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Hammer on Civil Rights

This was Dr. King's fourth annual report on the state of the civil rights struggle.

Exactly one hundred years after Abraham Lincoln wrote the Emancipation Proclamation for them, Negroes wrote their own document of freedom in their own way. In 1963, the civil rights movement coalesced around a technique for social change, nonviolent direct action. It elevated jobs and other economic issues to the summit, where earlier it had placed discrimination and suffrage. It thereby forged episodic social protest into the hammer of social revolution.

Within a few months, more than one thousand American cities and towns were shaken by street demonstrations, and more than twenty thousand nonviolent resisters went to jail. Nothing in the Negro's history, save the era of Reconstruction, equals in intensity, breadth and power this matchless upheaval. For weeks it held spellbound, not only this country, but the entire world. What had moved the nation's foundations was a genuinely new force in American life. Negro power had matured and was dynamically asserting itself.

The impact of this new strength, expressed on a new level, means among other things that the civil rights issue can never again be thrust into the background. There will not be "One hundred years of litigation," that cynical threat of the segregationists. Nor will there be easy compromises which divert and stagnate the movement. The problem will now be faced and solved or it will without pause torment and agonize the political and social life of the nation.

In the past two decades, the contemporary world entered a new era characterized by multifaceted struggles for human rights. Continents erupted under the pressures of a billion people pressing in from the past to enter modern society. In nations of both the East and the West, long-established political and social structures were fissured and changed. The issues of human rights and individual freedom challenged forms of government as dissimilar as those of the Soviet Union, colonial Africa, Asia, Latin America and the United States.

The Negro freedom movement reflects this world upheaval within the United States. It is a component of a world era of change, and that is the source of its strength and durability. Against this background the

civil rights issue confronts the Eighty-eighth Congress and the presidential campaign of 1964.

Earlier civil rights legislation was cautiously and narrowly drawn, designed primarily to anticipate and avoid Negro protest. It had a double and contradictory objective: to limit change and yet to muffle protest. The earlier legislation was conceived and debated under essentially calm conditions. The bill now pending in Congress is the child of a storm, the product of the most turbulent motion the nation has ever known in peacetime.

Congress has already recognized that this legislation is imbued with an urgency from which there is no easy escape. The new level of strength in the civil rights movement is expressed in plans it has already formulated to intervene in the congressional deliberations at the critical and necessary points. It is more significantly expressed in plans to guarantee the bill's implementation when it is enacted. And reserve plans exist to exact political consequences if the bill is defeated or emasculated.

As had been foreseen, the bill survived intact in the House. It has now moved to the Senate, where a legislative confrontation reminiscent of Birmingham impends. Bull Connor became a weight too heavy for the conscience of Birmingham to bear. There are men in the Senate who now plan to perpetuate the injustices Bull Connor so ignobly defended. His weapons were the high-pressure hose, the club and the snarling dog; theirs is the filibuster. If America is as revolted by them as it was by Bull Connor, we shall emerge with a victory.

The keys to victory in Birmingham were the refusal to be intimidated; the indomitable spirit of Negroes to endure; their willingness to fill the jails; their ability to love their children—and take them by the hand into battle; to leave on that battlefield six murdered Negro children, to suffer the grief, and resist demoralization and provocation by violence.

Argument will inevitably be made that in the Senate cloture is the only weapon available to subdue the filibuster. And cloture requires that a two-thirds majority be mustered before a simple majority can legislate. In thirty-five years, the only time that cloture has been successfully invoked was against a fragile liberal group opposed by the administration regulars and almost the entire Republican delegation. That is hardly a convincing precedent for the success of cloture in the present fight.

On the other hand, if proponents of the civil rights measure will adopt some of the burning spirit of this new period, they can match their tenacity with that of the filibusterers. The dixiecrats can be worn down by an endurance that surpasses theirs. What one group of men dedicated to a dying cause can do, another group, if they are as deeply committed to justice, should be able to do. When the southern obstructionists find themselves at the end of their physical and moral resources, cloture may be employed gently to end their misery.

It is not too much to ask, 101 years after Emancipation, that senators

who must meet the challenge of the filibuster do so in the spirit of the heroes of Birmingham. They must avoid the temptation to compromise the bill as a means of ending the filibuster. They can use the Birmingham method by keeping the Senate in continuous session, by matching the ability of the segregationists to talk with their capacity to outlast them. Nonviolent action to resist can be practiced in the Senate as well as in the streets.

There could be no more fitting tribute to the children of Birmingham than to have the Senate for the first time in history bury a civil rights filibuster. The dead children cannot be restored, but living children can be given a life. The assassins who still walk the streets will still be unpunished, but at least they will be defeated.

The important point is that if the filibuster is not beaten by a will to wear it out, the dixiecrats will be justified in believing that they face, not an implacable adversary, but merely a nagging opponent. Negroes are not going to be satisfied with half a loaf of the legislation now pending. The civil rights forces in the Senate will have to find the strength to win a full victory. Anything less will be regarded as a defeat in the context of today's political realities.

