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# The Civil Rights Legacy of Fr. Theodore M. Hesburgh, C.S.C.

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## SPEECH

### THE CIVIL RIGHTS LEGACY OF FR. THEODORE M. HESBURGH, C.S.C.†

JENNIFER MASON McAWARD\*

Each year, I take my Civil Rights Law class to meet with Fr. Theodore Hesburgh in his office on the thirteenth floor of Notre Dame's Hesburgh Library. Fr. Hesburgh regales my students with stories of his fifteen years on the United States Commission on Civil Rights. He often leads with the story of when the Commissioners were denied lodging while holding hearings in Alabama in 1958. No hotel in segregated Alabama would lodge the members of a presidentially-appointed Commission because one was African American. A federal air force base also refused them rooms for the same reason until President Eisenhower personally intervened.<sup>1</sup> My students are aghast to learn of such discrimination.

Fr. Hesburgh then moves on to more hopeful stories of civil rights reform, leaving unspoken stories that would really leave my students speechless. There are too many to recount, of course, but one that stuck with me was a conversation Fr. Hesburgh had with an African American mother on a South Shore train platform in Chicago in the late 1950s. Here is how Fr. Hesburgh once described it:

[She] told me that one day she was giving her 4-year-old little boy a bath, and when she told him to scrub hard he asked, "If I scrub hard enough, will I become white?" She said, "No, you are colored, and you will always be colored." To this he had a very laconic answer. He said, "It is better to be white." I [Fr. Hesburgh] asked her if she had said anything in answer to what he had said. She replied, "What could I say? Isn't it really better to be white? Aren't you assured of a better education? Of a better opportunity for making a living? Of a better house, of a better neighborhood, of better associations, if you happened to be born

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† Adapted from a speech Professor McAward delivered on September 30, 2013, honoring Fr. Hesburgh and celebrating the fortieth anniversary of the Notre Dame Center for Civil and Human Rights.

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1. THEODORE M. HESBURGH, C.S.C., *GOD, COUNTRY, NOTRE DAME* 180–81 (1999).

in the United States as a white person, as distinguished from being born as a Negro?"<sup>2</sup>

This mother's lived experience of what Fr. Hesburgh has called the "ineluctable trilogy of education, employment, and housing"<sup>3</sup> provides essential perspective on the task of the Civil Rights Commission generally, and the civil rights legacy of Fr. Hesburgh in particular. As Fr. Hesburgh has said repeatedly, those basic civil rights—as well as the right to vote—are all interconnected. Denying a person equal opportunity with respect to education or voting, or to his or her ability to choose "a job and a house commensurate with [his or her] education and achievement," destroys motivation and visits "the stigma of second-class citizenship" upon that person and his or her family.<sup>4</sup>

This Speech will discuss Fr. Hesburgh's advocacy on these core civil rights issues—education, employment, housing, and voting rights—and how his work changed the face of this country. The story of Fr. Hesburgh's civil rights advocacy is a key to understanding how he emerged—in the words of Vice President Biden—as "one of the most powerful unelected officials this nation has ever seen."<sup>5</sup>

It is vitally important at the outset to understand the philosophical and theological framework that forms the basis for Fr. Hesburgh's views on civil rights. For him, the crucial starting point is the "sacred nature" and God-given dignity of the human person.<sup>6</sup> From this reality should flow the conviction "*nihil humanum mihi alienum*"—translated "nothing human is alien to me." According to Fr. Hesburgh, if each of us truly held this conviction, we would necessarily appreciate with compassion "every human suffering, and every human ill . . . every neglected opportunity that is closed off to another person."<sup>7</sup> Fr. Hesburgh argues that if that compassion were the "overriding conviction of our lives," then we would necessarily seek "abiding . . . human solutions" to the great inequalities and injustices of our time.<sup>8</sup>

Ordained a priest in 1943, Fr. Hesburgh held these convictions even prior to his service on the U.S. Civil Rights Commission. But it was his fifteen-year tenure on the Commission, from 1957 to 1972, that gave him the opportunity to learn directly about the suffering and closed opportunities experienced by racial minorities in this country. As Fr. Hesburgh wrote in 1961, racial disparities in education, voting, jobs, and housing demonstrated that we as a nation were "flouting our magnificent Constitution" and failing to acknowledge "man's inner dignity

2. U.S. COMM'N ON CIVIL RIGHTS, THE NATIONAL CONFERENCE AND THE REPORTS OF THE STATE ADVISORY COMMITTEES TO THE U.S. COMMISSION ON CIVIL RIGHTS 1959 at 18–19 (1960) [hereinafter 1959 REPORT].

3. HESBURGH, *supra* note 1, at 191.

4. 1959 REPORT, *supra* note 2, at 553.

5. John Nagy, *Father Hesburgh Celebrated in U.S. Capitol: 'A Very Wonderful Day that I'll Never Forget'*, NOTRE DAME NEWS (May 23, 2013), <http://news.nd.edu/news/40195-father-hesburgh-honored-in-u-s-capitol/>.

6. 1959 REPORT, *supra* note 2, at 19.

7. *Id.* at 20.

