

Book Review

The Bill of the Century: The Epic Battle for the Civil Rights Act¹

Reviewed by Major Mark E. Gardner*

*[N]o army can withstand the strength of an idea whose time has come.*²

I Introduction

The Civil Rights Act of 1964 was not the first such legislation to be signed into law in the twentieth century, but it was the first to have dramatic impact on the oppressive system of “Jim Crow”³ laws then pervasive in the American South.⁴ These laws prevented black Americans, including those who had just returned from serving their country in World War II, from voting, eating in the same restaurants, and attending the same schools, as white Americans.⁵ Beyond the importance of the substance⁶ of the Civil Rights Act, the story of its passage through Congress offers a remarkable insight into the American legislative process, and *The Bill of the Century: The Epic Battle for the Civil Rights Act* is essential reading for anyone who wants to understand the political forces at play during the passage of the Act through the legislative process.

Despite the aforementioned quote by Senate Minority Leader Everett Dirksen, the Civil Rights Act of 1964 was no sure-thing. Its path through Congress was tortuous and its existence in any effective form was precarious until it was finally passed by Congress after more than a year of legislative conflict. As the author, Clay Risen, points out, the story of the Civil Rights Act is usually told by discussing the two individuals most commonly considered the prime movers behind the Act: the Reverend Martin Luther King Jr. and President Lyndon B. Johnson.⁷ Risen makes the purpose of his book clear when he states his intent is to correct the misconception that King and Johnson deserve all the credit for the Civil Rights Act of 1964, and to tell the story of the large cast of individuals and groups that played a role, from Democratic and Republican representatives in Congress, to civil rights, labor, and religious groups, working outside

Congress and the White House.⁸

Risen argues that the Act is the most important piece of legislation passed in twentieth century America,⁹ and it is difficult to disagree with that assessment. When the words “[w]e hold these truths to be self-evident, that all men are created equal . . .”¹⁰ were proclaimed in 1776, it may have been surprising to some that it would take almost two hundred years for equal treatment under the law to be true for all citizens. Risen offers a compelling account of the birth of the law that finally resolved this national cognitive dissonance.

II. Congress

The strength of Risen’s book lies in his accounting of the Civil Rights Act’s dramatic passage through both chambers of Congress in 1963 and 1964. He lays the foundation by recounting previous attempts at civil rights legislation after World War II. The 1940s and ‘50s were characterized by small and incremental steps towards civil rights equality on the national level, with sometimes violent reactions, including the murder of civil rights activists by those who opposed it.¹¹ President Dwight D. Eisenhower signed two civil rights acts into law, in 1957 and 1960, mostly covering voting discrimination.¹² Those acts were so watered down by the mostly southern Democrat opposition in the Senate, that they were generally considered more symbolic than providing any substantial relief from the de facto or de jure disenfranchisement faced by minorities during the post-war period.¹³

However, in the early days of John F. Kennedy’s presidential campaign in 1960, he committed himself to one

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¹ CLAY RISEN, *THE BILL OF THE CENTURY: THE EPIC BATTLE FOR THE CIVIL RIGHTS ACT* (2014).

² *Id.* at 220 (quoting Senate Minority Leader of the 1964 U.S. Senate, Everett Dirksen).

³ The term “Jim Crow” was likely taken from an early 19th century white minstrel entertainer, who performed a song-and-dance routine in blackface called “Jump Jim Crow.” *ENCYCLOPEDIA OF SOUTHERN CULTURE* 213-14 (Charles Reagan Wilson and William Ferris eds., 1989).

⁴ Risen, *supra* note 1, at 2. “Jim Crow” was not limited to the South, as the author opens the introduction of the book with the recounting of a black teenager being turned away from the barber shop of the Muehlebach Hotel in Kansas City, Missouri, in July, 1964. *Id.* at 1; *see also id.* at 17 (describing the segregated symphony of Oak Park, Illinois, a suburb of

Chicago).

⁵ *Id.* at 15-17.

