

# Reviews

The Civil Rights Commission: 1957-1965. By *Foster Rhea Dulles*. East Lansing: Michigan State University Press, 1968. Pp. xiii, 274. \$7.50.

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The life of the Civil Rights Commission during the first eight years of its existence deserves careful and thoughtful investigation. In the first place, the time between 1957 and 1965 was a tumultuous one for the civil rights of black Americans. The period is bracketed by the passage of the 1957 Voting Rights Act, the first piece of civil rights legislation since Reconstruction, and by the Selma-Montgomery march and the demise, shortly thereafter, of at least a major phase of the Movement as a movement. A study of the testimony at the Commission's hearings, its findings, and its reports provides a rich and vivid source from which the character of American thought and action during this period can be elaborated and understood.

Second, and closely related to the above, both an analysis of the internal operations of the Commission and an examination of the relationships which existed between the Commission and other governmental agencies, such as the Department of Justice, the Congress, and the Presidency, would be interesting. For this sort of inquiry could tell us much about the official attitudes toward the problems of civil rights during this period, and much about the genuine strength and breadth of the federal commitment to the eradication of racial discrimination and its consequences.

Finally, and again related to what has been said, there is a real sense in which the Civil Rights Commission was consistently at the "radical" end of the spectrum of governmental agencies concerned with the civil rights of black Americans. Its policies and its proposals were, on the whole, more unconventional, more innovative, and more insistent upon the rapid satisfaction of the claims of black people than were those of any other duly constituted agency of the federal govern-

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ment. Since the positions taken by the Commission mark the "left-most" limit to which official policy ever went, a study of the Commission could constitute a significant means for delineating the intellectual boundaries beyond which official thinking never ventured.

The subject is clearly of consequence, and it is unfortunate that Professor Dulles does not do it complete justice. Nonetheless, there is much that Professor Dulles does teach us and still more that we can learn through explication of his text. Before looking more closely at its flaws, therefore, it is important to consider a few of the central lessons that the book offers us about the Commission, the federal government, and the United States.

Title I of the 1957 Voting Rights Act established an independent, bipartisan agency and specifically directed it to inquire into deprivations of the right to vote on grounds of race, to collect information concerning denials of equal protection, and to assess the policies of the federal government in the whole area of civil rights. By law the Commission was a temporary agency: in two years it was to report its findings and recommendations to the President and the Congress and then to go out of existence. At least two things stand out in connection with the birth of the Commission. First, a major argument for establishing the Commission was the felt need of many of its supporters to discover the facts about alleged denials of black people's civil rights. As late as the middle of the 1950's many respectable Americans still regarded the claim of widespread discrimination against black people as an open question. So we find this ringing declaration in Eisenhower's 1956 State of the Union message: the Commission should be created and empowered to investigate the charges "that in some localities Negro citizens are being deprived of their right to vote and are likewise being subjected to unwarranted economic pressures."<sup>1</sup> And this was further than many of his associates thought Eisenhower should have gone!<sup>2</sup> Thus, in early 1957 the case for civil rights legislation—the facts concerning the nature of the Southern system of apartheid and the Northern systems of oppression—still had to be established.

No less depressing, perhaps, but less startling, is the reminder that the Commission's birth gives us of the fantastic power which Southern congressmen had gained and which they eagerly exercised in behalf of the interests they served and sought to protect. Moreover this power

1. Quoted in F. DULLES, *THE CIVIL RIGHTS COMMISSION: 1957-1965*, at 11 (1963).

2. *Id.*

was fully matched by their vituperative rhetoric and warped convictions. Thus, one Southern congressman's curious sense of analogy led him to characterize the fact-finding commission as a "roving, election-year Gestapo."<sup>3</sup> Thurmond, almost moderately, saw the Commission as having been given "carte blanche authority to probe and meddle in every phase of the relations between individuals."<sup>4</sup> His colleague from South Carolina emphasized the reception which the members of the Commission could expect to receive in the South by indicating that he would seek to amend the bill to provide for payment of their funeral expenses.<sup>5</sup>

Such language and such fanatical opposition to any attempt to inform about—let alone to change—the institutions of the South are nothing new. It is a painful reminder of the stake that most Southern Representatives and Senators had in the complete preservation of that system of racial discrimination and exploitation. Moreover, they accurately perceived that free and adequate information about its genuinely oppressive character would endanger the system; it is not surprising, therefore, that the language of Southern opposition to the Commission remained unchanged throughout the eight year period studied in this book.

As Professor Dulles correctly observes, "It was one thing to have Congress create the Civil Rights Commission and quite another to have the Commission become fully operative."<sup>6</sup> The first ten months of the Commission's two-year term were consumed with selecting personnel. Eisenhower took two months to name the six Commissioners, and Congress took another four months to confirm them; it took nine months to appoint, confirm, and swear in the staff director. The history of the confirmation process again tells us a good deal about the state of the nation and the national mentality. Most revealing is the degree to which the selection of the Commissioners was affected and corrupted by the belief that the most fundamental civil rights issues were two-sided. It is not just that Eisenhower shied away from persons with any sort of an established concern for or commitment to the Movement. This is a tradition that all of his successors have followed, to some degree, as well. Rather, what is shocking is Eisenhower's concern that both sides of the "question" of the morality

3. Quoted in *id.* 14.

4. *Id.* 14-15.