8. *Id.* at 19.

and rightful aspiration to equality—unless he happens to be a white man.”<sup>9</sup>

Congress created the U.S. Commission on Civil Rights in the Civil Rights Act of 1957, conceiving of it as a bipartisan, independent executive agency and directing it to investigate race-based deprivations of voting rights and of the right to equal protection of the laws.<sup>10</sup> Even this modest mandate outraged Southern segregationists. Senator Strom Thurmond of South Carolina infamously filibustered—for more than twenty-four hours—the Act that created the Commission, and Senator James Eastland of Mississippi engaged in multiple tactics to stall its creation.<sup>11</sup> Ultimately, though, President Eisenhower appointed six commissioners with diverse backgrounds. Three were Northerners; three were Southerners. Three were Democrats, two were Republicans, and one claimed political independence: Fr. Hesburgh.<sup>12</sup>

At the Commission’s inception, skeptics lamented that it was likely to pursue “the cause of moderation” and unlikely “to break many lances crusading for civil rights.”<sup>13</sup> Still, the Commission held hearings throughout the South and documented extensive voting-rights and other civil-rights violations.<sup>14</sup> Over time, it expanded its inquiries into housing, employment, education, public accommodations, and the administration of justice.<sup>15</sup> By the end of Fr. Hesburgh’s tenure on the commission—including nearly four years as chair—Congress had enacted roughly seventy percent of the Commission’s recommendations, incorporating them into critical pieces of civil rights legislation, including the landmark Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968.<sup>16</sup>

It might be tempting to diminish Fr. Hesburgh’s contributions to the Civil Rights Commission by characterizing him as simply one of six commissioners. From the inception of the Commission, however, it was clear that he was a first among equals. In 1959, as the Commission sought to draft its initial report to Congress, Fr. Hesburgh arranged for the commissioners to fly from their lodgings at an air force base in (one-hundred-degree-plus) Shreveport, Louisiana to Notre Dame’s Land O’Lakes property in Wisconsin. While the other five commissioners enjoyed the flight, Fr. Hesburgh sat in the rear of the plane with

9. U.S. COMM’N ON CIVIL RIGHTS, JUSTICE: 1961 COMMISSION ON CIVIL RIGHTS REPORT (Book 5), 167–68 (1961) [hereinafter 1961 JUSTICE REPORT].

10. Civil Rights Act of 1957 § 104(a)(1–3), *amended by* 42 U.S.C. § 1975d (2012) (terminating the Commission’s statutory authorization on September 30, 1996).

11. MICHAEL O’BRIEN, HESBURGH: A BIOGRAPHY 72 (1998).

12. The other original members were John Hannah, John Battle, Robert Storey, Ernest Wilkins, and Doyle Carlton. *Id.*

13. *See id.*

14. The Commission initially focused on public education, housing, and voting. When its term was extended in 1959, it extended its focus to government employment and the administration of justice. *See* Berl I. Bernhard, *Role of the United States Commission on Civil Rights*, 23 L. TRANSITION 107, 111–12 (1963).

15. HESBURGH, *supra* note 1, at 191.

16. Hugh Davis Graham, *The Civil Rights Commission: The First 40 Years*, 2 C.R.J. 6, 7 (1997) (Civil Rights Act of 1964 and Fair Housing Act of 1968); O’BRIEN, *supra* note 11, at 85 (Voting Rights Act of 1965); HESBURGH, *supra* note 1, at 180 (seventy percent statistic).

Commission staff and drafted the resolutions that would be at the heart of the report. After an evening of fishing, martinis, and crisp Wisconsin air, Fr. Hesburgh presented those resolutions to the Commission and asked for a vote. The results were better than anyone could have hoped—thirteen of the fourteen recommendations were unanimous, with a single dissent on voting rights.

When the Commission presented its report to President Eisenhower, he marveled at the unanimity of the politically- and geographically-diverse Commission. Then, Fr. Hesburgh informed him that he had not just appointed Republicans and Democrats or Northerners and Southerners—he had also appointed six fishermen. Upon hearing the Land O'Lakes story, the President replied, "We've got to put more fishermen on commissions and have more reports written at Land O'Lakes, Wisconsin."<sup>17</sup>

The publication of the Commission's report in September of 1959 was front-page news across the country.<sup>18</sup> The report received praise from some politicians and editorial pages for its dispassionate, humane analysis,<sup>19</sup> but it also engendered vitriolic criticism from segregationists, whose harsh words only served to underscore the report's significance. Senator Strom Thurmond, for example, proclaimed that the Commission's recommendations constituted an attempt to "rape the rights of the states and the people" and that its proposals about voting rights could lead to "outright dictatorship."<sup>20</sup> Despite the predictable southern backlash, the report legitimized the Commission and invigorated efforts to extend the Commission's lifetime past its original expiration date in late 1959.<sup>21</sup> As the *Washington Post* editorialized, "To cut off the Commission after it has made so promising a beginning and finds so much territory yet to be explored would be an inexcusable blow to the cause of civil rights . . ." <sup>22</sup> Thus, we have Fr. Hesburgh to thank for the fact that the work of the U.S. Commission on Civil Rights has continued for now fifty-five years past its original two-year term. Although the Commission has languished in recent years, Fr. Hesburgh was a key

17. HESBURGH, *supra* note 1, at 188; *see also* 1959 REPORT, *supra* note 2, at 134–42, 324–27, 534–40. The Report contains fourteen recommendations, with one dissent on voting by Gov. Battle. *Id.* at 142.

