

CONSTITUTION DAY, 17 SEPTEMBER 1988

Remarks at the U. S. Commission on Civil Rights¹

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What do Conservatives care about civil rights? That question occurs to me today because of the significant implication of Constitution Day, which we shall mark tomorrow. On each renewal of this case we echo the claims of the past on our future—looking back, now 200 years, to find our way forward. Looking back to the constitution is conservative, in the way Lincoln defined it, namely adhering “to the old and tried, against the new and untried [?],” when, as he said, “we stick to, contend for, the identical old policy. . . which was adopted by ‘our fathers who framed the Government under which we live;’...” Today many say that the Framers had no regard for civil rights, rightly construed. Civil rights, they insist, is about changing the face of America, and therefore cannot be about the old look of things. It therefore becomes a serious question whether those who stick by the Framers, the Conservatives, care anything at all about civil rights.

Our work in this Commission is to superintend change in our nation—change in our laws and in our practices. It is a work which has been made necessary by our past shortcomings regarding some important dimensions of American life, and of those none more important than the guarantee of equal rights of citizenship. The general name for this valuable work has been “civil rights” for at least thirty years now. That is why this is called the United States Commission on Civil Rights.

Thirty-one years ago President Eisenhower recommended and the Congress acted to create the United States Commission on Civil Rights. In an atmosphere tense with suspicions of forced integration and recognition that America faced perhaps its greatest challenge since the War of American Union in the need to correct injustices inflicted on blacks by state and federal policies of discrimination, President Eisenhower recommended a “reasonable and moderate response,” designed to provide a means of resolving “a great educational problem that involves a moral” principle. The Commission was to assist in identifying the responsibilities “not of Massachusetts or Mississippi but of the United States,” to “bring about better understanding and not to persecute anybody.”

Since that positive and creative decision in the depths of the “bad old days,” Congress has from time to time resolved, and the President proclaimed, our country’s dedication to the attainment of truly equal rights of citizenship.

Here we have a bedrock conservative issue if ever there was one. Living as we do in an era when some believe civil rights to be the privileged preserve of some, but not all Americans, we have cause to recover Eisenhower’s vision. The Preamble to our Constitution was drafted by Gouverneur Morris of Pennsylvania. But Morris’s “We The People” was more than one man’s idea. As Patrick Henry correctly remarked, Morris did

not speak merely in his name, nor in the name of the thirteen states, but in the name of all the people of the United States. “We The People” made pledges and promises to be redeemed not by special interests but by all the individuals comprising this great society. It must be the work of this Commission to remind us of those pledges and promises, and that civil rights are the benchmarks not of oppression but of American citizenship.

Since the preamble was adopted, America has become a land of many races, and faiths. It remains, however, a land of one right for all—where the rule of law benefits every one and not one or some at the expense of others. Ours is a democratic land, where the idea of majority rule encompasses “justice for all.” The majority is a sacred republican expedient, not a class or a caste. When Americans begin to speak of the majority, not as the voice of republican liberty, but as one group in opposition to other groups in our society, they are perverting our heritage. When defenders of a quota-ized society scornfully reject the claims of “the majority,” they turn an icon of republicanism into a mere racial epithet. They pit race against race, men against women, faith against faith, without any means of reuniting them.

President Eisenhower said that his objective “was to prevent anybody illegally from interfering with any individual’s right.” His Commission was to contribute to this end by representing “the spectrum of American opinion,” and would consist of persons of such character and “national reputation that their opinions, convictions, and findings of fact will be respected by America.” Nothing less could provide a proper emphasis for the American principle that every individual’s rights are precious.

To keep America on the track of its ancient pledges and promises, we need to keep the spirit of Civil Rights for all alive. That is a worthy Conservative goal, for nothing should so roil a Conservative’s soul as to notice that Americans’ civil rights are jeopardized by governmental indifference to the rights of individual Americans. If Conservatives sleep now, while a Civil Rights Commission true to Eisenhower’s vision is being destroyed, we will awaken later, not to find that there is no longer a Civil Rights Commission, and all Americans secure in their constitutional rights without distinctions of race, gender, or class. We will awaken to a new Commission on Civil Rights bent on dividing and punishing our Country until one day no one remembers, we were once “We the people of the United States.”

That is why I address myself particularly to this question, what do Conservatives care about civil rights? The answer must be everything, for not otherwise can conservatives carry out their proper task. This must mean, then, that Conservatives do not contribute enough, when simply reminding their countrymen of the preferred solutions to the problems of our day. They must go beyond, and apply their convictions to practical wants, thereby demonstrating that civil rights properly understood answer to the needs of all.

We find no fitter example of this challenge to pending review of its decision in the case, *Runyon v. McCrary*. Speculation has it that the Court will overturn that decision’s novel application of the original Reconstruction civil rights statutes. Such a result would be a lamentable mistake, for what the Court requires rather to do is to clarify and extend that ruling.

Conservatives do not err when they remark that it is unjust to empower a private individual to force another private individual into a contractual relation against the will of the latter. That, however, is the misapplication of the Runyon ruling and not its essence. Conservatives ought to notice still more how essential it is to bar private or public third-party interference in the right to make contracts. That is the legitimate civil right claim the legislation was aimed at. It is a means to spell out limits to contracts which confine their obligations to the contracting parties, as well as a means to protect the crucial entrepreneurial ambiance which alone renders the right of contract meaningful. Because Conservatives care enough about civil rights to insist upon clarity in their expression, they should urge the extension and clarification of Runyon, including providing due emphasis on damages (compensatory and punitive) over regulation and bureaucracy as the appropriate remedy for force and fraud injuries.