⁶ The Act’s provisions covered, in part, voting rights, equal access to public accommodations, funding to assist school districts in their desegregation plans and prohibition on employment discrimination. *Id.* at 5, 55, 102, 111.

⁷ *Id.* at 2.

⁸ *Id.* at 3.

⁹ *Id.* at 257.

¹⁰ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

¹¹ RISEN, *supra* note 1, at 10-15.

¹² *Id.*

¹³ *Id.* at 14.

of the strongest civil rights programs yet.¹⁴ This was a decision he came to regret, according to Risen, because it was practically impossible to follow through with, given the strength of the senior southern Democrats in the Senate,¹⁵ and the filibuster rules they used so effectively.¹⁶ This marks the beginning of the struggle to finally get effective civil rights legislation through the House and Senate to the President's desk for signature, and Risen gives a fascinating chronological account, relying on many first-hand accounts of the players involved in the struggle.

The southern Democrats' stranglehold on the Senate meant that for any chance of success, the Act had to originate in the more liberal House of Representatives and gain momentum before moving to the Senate for debate.¹⁷ This strategy carried its own risks, as there was a danger that some representatives who took a more aggressive approach to civil rights would introduce amendments that would scuttle the bill due to opposition from more conservative representatives.¹⁸ It is at this point in the book that a minor weakness appears. There is no concise explanation of the specific provisions, or titles, of the Act in the early chapters of the book, and it is difficult for a reader not already well versed in the Act to follow Risen's detailed discussions about the debate in Congress regarding those provisions. This reviewer spent a considerable amount of time searching back and forth through the book for descriptions of the Titles being discussed.

Despite the more liberal make-up of the House of Representatives, the Act was not received with open arms and faced a contentious path through the House when President John F. Kennedy's administration introduced it in June 1963.¹⁹ Officials from the Department of Justice²⁰ kept close

tabs on the bill as it worked its way through the House of Representatives and stepped in as necessary to advocate for the administration's bill over any of the more than one hundred alternatives introduced by House members.²¹

October and November of 1963 was a time of crisis for the Civil Rights Act.²² The detail Risen provides in his recounting of the Act's emergence from House committee hearings is, in part, what makes this book such a valuable addition to the written history of the Civil Rights Act. More than fifty years after the passage of the Civil Rights Act into law, it is easy to assume that, as Senator Everett Dirksen told a reporter, it was an idea whose time had come and its passage was inevitable.²³ However, Risen makes clear that was not the case, and the bill constantly navigated perilous waters throughout its legislative history. The bill that emerged from the subcommittee was considerably stronger than when it was initially introduced to the House,²⁴ leading to negotiations between the players in the House and the administration.²⁵

In November 1963, the assassination of John F. Kennedy dealt another blow to the Civil Rights Act's chances and it's here in the narrative that Risen turns to Lyndon B. Johnson, who became president upon the death of Kennedy, and is one of the individuals he asserts does not deserve the bulk of the credit for the Act's passage.²⁶ Johnson, the former Senate Majority Leader, in an unexpectedly eloquent address to Congress, calls on its members to continue the work on civil rights started by President Kennedy.²⁷ Risen asserts that at this point there was little more for Johnson to do than play "cheerleader and exhorter in chief."²⁸ While true, Risen makes clear that Johnson did not just sit on the sidelines as a spectator, and there are many examples of Johnson's

¹⁴ *Id.* at 19.

¹⁵ *Id.*; *See also id.* at 13 (discussing the power of the southern Senators, the "true masters of the Senate," who controlled the majority of the committees, including Judiciary, Armed Services, and Finance; essentially giving them the ability to control what legislation made it to the Senate floor for a vote).

¹⁶ Senators could tie up legislation by engaging in endless debate on the Senate floor. *Id.* at 21. The filibuster rules at the time required two-thirds of the senators present to vote for "cloture," or an end to the debate, thereby allowing a vote on the bill itself. *Id.* This meant the nineteen southern Democrats, allying with some conservative Republican senators, could keep any civil rights bill away from a vote on its substantive provisions. *Id.*

¹⁷ *Id.* at 71.