18. *See, e.g.*, Anthony Lewis, *Rights Unit Asks U.S. to Insure Negroes of Votes*, N.Y. TIMES, Sept. 8, 1959, at 1; Richard L. Lyons, *Rights Board Recommends 14 Steps to Combat Racial Discrimination*, WASH. POST, Sept. 9, 1959, at A1; *Rights Commission Recommends Move Against Vote Denials*, ATLANTA DAILY WORLD, Sept. 9, 1959, at 1.

19. *See, e.g.*, 105 CONG. REC. 17,837 (1959) (statement of Sen. Keating); Editorial, *The CRC Looks Ahead*, WASH. POST, Sept. 12, 1959, at A10.

20. *Senators Clash on Rights Survey*, N.Y. TIMES, Sept. 5, 1959, at 5 (Thurmond comments); *see also Carolina Senator Rips Into Rights Document*, DALL. MORNING NEWS, Sept. 4, 1959, at 3 (recounting comments of Olin Johnson, South Carolina's other Senator, denouncing the report as "one of the most devastating, unconstitutional documents I ever saw"); *Southerners Blast Rights Group Report*, CHI. TRIB., Sept. 9, 1959, at 2.

21. *See, e.g.*, 105 CONG. REC. 17,837 (Sen. Keating's statement that the Commission's report "is the best argument there is for extending the life of this agency"); Editorial, *Conscience of the Nation*, WASH. POST, Sept. 9, 1959, at A14 (praising the report and calling for the Commission to be extended).

22. *The CRC Looks Ahead*, *supra* note 19.

voice on the Commission during its most influential period during the late 1950s and 1960s. Let's turn to how the Commission—and Fr. Hesburgh specifically—provided leadership on the issues of education, housing, employment, and voting over the course of the civil rights movement.

### I. EDUCATION

When Fr. Hesburgh began his tenure on the Civil Rights Commission, the vast majority of primary and secondary schools throughout the South remained segregated<sup>23</sup> despite the Supreme Court's 1954 ruling in *Brown v. Board of Education*, which held that compulsory racial segregation in public schools violates the Equal Protection Clause of the Fourteenth Amendment.<sup>24</sup> Southern political leaders were overtly hostile toward desegregation, and Congressional representatives from the South called for states to “resist forced integration by any lawful means.”<sup>25</sup> Mississippi chose to close its public schools rather than integrate them,<sup>26</sup> while Louisiana amended its constitution to justify segregation as an exercise of its “state police powers.”<sup>27</sup> Georgia simply issued a resolution asserting that the Fourteenth and Fifteenth Amendments to the United States Constitution—and their respective guarantees of equal protection of the laws and voting nondiscrimination—were “null and void.”<sup>28</sup>

Against this background, the Commission held extensive hearings on the degree of compliance with *Brown* and theorized that, where moral suasion and judicial mandates had failed to promote integration, financial incentives might work. Indeed, Fr. Hesburgh became a leading proponent of promoting nondiscrimination through the threat of withholding federal funds. He initially proposed this idea in the Commission's 1959 report, in a joint statement joined by only two other commissioners. The following year, the entirety of the Commission adopted Fr. Hesburgh's approach—but only on a limited basis, recommending that Congress withhold funds from *public* colleges and universities that engaged in racial discrimination.<sup>29</sup> That was not enough for Fr. Hesburgh, though, who wrote a supplemental statement arguing that the same condition should apply to all *private* schools as well.<sup>30</sup> The Commission adopted this recommendation the following year.<sup>31</sup>

23. See 1959 REPORT, *supra* note 2, at 230 (Chart XIV).

24. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

25. 102 CONG. REC. 4460 (1956) (Statement of Sen. George).

26. U.S. COMM'N ON CIVIL RIGHTS, EDUCATION: 1961 COMMISSION ON CIVIL RIGHTS REPORT (Book 2), 80 (1961) [hereinafter 1961 EDUCATION REPORT].

27. 1959 REPORT, *supra* note 2, at 236–37.

28. J. RES. 45, 1957 Ga. Gen. Assemb. (Ga. 1957), 1957 Ga. Laws 348.

29. See U.S. COMM'N ON CIVIL RIGHTS, EQUAL PROTECTION OF THE LAWS IN PUBLIC HIGHER EDUCATION, 1960 at 267 (1960) [hereinafter 1960 PUBLIC HIGHER EDUCATION REPORT]; 1961 EDUCATION REPORT, *supra* note 26, at 184.

30. 1960 PUBLIC HIGHER EDUCATION REPORT, *supra* note 29, at 272–73.