5. *Id.* 14.

6. *Id.* 16.

of segregation be represented on the Commission. The original six Commissioners ranged, ideologically, all the way from John S. Battle, the former Governor of Virginia and an avowed segregationist, to the sole Negro Commissioner, Ernest Wilkins, who, in the words of Professor Dulles, "did not awaken great enthusiasm in the Negro Press."<sup>7</sup> No wonder the *Nation* and the *New Leader* were less than ecstatic about the choices.<sup>8</sup> But the best indication of how "moderate" the original Commissioners must have been was the announcement by Senator Ervin of North Carolina that he was "pleased" with the selections.<sup>9</sup>

Professor Dulles' report of the confirmation of the first staff director, Gordon M. Tiffany, recaptures the Congress at one of its worst moments. Of course the Southern senators opposed the appointment. Russell chose the distinctive grounds that Tiffany was a Republican and from New Hampshire;<sup>10</sup> Eastland, true to form, went the route of red-baiting,<sup>11</sup> which in Tiffany's case wasn't easy. But nothing reflects senatorial banality quite so well as Senator Dirksen's defense of Tiffany. In addition to integrity and competence, Tiffany had three special virtues, Dirksen told the Senate. He was a New Englander, an Episcopalian, and a father of two children.<sup>12</sup> These inauspicious first encounters with the Legislature were matched by the Executive's manifest apathy toward the entire undertaking. By the time the Commission was fully organized, staffed, housed, and funded, only a little over a year remained in which to conduct its inquiries and to submit its findings and recommendations to the President and the Congress.

Once underway, the Commission held hearings on housing in several Northern cities and sponsored a conference for educators on desegregation. Its major activity, however, was the series of hearings in Montgomery in late 1958 and early 1959 on racial discrimination in voting in Alabama. The Commissioners heard the now familiar accounts of blatant denials to black people of the right to vote in any county where they constituted a substantial proportion of the population. It is hard today to assess the degree to which this was news in 1958 and 1959, but apparently it was. The Commissioners also witnessed the un-

7. *Id.* 21.

8. *Id.* 19.

9. *Id.* 22.

10. *Id.* 24.

11. *Id.*

12. *Id.* 25.

abashed, but characteristic, defiance of the Commission's subpoenas by the Alabama officials. For example, a Circuit Judge, one George C. Wallace, announced that he would lock up any agent of the Commission who attempted to get the voting records it had subpoenaed. The Commission did not seek to match the power of the Federal Government against the power of a state circuit court. Instead, because it received so little cooperation or compliance from the registrars and probate judges who did appear, it voted to turn the record of the hearings over to the Attorney General for such action as he deemed appropriate. Brownell did file a civil suit which finally provided the Commission staff with a hurried and generally unsatisfactory look at the voter registration records from several counties.<sup>13</sup>

The Commission's first report was issued in 1959 and contained three noteworthy recommendations: first, appoint temporary federal voting registrars in places where a pattern of racial discrimination existed; second, adopt a constitutional amendment abolishing all requirements for voting except age, residence, and legal confinement; third, cut off all federal funds to any institution of higher education that discriminated on grounds of race. These recommendations were, at the time, far-reaching and imaginative for a governmental agency. Six years later, after they had been condemned by most of the liberal establishment as unobtainable, unworkable, and extreme, most of the recommendations were enacted into law. And this pattern of initial condemnation and eventual enactment was to become a familiar one.

In 1959 and again in 1961<sup>14</sup> the Commission's life was extended for two years; in 1963 the Commission received only a year's lease on life.<sup>15</sup> Each time the script was virtually the same. The Chief Executive would praise the Commission's work, urge that its existence be extended, and then do nothing substantive to push Congress to act. Prospects would appear gloomy until the eve or day of adjournment when a rider to extend the Commission's life would finally be appended to another bill. The impact of such a doubtful future was low morale, high staff turnover, and general internal inefficiency within the Commission.

The civil rights record of the Kennedy administration is all too often romanticized, even by those who should know better; a look at how the Commission fared under Kennedy can help to correct such a tendency. In many respects, the Commission's relationships with the executive

13. *Id.* 40.

14. *Id.* 103-08.