¹⁸ *See, e.g., id.* at 71 (discussing the Kennedy administration's concern that additions to the bill in the House, such as broad school desegregation provisions that would target de facto segregation outside the South, would hinder its ultimate success); *see also id.* at 91 (discussing New York Representative William Miller's questioning, during a House subcommittee hearing, of Attorney General Robert F. Kennedy on whether de facto school segregation was to be a target of the Civil Rights Act).

¹⁹ *Id.* at 77.

²⁰ The Attorney General, Robert F. Kennedy, led an impressive cast of lawyers in the Department of Justice, including his deputy attorney general, future Supreme Court justice Byron White, and head of the Office of Legal Counsel, Nicholas Katzenbach, a University of Chicago law professor and World War II veteran who spent two years as a prisoner of war and was later appointed attorney general by President

Johnson. *Id.* at 29-30.

²¹ Not always to good effect. Early in the bill's existence, in an address before a House subcommittee, Robert Kennedy's lack of knowledge of the details of the bill and his lack of knowledge regarding alternative legislation offered by other representatives was exposed by sometimes hostile questions from committee members. *Id.* at 86-90.

²² *Id.* at 115.

²³ *Id.* at 220.

²⁴ Added to the bill were two amendments that would allow the attorney general to join suits, or sue directly, public officials alleged to have engaged in discrimination, and prohibited employment discrimination (enforceable by a fair employment practices committee with cease-and-desist powers) based on race, religion, color, national origin. *Id.* at 113-15. While these were much sought after by civil rights activists, they were not supported by the Republican representatives, such as William McCulloch of Ohio, who the administration and Democratic leadership in the House were lobbying to support the Act. *See also id.* at 111-13 (discussing Representative McCullough's opposition, based on the property rights of owners, to a broader public accommodations title that would ban discrimination in all public accommodations except the smallest boarding houses).

²⁵ *Id.* at 120-23.

²⁶ *Id.* at 3.

²⁷ *Id.* at 139-41.

²⁸ *Id.*

backroom dealings with legislators in an attempt to ensure success.²⁹

Risen discusses one interesting amendment to the bill, introduced by Howard Smith, a representative from Virginia, that could have received further attention in the book. Smith, an ardent segregationist,³⁰ submitted language that added gender to the anti-employment discrimination sections of the Act.³¹ Risen speculates that it could have been an attempt to scuttle the bill entirely due to lack of support for anti-gender discrimination legislation in Congress, but does point out that Smith had long been a supporter of the Equal Rights Amendment. Risen notes it is likely that Smith had more than one goal in mind when he introduced the amendment.³²

Once the bill was introduced in the Senate in early 1964, the fight to get it passed only intensified due to the strength of the more senior southern Democrats who held influential leadership positions in key committees.³³ Rather than compromise to get a weaker bill, as had happened in 1957 and 1960, the southerners opted to try to kill the bill entirely,³⁴ fearing that any weakness would make them susceptible to attack by segregationists in their home states.³⁵ This led to the longest filibuster since 1846³⁶ and Risen again gives a detailed account of the constant negotiation and, occasionally bourbon-fueled, backroom meetings in the Senate in an effort by the bill's supporters to ensure the success of the bill in the Senate.³⁷ The filibuster by the southern Democrats and their supporters was eventually defeated after a record seventy-five days,³⁸ and the bill passed the Senate by a vote of seventy-three to twenty-seven.³⁹ President Johnson signed the bill into law on July 2, 1964.⁴⁰

III. The Public

Risen devotes far less space to the public's reaction to the civil rights movement and the bill, but very effectively uses it to add context to what was happening in Congress. However, his analysis of the public opinion and its effect on the Civil Rights Act is slightly less convincing than his analysis of the legislative history. Two groups in particular, the Leadership Conference on Civil Rights and the National Council of Churches undoubtedly played a large role by pressuring representatives and senators to vote in favor of the Act,⁴¹ but it is not at all apparent that public opinion across the nation was always firmly in support of all aspects of the Act.