31. 1961 EDUCATION REPORT, *supra* note 26, at 181 (recommending that Congress withhold up to fifty percent of a school district's funds based on the level of remaining segregation in that district); 1959 REPORT, *supra* note 2, at 328–29 (proposal of Chairman

Most critically, Fr. Hesburgh prevailed with Congress, which, in Title VI of the 1964 Civil Rights Act, permitted termination of federal financial assistance to any program or activity that discriminates on the basis of race.<sup>32</sup>

Although Title VI had an immediate and beneficial effect on school desegregation in the South,<sup>33</sup> Fr. Hesburgh, with the rest of the Civil Rights Commission, recognized that de facto segregation in the North was a major impediment to school integration and equality.<sup>34</sup> Because segregated housing patterns were the leading cause of de facto school segregation, the Commission conceptualized equal educational opportunity and fair housing as “inseparable”<sup>35</sup> issues and often incorporated recommendations about housing and urban renewal into its reports on education.<sup>36</sup> Thus, a holistic approach to educational equality led the Commission to focus on housing discrimination.

## II. HOUSING

The Civil Rights Commission’s first report made two major findings with respect to housing. First, the lack of quality, affordable housing was a national crisis.<sup>37</sup> In 1950, for example, approximately seventy percent of nonwhite families lived in substandard housing.<sup>38</sup> Second, the Commission found that many Americans were being deprived of equal access to housing due to their race. Indeed, in the early 1960s, the chairman of the Federal Deposit Insurance Corporation (FDIC) informed the Commission that banks were morally and legally obligated to engage in race discrimination. As the chairman described, “financing . . . a real estate purchase for a member of a minority group might have a serious effect upon values in a neighborhood. If the bank already had a substantial number and dollar volume of mortgage loans in the neighborhood, it would necessarily consider the effect [of extending a mortgage to a minority family] upon these assets.” Therefore, he argued, banks must decline to finance minority real estate

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Hannah and Commissioners Hesburgh and Johnson) (proposing that federal aid should not be provided to programs which discriminate on the basis of race).

32. See 42 U.S.C. § 2000d-1 (2012). The Commission also recommended that the federal government provide financial and technical assistance to assist desegregating school districts. This recommendation was incorporated into Title IV of the 1964 Act. See 1959 REPORT, *supra* note 2, at 182. See also 109 CONG. REC. 12,102 (1963) (statement of Sen. Javits) (noting connection between Commission’s recommendations and Title VI).

33. UNITED STATES COMMISSION ON CIVIL RIGHTS, SURVEY OF SCHOOL DESEGREGATION IN THE SOUTHERN AND BORDER STATES 1965–66, at 63–64 (1966).

34. See *id.*

35. *Id.* at 211.

36. See, e.g., U.S. COMM’N ON CIVIL RIGHTS, CIVIL RIGHTS ‘63, at 70 (1963) [hereinafter 1963 REPORT] (recommending reform of urban renewal policy in order to combat housing discrimination which manifested itself in the schools); U.S. COMM’N ON CIVIL RIGHTS, RACIAL ISOLATION IN THE PUBLIC SCHOOLS 211–12 (1967) [hereinafter RACIAL ISOLATION] (recommending, *inter alia*, a prohibition of discrimination in the sale or rental of housing, an expansion of federal assistance programs for public housing, and other measures to reduce discrimination in housing).

37. 1959 REPORT, *supra* note 2, at 534.

38. *Id.* at 343.

purchases out of “responsibility toward the economic welfare of its depositors and stockholders.”<sup>39</sup>

Fr. Hesburgh did not remain silent upon hearing such arguments. He blasted “the sophisticated approach of the financial community which says its concern in financing housing is purely economic as though this might somehow cancel out the moral dimension of what their lack of moral concern causes to happen to human beings . . . .”<sup>40</sup> He pointed to the arrogance of the “unspoken, but very effective conspiracies of builders, real estate brokers, and good neighbors” who seek to “preserv[e] the blessings of democracy for their own white selves alone.”<sup>41</sup> He lamented that many white people would like to “pretend that the poor are not with us or . . . that blacks do not really exist. And [Fr. Hesburgh said,] fear feeds upon fear and suspicion grows and a Nation that offers the best hope for mankind shivers on the narrow edge of a breakdown.”<sup>42</sup>

The Civil Rights Commission embraced two principal strategies with respect to housing: urban-renewal reform and the prohibition of housing discrimination. The Commission’s 1961 recommendation that federal funding for urban renewal projects be contingent on the availability of safe and adequate housing was implemented by the Department of Housing and Urban Development.<sup>43</sup> The Commission’s advocacy of a ban on race discrimination in the sale or rental of property ultimately became the landmark Fair Housing Act of 1968.<sup>44</sup>

Of course, housing discrimination persisted despite the Fair Housing Act. In 1971, the Commission heard testimony that systemic racial and economic discrimination still permeated the housing sale and rental markets.<sup>45</sup> During those hearings, Fr. Hesburgh bemoaned an “America [where] a white prostitute can buy a house that a black professional man can’t buy.”<sup>46</sup> He went on to identify three systematic impediments to fair, open, and decent housing: individual prejudice—the not-in-my-neighborhood mentality of white suburbanites;<sup>47</sup> local

39. U.S. COMM’N ON CIVIL RIGHTS, COMMISSION ON CIVIL RIGHTS REPORT (Book 4), 49 (1961).

40. 1961 JUSTICE REPORT, *supra* note 9, at 168.