And now, if only they will listen—and I know not why they shouldn't—I would address a few words to the liberal, civil rights elite.

I would say to them:—You pride yourselves a reasonable and a just people; moreover, I do not doubt that you possess in general talents for reason and justice in proportion as others do. Nevertheless, whenever you speak of Conservatives, and Republicans, you do so only to wield the whip of “racism,” using even the flimsiest of pretexts to hound us out of polite society as if we were no better than outlaws. Indeed, it often appears that even outlaws—murderers, muggers, and perverts—would sooner be received into your company than a Reagan Conservative. You grants us no hearing at all, while assuring them every consideration. Even when you cannot agree among yourselves, you can always restore harmony by starting up a condemnatory hymn of “Reagan Racism”—you use it as a secret password by which you give leave to one another to come and go. I beg you to think, though, how unjust this is to us—and indeed even to yourselves! Do indict what you perceive as our shortcomings; but then wait, at least long enough, to hear our account. We insist on taking the stand in our own defense; permit us to deny or justify. We ask no more.

The Commission on Civil Rights has been locked in a stranglehold by the liberal civil rights elite. Slowly, the past four years, they have been choking off its life and in the coming year threaten to kill it. Why do they in 1988 act the part of the obstructionists of 1957? Two words: Ronald Reagan. While the President is in office, they cannot reserve the Commission to their own uses. Unlike Eisenhower, they believe Civil Rights are not for all Americans but only for those interests who will push a liberal agenda. In 1957 the obstructionists forced a black woman to the back of the bus. In 1987 the obstructionists force even young black children to the back of the classroom, just to be able to save their notions of quotas and group interests for America. The Commission on Civil Rights would tell the truth about the liberal agenda. That is why the obstructionists attempt to cut off funding and silence the Commission.

And what is that truth? Namely, that policies touted as successful have consistently failed. This week the Equal employment Opportunity Commission had to request a federal court to hold United Airlines in contempt for failing to abide by a nearly fifteen year old settlement and, indeed, perverting its terms to the benefit of white males. The Airline had agreed to apply a 2:1 quota in its hiring arrangements, consistent with the

reasoning of that era; it promised a court that it would do so. The truth is, however, that it did not.

Similarly, a spokesman from Asian Americans for Affirmative Action appeared before the Commission in its Los Angeles forum only last week, there to complain that affirmative action arrangements in universities and elsewhere were operating as effective devices for screening out American Asians. He expressed some surprise that a device so well suited to that precise operation would in fact be used that way.

At that same forum, three manifestly capable, intelligent black university professors—each from a different institution, in different fields, and doubtless of different moral and political inclinations—brought before us a tale of an affirmative action underworld, where black professionals are kept circulating from institution to institution through revolving door processes which provide steady statistical reports for the institutions but no absolute improvement over time in their hiring patterns.

The most gruesome aspect of each of these stories is that they point out how thoroughly those who have acquired reputations for fairness in matters of race have in fact become the new custodians of an old-fashioned Jim Crow regime. The strongest architects and defenders of affirmative action, as often as not, are its chief violators—not least of all on Capitol Hill itself.

No one at this late date requires to hear rehearsed the sheer destruction and brutalization of education which this country has suffered through a mindless pursuit of chimerical goals without regard for individual accomplishments. For that is how all too many black children, suffering integration in school buildings distant from their homes, nevertheless receive a segregated education within classrooms and school buildings stratified by race.

Put these stories together, along with the mounting carnage of failed urban policies, and the watchful citizen can arrive at no conclusion short of horror for the evil that has been wrought. Nor is it necessary to deny that America has changed in numerous and valuable ways since August, 1964. There has been honest progress in the country, even while there is much room to speculate whether that progress has not consisted almost exclusively in the immediate changes effected by the passage of the historic civil rights laws. Where abuses have been legislated out of existence, the attainments have been real and palpable. By contrast, in almost every aspect of our lives where we have tried to manage our civil rights relations we have failed. Voting rights until recently has been a notable exception; that is, not only did citizens come to participate at a vastly improved rate in the governance of the community, but the complexion of the corps of office-holders in the country changed by several orders of magnitude (at least in municipal politics).

Now, though, we prepare to sail off into a brave new world, in which voting rights must be managed as thoroughly as our schools were—like our schools, presumably, managed into worthlessness. At every turn in our historic civil rights travail, we have been bedeviled by the penchant of the state to intrude itself between citizen and citizen—the reluctance to entrust to Americans themselves the management of their peaceful relations. Yet, nothing can be more clear than that, ultimately, no other solution

will honestly fulfill the promises and pledges of America. Laws and strict enforcement are required to set the boundaries of our social and political life. Nevertheless, the complexion of the intricate and manifold relations of that social and political life must necessarily result from the particular negotiations of individuals wending their way into the future.

The liberal civil rights elite seems never to have understood this basic truth. They have confused the power to remove petty apartheid from American life with a power to govern in all things. They revile Conservatives because Conservatives seek to remind them of the limits of their power. Conservatives do not begrudge them their just desserts and proper recognition. Conservatives seek only to remind them that, though, indeed, they changed the face of America, they have left its soul untouched. Conservatives care enough about civil rights to wish to redeem a nation's soul through the promises of its Constitution.

¹ These remarks were published in the *Congressional Record*, September 28, 1988, pp. E3123-3125.