In discussing the March on Washington,⁴² Risen asserts that while the newspaper coverage expressed doubt as to any positive impact on the bill's chances in Congress, there was a positive impact on public opinion, in that white viewers of the march would be more likely to accept appeals for support from their religious leaders and write letters of support to their representatives, be more skeptical of anti-civil-rights propaganda, and possibly sign a petition supporting the bill.⁴³ But Risen offers no source for this assertion, and to the contrary, his book is rife with examples of a lack of public support, and not just in the South. For example, Risen recounts that George Wallace, the staunch segregationist governor of Alabama who stood in the doorway at the University of Alabama to block two black students from registering,⁴⁴ received a whopping one-third, or 266,000, of the votes in the Wisconsin Democratic primary election. The Wisconsin governor stated before the primary that even 100,000 votes for Wallace would be a "disaster."⁴⁵ Risen also notes a rapidly growing "fear among middle-class whites"⁴⁶ that was eroding support for the Act.⁴⁷

²⁹ See, e.g., *id.* at 215 (discussing Johnson's promise to Arizona senator Carl Hayden that he would push for the Arizona Water Project, a large program to bring water to Phoenix and Tucson, in exchange for support of the Civil Rights Act); *id.* at 226 (discussing a White House promise to open a silver dollar mint in Nevada in exchange for support of a Nevada senator).

³⁰ *Id.* at 4.

³¹ *Id.*

³² *Id.* at 160-61. Risen does address Smith and his amendment in further detail in a separate article for Slate. Clay Risen, *The Accidental Feminist*, SLATE (Feb. 7, 2014), http://www.slate.com/articles/news_and_politics/jurisprudence/2014/02/the_50th_anniversary_of_title_vii_of_the_civil_rights_act_and_the_southern.html.

³³ Risen, *supra* note 1, at 166.

³⁴ *Id.* at 165.

³⁵ *Id.* at 188.

³⁶ *Id.* at 217.

³⁷ *Id.* at 213.

³⁸ *Id.* at 229.

³⁹ *Id.* at 237.

⁴⁰ *Id.* at 240.

⁴¹ See, e.g., *id.* at 112 (discussing the Leadership Conference on Civil Rights (LCCR) lobbying for a stronger bill after terrorist bombings killed four young black girls at a church in Birmingham, Alabama); *id.* at 135 (discussing "armies" of LCCR activists meeting with representatives); *id.* at 108 (discussing the National Council of Churches spending \$185,000, or \$1.4 million in 2013 dollars, on lobbying and efforts to desegregate churches).

⁴² *Id.* at 103-06. The March on Washington involved more than two hundred thousand people traveling to Washington, D.C. in August, 1963, to rally in support of civil rights and to hear Reverend Martin Luther King Jr. give his famous "I have a dream" speech. *Id.*

⁴³ *Id.* at 107.

⁴⁴ *Id.* at 64.

⁴⁵ *Id.* at 197.

⁴⁶ *Id.*

⁴⁷ See, also, *id.* at 108-09 (discussing areas of Ohio that were "running nearly 100 percent against the legislation," according to its congressional representative); *id.* at 214 (discussing George Wallace receiving almost one third of the vote in the Indiana democratic primary election); *id.* at 179

IV. Conclusion

Risen offers a well-researched and indispensable addition to the historical accounts of the Civil Rights Act. The detail he offers into the legislative path followed by the Act makes it a must-read for anyone interested in how a momentous, and perhaps controversial, bill reaches a president's desk for signing into law. The level of detail he provides should also be of particular interest to attorneys who find themselves reaching into the legislative history of any law as part of their practice. The competing interests and different motivations at play during a bill's passage through Congress should offer pause for anyone trying to uncover a legislature's intent. Finally, and as Risen points out, at a time when rigid ideology seems to always trump pragmatism in politics, the "passage of the act offers an example of what the country's legislative machinery was once capable of, and what it may well be able to achieve again."⁴⁸

(discussing senators' mail from New York, Idaho, and parts of the Midwest, running from a four-to-one to a ten-to-one rate against the bill). ⁴⁸ *Id.* at 6.