41. *Id.*

42. *Hearing before the U.S. Commission on Civil Rights held in Baltimore*, United States Commission on Civil Rights 486 (1970) [hereinafter *Baltimore Hearing*].

43. *See, e.g.*, 1963 REPORT, *supra* note 36, at 259 (noting that the Urban Renewal Administration (HUD’s predecessor) changed its internal regulations to require planning to ensure the availability of housing before the displacement of residents). *See also* Garrett v. City of Hamtramck, 503 F.2d 1236, 1246–47 (6th Cir. 1974) (interpreting Title VI of the Civil Rights Act of 1964 to require HUD to provide adequate relocation programs as a part of urban renewal projects).

44. *Compare* RACIAL ISOLATION, *supra* note 36, at 211 (advocating for such a law), with Fair Housing Act, 42 U.S.C. §§ 3601–3631 (2012). *See also* Exec. Order No. 11,609, 27 Fed. Reg. 11527 (Nov. 20, 1962) (banning discrimination in the sale, lease, or use of federally owned or constructed housing).

45. *Hearing before the U.S. Commission on Civil Rights held in Washington, D.C.*, United States Commission on Civil Rights 432 (1972).

46. *Id.* at 265.

47. *Id.* at 425–26.



politics—which subordinated the concerns of minorities;<sup>48</sup> and economics—which made it unprofitable to provide fair, decent housing for low- and middle-income families.<sup>49</sup> While Fr. Hesburgh thought that families, churches, and schools had the principal duty to ameliorate individual prejudice, he advocated for strong national leadership to address persistent disparities and economic imbalances in the housing market.<sup>50</sup> As he did in the school setting, he proposed linking the availability of federal funds to a community's compliance with the national ideal of equal housing opportunity.<sup>51</sup>

### III. EMPLOYMENT

Of course, without sufficiently lucrative employment options, racial minorities were limited with respect to their housing options. When Fr. Hesburgh's tenure on the Civil Rights Commission began, African Americans filled a disproportionate number of low-skill jobs and were disproportionately unemployed.<sup>52</sup> "In some cities more than one-third of the [African American] work force was unemployed" in 1961.<sup>53</sup> By 1963, the unemployment rate of non-white workers had been more than twice that of white workers for at least five consecutive years.<sup>54</sup> Statistics such as these prompted the Commission to note that African Americans were "the last hired and the first fired."<sup>55</sup> And although the President's Committee on Equal Employment Opportunity had been established, it had limited jurisdiction and limited efficacy.<sup>56</sup>

The Civil Rights Commission heard extensive testimony on employment discrimination and the lack of adequate job training for minorities.<sup>57</sup> In the early 1960s, the Commission—with Fr. Hesburgh's support and vote—recommended strong congressional action to ban employment discrimination in broad sectors of the American economy and to create a new federal body with jurisdiction over such discrimination. The Commission's recommendations were reflected in Title VII of the Civil Rights Act of 1964, which bans employment discrimination on grounds of race, color, religion, sex, or national origin.<sup>58</sup> Title VII

48. *Id.* at 426.

49. *Id.* at 426–27.

50. *Id.* at 425–26, 430–32.

51. *Id.* at 432.

52. U.S. COMM'N ON CIVIL RIGHTS, EMPLOYMENT: 1961 UNITED STATES COMMISSION ON CIVIL RIGHTS REPORT (Book 3), 157 [hereinafter 1961 EMPLOYMENT REPORT].

53. *Id.* at 1.

54. 1963 REPORT, *supra* note 36, at 73 n.1.

55. 1961 EMPLOYMENT REPORT, *supra* note 52, at 1.

56. *Id.* at 158.

57. *See, e.g.*, 1963 REPORT, *supra* note 36, at 73–91 (analyzing *inter alia* the availability of nondiscriminatory job training).

58. Civil Rights Act of 1964 § 701, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 2000(e)); *but see* 1963 REPORT, *supra* note 36, at 91. Title VII's prohibition applies generally to "commerce," but the CCR recommended that this prohibition apply to "interstate commerce." *See also* 110 CONG. REC. 6970–71 (1964) (charting "Extent That Commission Recommendations Are Incorporated in the Civil Rights Bill").

also established the Equal Employment Opportunity Commission (EEOC).

Job discrimination did not end overnight, and the Civil Rights Commission continued to hold hearings, make findings, and issue recommendations for legislative action. Based on the Commission's recommendations, Title VII was amended in 1972 to require state and local governments to provide equal employment opportunity.<sup>59</sup> Also based on the Commission's recommendations, the enforcement powers of the EEOC were expanded to include the capacity to sue private employers.<sup>60</sup>

Congress was not the only body listening to the Commission. In its January 1970 hearing in St. Louis, the Commission discovered that the Defense Department had awarded McDonnell-Douglas a multibillion-dollar contract, even though the company lacked an adequate affirmative action plan and otherwise failed to satisfy federal equal-opportunity standards. The Commission wrote to the Secretary of Defense, condemning the lack of contract oversight and requesting immediate corrective action. Shamed, the Department of Defense, the Department of Labor, and McDonnell-Douglas entered into an agreement creating a satisfactory affirmative action program and allowing the contract to move forward contingent on implementation of that new program. While affirmative action hiring programs are now standard among private corporations, this was a major development at the time. Indeed, an editorial in the *St. Louis Post-Dispatch* lauded the agreement as being emblematic of a "new era" in which "the modern corporation has to use its skill not only to make things but to help people."<sup>61</sup>