While attention is now properly focused on legislation, it is still useful to widen our perspective by stepping back a little. For the past several years Negro rights have been imperiled and impeded by a confusion of tactics. In the earlier years of the administration of President Kennedy, executive power was advocated as a more effective weapon than legislative action. It was argued then that laws existed, but were not adequately exercised; that a broad application of executive power could effect many significant changes. The Civil Rights Commission, easily the most underrated agency of government, began its life in political isolation because neither side respected it. In one of its early reports it declared that the federal government was the single heaviest financial supporter of segregation. Much of this evil, the commission indicated, could be cured by executive action.

President Kennedy did begin a new use of his presidential power by exposing the little-observed practices of many government bureaus. Changes of some significance began to alter the profile of certain agencies. His Committee on Fair Employment headed by then Vice President Johnson, opened jobs and upgraded opportunities for Negroes in many plants in the South. Though the tempo was slow and the goal distant, the direction was right.

President Kennedy, also, after considerable delay, issued an order prohibiting segregation in government-financed housing. It was conspicuously flawed with compromise and to this date has not significantly altered any housing patterns. Nevertheless, it was another example of the application of presidential power, and if timidity of conception or execution limited the effect, still a new path was chopped through the

thicket. Alert and aggressive civil rights forces have an opportunity to pave a highway over it. These examples of executive action illustrate that gain is possible even in the absence of legislation.

However, before a serious drive was mounted in this direction, the unfolding of massive and revolutionary direct action restored legislation to the head of the list, and virtually all public attention has since focused on Congress.

Perhaps unintentionally, one method became posed against the other; the investigation and use of executive power receded as the legislative battle crowded into the limelight. But there is no reason why the civil rights movement should abandon one weapon as it flourishes another. It would amount to negligence to allow the creative use of executive power to wither because gains are possible on the legislative stage. More than that, when the legislation becomes law, its vitality and power will depend as much on its implementation as on the strength of its declarations.

Legislative enactments, like court decisions, declare rights, but do not automatically deliver them. Ultimately, executive action determines what force and effect legislation will have. The elusive benefit of legislation is illustrated by the fact that for some years federal law has authorized the appointment of federal registrars where voting rights are denied. Yet to date not one registrar has enrolled one voter from among the millions of eligible Negroes who remain disenfranchised. An even more striking example of executive vacuum, as Dr. Howard Zinn has pointed out, is that civil rights legislation passed in 1866 is still not enforced in the South. The United States Criminal Code Title 10, sections 241 and 242, make it a crime for officials to deprive persons of their constitutional rights, and for any persons to conspire to that end. The numberless violations of that law stand in sharp contrast to the infrequency with which the Justice Department has attempted to invoke it.

The simple fact is that federal law is so extensively defied in the South that it is no exaggeration to say that the federal union is barely a reality. For the southern Negro it is more a tragic myth. He has been exploited, jailed and even murdered, by deeds which federal writ can reach, but his oppression continues essentially unrelieved.

The most tragic and widespread violations occur in the areas of police brutality and the enforcement against the Negro of obviously illegal state statutes. For many white Americans in the North there is little comprehension of the grossness of police behavior and its wide practice. The Civil Rights Commission, after a detailed, scholarly and objective study, declared it to be one of the worst manifestations of the Negro's oppression. The public becomes aware of it only during episodes of nonviolent demonstration, and often concludes that what they have witnessed is an atypical incident of excessive conduct. That the behavior is habitual, not exceptional, is a fact little understood.

Police brutality, with community support, or at best indifference, is a

daily experience for Negroes in all too many areas of the South. They live in a police state which, paradoxically, maintains itself within a democratic republic. Under these conditions, an occasional lawsuit by the federal government, which may drag for years through the courts, is no remedy. Indeed, it is sometimes worse than nothing. It demonstrates the futility and weakness of federal power.

People often wonder why southern demonstrations tend to sputter out after a vigorous beginning and heroic sacrifice. The answer, simply and inescapably, is that naked force has defeated the Negro. A ruling state apparatus, accustomed for generations to act with impunity against him, is able to employ every element of unchecked power. A slow-moving federal suit, or sporadic and frequently ineffectual federal mediation, is scarcely more adequate to support the Negro in such a one-sided engagement than would be a pat on the back.

Negroes have found nonviolent direct action to be a miraculous method of curbing force, but it is not a cure-all. When the glare of a thousand spotlights illuminates the misdeeds of southern police, their guns and clubs are temporarily muzzled. Yet so shameless are the mores of the feudal South that even in the presence of millions of witnesses police still employ such barbaric weapons as the cattle prod and the high-pressure hose. Moreover, when a deed can be cloaked in night, the depravity of conduct is bottomless. The blasting to death of four Sunday school children is such an example. Assassinations, mutilations, floggings and bombings are others.

