partisan advantage, and its commitment to obtaining effective legislation were essential ingredients of success. The determined and skillful efforts of Justice Department officials not only preserved the relationship with Representative McCulloch during periods of crisis, but provided highly effective substantive support to congressional proponents in both houses, especially during the final negotiations with Senator Dirksen.

Enactment was eased by the plain fact that the legislation was directed at the South and at discrimination against Blacks. The bill was intended to remedy ills that were thought to be found largely in the Old Confederacy and some border states. Notwithstanding its inclusive language, it was not generally perceived as affecting other minorities elsewhere. Moreover, some parts of the North already had their own versions of Titles 2 and 7. Southern legislators were but speaking the truth when they said--as if it were an accusation--that the bill was aimed only at their constituents. Notwithstanding both the reality of racial prejudice in the North and the 1964 Act's eventual national application, many Members of Congress seemed to believe that it would have little, if any, practical impact on the lives of <u>their</u> constituents.

Finally, the Act's passage was aided by the spirit of the times. The early 1960s were years of optimism and hope; there was

a belief in possibilities and in a future that may seem dimmer today. Among the public and within government there was a conviction that things could be changed, that the nation's problems were manageable, that they could be dealt with, if only we were smart enough, committed enough, and worked hard enough. In short, government programs and the law could make a difference. The decade witnessed, for example, the passage not only of the Civil Rights Acts of 1964, 1965, and 1968, but also Medicare and Medicaid, the beginning of the War on Poverty, in all its many aspects, and the enactment of the Elementary and Secondary Education Act of 1965.[16]

Although the Civil Rights Act of 1964 was a great success in substantive terms, neither party got what it wanted politically from supporting the bill. For the Democrats, the bill was motivated not only by the moral and political force of the cause but by the Kennedy Administration's desire to ease racial violence and thereby remove a threat to the President's campaign for reelection. The bill did not, of course, cause the riots in northern cities in the later 1960's, but that racially-based urban unrest was, in addition to Vietnam, an issue that helped defeat Hubert Humphrey in 1968 (Converse et al., 1969, p. 1085).

The Republican irony is more obvious. Republican majorities for civil rights were skillfully put together in both the House and Senate. But this all went for naught because one of the six Republican senators who voted no happened to be the most important

[16]This last measure, providing billions of federal dollars to local public schools, made Title 6 the instrument that ended de jure school segregation.

one of all from the standpoint of the party's image: Barry Goldwater. Republican presidential candidates had won 40 percent of the Black vote in 1956 and 25 percent in 1960. In 1964, for all the efforts of Dirksen, Mculloch, and Halleck, the Republican ticket got a mere five percent of the Black vote, and has not risen far above that level since then. What set American Blacks' image of the Republican party was not Halleck and McCulloch and Dirksen, but Goldwater.

These consequences for the parties are not the most important legacy of the Civil Rights Act. The lives of millions of American Blacks were directly improved. The Act reflected a sea change in American law and politics in the early 1960's. It did not originate in Washington or in academia, nor did it come from liberal ideologues. It came from the people represented by Martin Luther King and others, anonymous marchers--Black and white--who, like their leaders, risked and sometimes lost their lives in their quest for racial justice. The significance of the civil rights movement extends well beyond the changes worked by the 1964 Act and its successors in 1965 and 1968. It led to a major restructuring of Americans' sense of justice across broad reaches of national life. The movement was the stimulus, the precedent, and the model for achieving other major shifts in attitudes and in the law. The successes of efforts on behalf of other minorities and for other causes, for women's rights, tenants' rights, the rights of the disabled, gays, the elderly and others are all based on the movement that found its most strategic expression in Birmingham. By the same token, the Civil Rights Act of 1964 was

the model for extending legal protections to each of these other groups.

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