#### IV. VOTING

The last substantive area I will discuss is voting rights, which were the initial focus of the Civil Rights Commission's mandate.<sup>62</sup> When Fr. Hesburgh began his tenure on the Commission, intimidation and disenfranchisement characterized the state of the African American vote across the South. State and local officials used literacy tests, poll taxes, and outright physical violence to suppress the black vote in what Fr. Hesburgh described as a "reign of terror."<sup>63</sup>

The story of Mary Thomas, an African American resident of Humphreys County, Mississippi, illustrates. During the mid-1960s, not a single one of the 5,561 nonwhite residents of the county was registered to vote. Thomas tried to register but failed the literacy test, which in Mis-

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59. Compare Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103 (1972) with U.S. COMM'N ON CIVIL RIGHTS, FOR ALL THE PEOPLE . . . BY ALL THE PEOPLE 128 (1969).

60. *Id.* at 129. The recommendation was enacted in the Equal Employment Opportunity Act of 1972, *supra* note 59.

61. U.S. COMM'N ON CIVIL RIGHTS, THE "SYSTEM" CAN WORK: A CASE STUDY IN CONTRACT COMPLIANCE 27 (1971).

62. Voting rights have been a source of great public attention recently. See, e.g., *Shelby Cnty. v. Holder*, 133 S. Ct. 2612 (2013).

63. 1961 JUSTICE REPORT, *supra* note 9, at 167.

Mississippi required potential voters to interpret a section of the state constitution. White registrants were assigned the simplest of sections, and even the most inept answers were accepted. For instance, when asked to interpret a section of the state constitution that required elections to be held every four years, a white applicant who wrote, "the government is by the people and for the people" passed.<sup>64</sup> African American registrants, by contrast, were assigned the most impenetrable sections, such as the one governing the intricacies of corporate taxation.<sup>65</sup> And their answers were uniformly deemed unacceptable, even by voting registrars who by law were not required to be literate themselves.<sup>66</sup>

When Mary Thomas failed her literacy test, the voting registrar decided to teach her a lesson for even attempting to register. He took Thomas's picture and circulated it to county business owners so that she would have a difficult time getting credit.<sup>67</sup> Thomas's impudence also outraged the county sheriff, who then arrested her, jailed her for the night without access to a lawyer, and slapped her with a hefty fine.<sup>68</sup>

The Commission's ability to focus the national spotlight on the stories of Mary Thomas and other disenfranchised African Americans provided Congress with the ammunition and political cover it needed to enact the Civil Rights Act of 1964 and Voting Rights Act of 1965.<sup>69</sup>

The Commission also made concrete recommendations that ultimately formed the core of those landmark bills, with its foremost priority being the eradication of literacy tests.<sup>70</sup> With respect to voting, Congress was initially reluctant to go as far as the Commission had recommended, and as a result, the 1964 Act simply regulated certain standards and procedures for state literacy tests. Still, the Commission pressed on, and in 1965, it issued a report urging the abolition of all literacy tests, as well as the appointment of federal voting registrars, a ban on poll taxes, and the assignment of federal election monitors.<sup>71</sup> The Voting Rights Act of 1965 enacted the Commission's recommendations regarding registrars and election monitors, but banned literacy tests only in a subset of jurisdictions.<sup>72</sup> By 1970, though, Congress came to see the wisdom of the Commission's opposition to literacy tests and banned their use nationwide.<sup>73</sup>

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64. 89 CONG. REC. 259 (1965) (testimony of Commissioner Theodore Hesburgh, United States Commission on Civil Rights).

65. *Id.*

66. *See id.* at 259, 264.

67. *Id.* at 265.

68. *Id.*

69. *Id.* at 269 (statement of Rep. Corman).

70. *See* U.S. COMM'N ON CIVIL RIGHTS, VOTING: 1961 COMMISSION ON CIVIL RIGHTS REPORT (Book 1), 137, 139; 1963 REPORT, *supra* note 36, at 28 (reiterating the 1961 report's conclusion on literacy tests).

71. U.S. COMM'N ON CIVIL RIGHTS, VOTING IN MISSISSIPPI 62 (1965).

72. *See* Voting Rights Act of 1965, Pub. L. No. 89-110, §§ 4(b)-5, 79 Stat. 437, 438-39.

73. *See* Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314 (stating that the ban on literacy tests applies nationwide on a temporary basis); Act of Aug. 6, 1975, Pub. L. No. 94-73, 89 Stat. 400 (making the ban permanent).