When the armored car of the Birmingham police rumbled into the spotlight, it was regarded as a grotesque but rare example of local police power run wild. In the past weeks the mayor of Jackson, Mississippi, has boasted of the armor he has accumulated for next summer. It includes "Thompson's Tank," a thirteen-thousand-pound armored battle wagon, carrying a task force of twelve men armed with shotguns, tear gas and submachine guns. The mobile equipment also includes three troop lorries, two searchlight tanks and three giant trailer trucks, nearly five hundred men, plus a reserve pool of deputies, state troopers, civilian city employees and neighborhood citizen patrols. This local army awaits nonviolent demonstrators with undisguised hostility and the familiar trigger-happy eagerness for confrontation.

The inevitable conclusion is that as Negroes have marshaled extraordinary courage to employ nonviolent direct action, they have been left—by the most powerful federal government in the world—almost solely to their own resources to face a massively equipped army. They have endured violence to reveal their plight and to protest it; their government has been able to muster only the minimum courage and determination to aid them.

This contradiction cries out for resolution. Legislation, commissions, biracial committees, cannot change a community when those in the

seats of power locally are aware that they can organize and employ force while the federal power temporizes. There are governments in some areas of the world today that have no effective control in some regions of their country. The United States a century ago did not have control of areas dominated by unsubdued Indian tribes. But we are nearing the year 2000 and our national power almost defies description. Yet it cannot enforce elementary law even in a dusty rural southern village.

It is not my intention, in presenting these stark facts, to make a blanket condemnation of this administration or its predecessor. The Kennedy administration initiated the pending bill and, at this writing, the Johnson administration has fought off weakening amendments. It would be not only unrealistic, but unfair, to ignore the complexities that face and frequently confound national leaders who have inherited a hundred years of evasions, compromises, and malevolence. Nevertheless, to understand difficulties should not be a preparation for surrendering to them.

Along with the fight to add legislation to the law books, the intolerable conditions of the South require that the administration look in a new way to its powers and their use. The president and the heads of every relevant agency should allocate the time to study the question; they should literally throw away the key to the room until answers are uncovered.

An example of the creative innovations that might be forthcoming is the assignment in recent years of federal marshals in situations unsuitable for troops. Earlier, no one had thought of using the marshals as a civil rights measure. Yet the federal marshal is well known even to school children; he attained legendary fame in the taming of the West and is exalted today in books, movies and television.

It is a challenge to wonder what the organization of a marshal's corps might do to bring law into the South. Up to now, however creative the idea to use them may have been, they have too often been hastily withdrawn and their recruitment revealed as an emergency measure with no thought that they might remain on the scene for as long as resistance to law required.

Above all, the federal government must not overlook the fact that the heroics of some southern officials are more impressive for stagecraft than for determination. The battle-clad brigades are designed to terrorize Negroes and to generate alarming illusions of warfare in the timid onlookers, North and South. They will not freeze the blood of Negroes who have cast out their fears. They should not intimidate a federal power that has not hesitated to commit its forces on fronts around the world.

Still another example of creative search through the legal corridors of the federal law was the discovery that the Interstate Commerce Commission had power to require desegregation of interstate buses and terminals. This right of law in support of the freedom ride movement made possible a relative degree of progress; at the same time, a project that had been born to violence ended in peaceful victory.

Finally, many new elements of the South are as appalled by these histrionics as are citizens of the North. They would welcome the curbing of the updated, iron-booted Klansmen. There is genuinely a new South, but it cannot surface without the shelter of federal power and order. The dignity of the federal government would be radiantly enhanced if it arrayed a trained, self-confident force of federal marshals against these armed usurpers who have stomach for battle only with the unarmed and nonviolent.

The country abounds in specialists and experts in law enforcement. If the administration would summon to the White House a conference of experts to deliberate with the highest officials of government, it could not fail to produce practical and effective answers. The administration participants should include not only the president but also the National Security Council.

Some of the other participants in a White House session might be the heads of the Treasury law enforcement agencies. There is a need to know what is going on in conspiratorial racist circles. Many of the shocking bombings might have been avoided if such knowledge had been available. Something must certainly be done to capture those who have with utter impunity caused dozens of bombings across the South. The law enforcement agencies of Treasury are suggested because the Bureau of Narcotics is extensively experienced in working within secret groups and obtaining effective results. And the alcohol-tax unit of Internal Revenue is probably more familiar with the rural South than is any other agency, because for years it has been tracking down "moonshiners."

These examples are cited, not as outstanding or special, but to suggest that the scope of inquiry should be so wide that no possible key will be overlooked in the search for solutions. If determination is expressed at the highest level, and if it is realized that the prevalent lawlessness of the South must come to an end, the victory cannot fail. The massive power of the federal government, applied with imagination, can make this problem yield.

The necessity for a new approach to the executive power is not a matter of choice. The newfound strength of the civil rights movement will not vanish or wither. Negroes have learned the strength of their own power and will unleash it again and again. The surge of their revolution must inevitably engulf the nation once more, and if effective methods have not been devised, chaos can result from future confrontations dealt with indecisively. Now is the time to anticipate needs, not when the flames of conflict are raging. This is the lesson the past teaches us. This is the test to which concerned national leaders are put—not by civil rights leaders as such, but by conditions too brutal to be endured, and by justice too long delayed to be justified.

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