Fr. Hesburgh exercised leadership on voting rights in a number of ways. He of course participated in formulating the Commission's influential policy recommendations and personally testified before Congress in support of the 1965 Voting Rights Act. But he also intervened individually on behalf of frustrated African American citizens. As Fr. Hesburgh has recounted, the Commission heard testimony about a New Orleans scheme in which white registrars struck some two thousand registered African Americans from the voting rolls. To re-register, these citizens were required to present two registered voters who would testify to their voting qualifications. Of course, there were no more registered African Americans to serve as witnesses, and no registered white person would vouch for a black voter.

The Commission heard about this problem from an African American U.S. Army Captain who had been disenfranchised. Unable to provide registered witnesses, this man went to the local registrar with photo I.D., his federal income tax return, his professional credentials in dentistry, and his honorable discharge from the Army. Still, he was turned away. Upon hearing this story during a televised hearing, Fr. Hesburgh said,

Captain, I believe you, and I am sure that everyone who is watching this on television believes you. . . . [G]o back to that registration place tomorrow morning . . . . If they don't register you . . . call me immediately and let me know, because I will then call the President of the United States . . . and I will tell him that one of his [Army] officers is being prevented from voting in Louisiana. I can promise you that the President will make things so hot for everyone . . . that they will wish they had never heard of you.<sup>74</sup>

It appears that the local voting registrar was indeed watching Fr. Hesburgh on television during this exchange, and the next day, the Army captain was registered immediately.<sup>75</sup>

## V. OTHER CIVIL RIGHTS WORK

Fr. Hesburgh became a national figure as a result of his service on the Commission and was the Commission's most prominent member during his tenure. He turned down requests to run for the U.S. Senate and for the vice-presidency<sup>76</sup> and instead became an uncompromising and savvy advocate for equality in the face of state and local resistance. He also was known for his belief that the Commission should be a "burr under the saddle" of the federal government<sup>77</sup> and for his willingness to resist pressure from the presidents who appointed and reappointed him. Indeed, as chair of the Commission in 1972, Fr. Hesburgh was vocal in his criticism of the Nixon administration's civil rights record. Infuriated, Nixon responded by forcing Fr. Hesburgh to resign from

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74. HESBURGH, *supra* note 1, at 184–85.

75. *Id.*

76. O'BRIEN, *supra* note 11, at 189–90.

77. *Id.* at 84.

the Commission.<sup>78</sup> This dismissal only enhanced Fr. Hesburgh's national profile as—in the words of *Commonweal Magazine*—the “epitom[e] [of] so many of the nation's ideals in the areas of justice, human rights and equal opportunity.”<sup>79</sup>

Fr. Hesburgh's contributions to the cause of civil rights greatly exceeded his work on the Commission. Most notably, he was a civil rights activist with close ties to the leaders of the movement—a relationship attested to by the famous picture of Fr. Hesburgh standing shoulder-to-shoulder with Dr. Martin Luther King, Jr., singing “We Shall Overcome” at a civil rights rally in Chicago. With his moral authority and national stature, Fr. Hesburgh proved to be a valuable ally. Andrew Young, a leader in the Civil Rights Movement, observed:

The key to the success of the civil rights movement was to keep it from being a radical leftist movement—and recognize that it was truly a movement coming out of the Judeo-Christian-U.S.-constitutional tradition of justice. Well, nobody could represent all of those forces like Fr. Ted could, and he did it in such a quiet, unassuming, nonjudgmental way that when he was with you, you didn't have to worry about who was against you.<sup>80</sup>

Expressing a similar sentiment, President Carter noted that Fr. Hesburgh bridged the gulf between the Civil Rights Movement and the white establishment. Because African American activists during that era were often marginalized, Carter argued, they were in dire need of “very distinguished white leaders who would join with them and add imprimaturs of approval for what they were doing, and Fr. Ted was one of those who came forward.”<sup>81</sup>

Fr. Hesburgh's civil rights legacy is not limited to his work with the U.S. Commission on Civil Rights. Fr. Hesburgh also served with distinction in a number of capacities in which he advocated for human rights, humanitarian relief, nuclear disarmament, and international development. He even chaired the Select Commission on Immigration and Refugee Policy, a body which later came to be known simply as the Hesburgh Commission. The Hesburgh Commission's recommendations directly influenced Congress's 1986 law providing limited amnesty for undocumented immigrants. Even today, those same recommendations are receiving renewed attention as Congress debates immigration reform.<sup>82</sup>

78. *Id.* at 127–35.

79. *Id.* at 135.

80. NDdotEDU, *Notre Dame Celebrating Father Hesburgh*, YouTube (Oct. 18, 2007), <http://www.youtube.com/watch?v=XiGyqH6L9QU>, at 5:31.

81. GOD, COUNTRY, NOTRE DAME: THE STORY OF FR. TED HESBURGH C.S.C. (Family Theater Productions 2004) at 18:39.

82. See *Immigration Reform and Control Act of 1986: Hearing Before the H. Comm. on the Judiciary*, 113th Cong. (2013), available at 2013 WL 2318791 (statement of Rep. Sensenbrenner praising Hesburgh Commission's recommendations).

## VI. NOTRE DAME

For all of Fr. Hesburgh's nationally recognized work, he has been an advocate for civil and human rights at Notre Dame as well. During his thirty-five-year tenure as president of the University, he engaged in multiple initiatives to fund minority scholarships and recruit minority students and staff.<sup>83</sup> He founded the Center for Civil and Human Rights, which has become a leader in training human rights advocates around the globe. And—from my humble perspective as an alumna of the University—he took the critical step of admitting women to the University's undergraduate programs. Although most point to 1972 as the pivotal year in which Fr. Hesburgh implemented that change, I would like to draw your attention to 1967, when Fr. Hesburgh was personally responsible for the enrollment of Notre Dame Law School's first female student, Graciela Olivarez.<sup>84</sup>

Graciela Olivarez was a high school dropout and community activist in Arizona's Latino community. She had impressed Fr. Hesburgh while testifying before the Civil Rights Commission in 1962, but the two had no subsequent contact until a chance meeting in O'Hare Airport four years later. During that meeting, Olivarez told Fr. Hesburgh about her continuing advocacy for Latinos and her worry that her work was not sufficiently effective. Fr. Hesburgh suggested that a law degree would give her credibility. Fr. Hesburgh called the President of Harvard University and arranged for Olivarez to receive a full scholarship at Harvard Law School. Fr. Hesburgh made the same offer on behalf of Notre Dame Law School, and Olivarez ultimately chose Notre Dame.<sup>85</sup>

Graciela Olivarez graduated in 1970 and went on to a distinguished career that included time as the chair of the Mexican American Legal Defense and Education Fund as well as her 1977 appointment as Director of the Community Services Administration, the federal anti-poverty agency. In that role, Olivarez was the highest-ranking Hispanic and third-highest-ranking woman in the Carter administration.<sup>86</sup> Olivarez died of cancer at age 59. To this day, Fr. Hesburgh keeps a picture of Olivarez and himself in his room at Notre Dame, a remembrance of a dear friend and of his commitment to the importance of equal opportunity and the recognition of human dignity.

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83. O'BRIEN, *supra* note 11, at 101–02, 116.

84. Notre Dame had had several female graduate students prior to 1972 as well. See Kristen Durbin, *Graduate Students Paved Way for Women on Campus*, THE OBSERVER (Mar. 1, 2013), <http://www.ndsmcobserver.com/news/graduate-students-paved-way-for-women-on-campus-1.2998167>.

85. Patricia Koval, *First Woman to Win Law Degree Fight at Old Notre Dame is High School Dropout*, THE PITT. PRESS, June 11, 1970, at 21.

86. Jimmy Gurulé, "Amazing Grace": A Tribute to Graciela Olivarez, NOTRE DAME LAW., Fall 2006, at 18, 19.

## CONCLUSION

I wish I could stand here and tell you that race discrimination is a part of the past, and that people of all colors and backgrounds enjoy equal access to education, housing, employment, and voting. I can't. Schools are re-segregating at an alarming rate: well over one-third of Latino and African American students attend schools where fewer than ten percent of their classmates are white.<sup>87</sup> The EEOC is inundated with more than 30,000 complaints of racially-based employment discrimination each year,<sup>88</sup> and the Fair Housing Administration receives 10,000 such housing complaints annually.<sup>89</sup> Efforts to suppress minority voters continue. Between 1982 and 2006, the Department of Justice blocked over 700 changes to state voting procedures, which it concluded were discriminatory.<sup>90</sup>

I imagine Fr. Hesburgh would say the same thing today as he did toward the end of his tenure on the Civil Rights Commission: One cannot hear about such racial division

and conclude that all is right in our land . . . . The problems are more complicated today [than when the Commission began its work in 1957]. The issues are not as clear, the solutions are not as readily apparent.

But the crisis facing our country today is every bit as serious, if not more so . . . . There are many more obstacles to be overcome before the dream of equality on which this country was founded is finally redeemed . . . .

[A]ll of us as Americans should be concerned and should look for answers that will help create a society where men [and women] can move about freely and people are not feared simply because they are strangers and where every human being is assumed to be a person of dignity and value and worth and respected as such.<sup>91</sup>

The civil rights legacy of Fr. Theodore Hesburgh is in part an impressive historical record of moral and political leadership. A critical piece of his legacy, though, resides in this room and in the hearts of all who heed his call: it is up to us to recognize the sacred value of each human being, and it is up to us to advance Fr. Hesburgh's work by ensuring that concern for human dignity is the guiding value of our communities and of our laws and policies.

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87. See Motoko Rich, *Segregation Prominent in Schools, Study Finds*, N.Y. TIMES, Sept. 19, 2012, at A16 (discussing report by the Civil Rights Project at the University of California, Los Angeles).

88. See *Race-Based Charges FY 1997 - 2013*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, <http://www.eeoc.gov/eeoc/statistics/enforcement/race.cfm>.

89. U.S. DEP'T OF HOUS. AND URBAN DEV., ANNUAL REPORT ON FAIR HOUSING FY 2010 at 19, available at <https://portal.hud.gov/hudportal/documents/huddoc?id=ANNUALREPORT2010.PDF>.

90. *Shelby Cnty. v. Holder*, 133 S. Ct. 2612, 2639 (2013) (Ginsburg, J., dissenting).

91. *Baltimore Hearing*, *supra* note 42, at 485-86 (Hesburgh Closing Statement).