15. *Id.* 191-93.

branch were indistinguishable from those that obtained under Eisenhower. Kennedy left unchanged the composition of the Commission; he maintained the tokenism of one and only one Negro Commissioner that was established by Eisenhower and continues to this day. Kennedy did appoint somewhat more liberal, more academic persons to the Commission.<sup>16</sup> But as Professor Dulles himself makes clear, whatever Kennedy's basic commitment to civil rights may have been, he was unwilling to try to translate that commitment either into legislative program or tangible support.<sup>17</sup>

In fact, the Commission's relations with other parts of the Executive—most notably the Department of Justice—went from bad to worse during the Kennedy administration. To begin with, the Commission made the unforgivable mistake in its 1961 report on the administration of justice to report that some persons had complained of the FBI's lack of enthusiasm in investigating charges of police brutality. This made J. Edgar Hoover angry. "He peremptorily demanded—with names—the facts on which the Commission's criticism was based."<sup>18</sup> And when they were not forthcoming he stormed some more. The Department of Justice, as was its custom when Hoover was involved, played it safe. Assistant Attorney General Burke Marshall finally suggested, according to Professor Dulles, "that the Commission might just as well drop the matter, allowing time—though he did not say exactly this—for Hoover to cool off."<sup>19</sup>

In addition to the Hoover incident, apparently little consideration was given to many of the Commission's sweeping recommendations for protecting the franchise against discrimination. Certainly few of the recommendations emerged in the Administration's proposed civil rights legislation for 1963.<sup>20</sup>

More overtly, the Commission and the Department clashed, and clashed repeatedly, over Mississippi. Three times between 1960 and 1963 the Commission decided to hold hearings in that most rebellious and totalitarian of all states. To decide to hold hearings in Mississippi was an act of some courage, political as well as personal, on the part

16. *Id.* 100.

17. *Id.* 103-08.

18. *Id.* 149.

19. *Id.* 150.

20. *Id.* 176-77. There was, apparently, a genuine degree of mistrust of the Commission on the part of some of Kennedy's closest advisors. Professor Dulles quotes Sorensen's characterization of the Commission as "the free wheeling Civil Rights Commission [which] proved to be a somewhat uncomfortable ally" in the civil rights struggle. *Id.* 180.

of the Commission and its staff. Yet each time the hearings were scheduled, the Department strongly objected to their taking place. Thus in December 1962 the Attorney General refused to permit the hearings to be held because they "might prejudice the criminal contempt proceedings that his department was currently bringing against Governor Barnett for his interference with James Meredith's admission to Ole Miss."<sup>21</sup> The Department must have wanted to prevent the Commission from making its investigation for it is hard to credit seriously a justification such as this.

Each time the Department objected the Commission acceded to its request, albeit reluctantly. But as the situation in Mississippi grew worse and worse, the Commission felt obligated to do something. So in April 1963 it issued what was in essence an indictment of the State of Mississippi.

The Report, which was very brief, just gave a devastating picture of conditions in Mississippi from which the Commission had received one hundred voting complaints since October: "citizens of the United States have been shot, set upon by vicious dogs, beaten and otherwise terrorized because they sought to vote." It described the assaults which had been made upon civil rights workers, including ministers and students, and the bombing of the Vice-Chairman of the State Advisory Committee's home. It declared "even children at the brink of starvation had been deprived of assistance by the callous and discriminatory acts of Mississippi officials administering Federal funds."<sup>22</sup>

Compounding the situation, in the Commission's eyes, was the federal government's continuing to pour federal funds into Mississippi, much of which went to support its system of racial oppression. "One glaring example the Report singled out was a two million dollar grant for building a jet airport to serve Jackson even though the approved plans called for segregated eating and restroom facilities."<sup>23</sup> The Commission's recommendations were twofold. First, Congress and the President should "consider seriously"<sup>24</sup> legislation to cut off funds to any state which continues to defy the Constitution; second, the President should explore his existing authority to withhold funds from Mississippi until its defiance ceases. The liberal establishment greeted these tentative recommendations with a chorus of disapproval,

21. *Id.* 180.

22. *Id.* 182.

23. *Id.* 182-83.

24. *Id.* 183.

another grim reminder of where the center of gravity lay in regard to thinking about the problems of black people. The Administration joined in, with the President publicly repudiating the recommendations and the Department of Justice explaining how "difficult" it was to move faster in Mississippi.<sup>25</sup> By 1964, of course, we had Title IV of the 1964 Civil Rights Act.

The Commission's hearings reveal the national sterility of thought concerning a number of America's most pressing racial problems. One sees all too vividly the extent to which white America and Americans developed a set of stylized, unvarying "solutions" to each aspect of black people's problems. No matter what the context, no matter what the time, no matter what the evidence, the responses seemed to remain the same. What emerges most forcefully is the degree to which incantation replaced genuine reflection and deliberation in many sectors of the body politic on a whole range of the most important and critical issues. Two examples out of many will have to suffice.

Consider first the problem of police practices. No matter who the police chief, no matter what the city, whenever the Commission heard his testimony about police practices and the administration of justice, it could be sure that it would hear (1) that all allegations of police brutality in this particular city are false; (2) that the police have for some time now been mounting the most intensive campaign imaginable to recruit more Negroes into the police (the doors are wide open but not enough qualified applicants are interested); and (3) that even though (or because) there is no police brutality here, it would be a dreadful, irremediable mistake to set up any sort of a civilian review board.<sup>26</sup>

Next consider the problem of discrimination in housing. No matter what the time, no matter what the city, the Commission would hear (1) that real estate agents are in no way responsible for the existence of discrimination in housing and the attendant de facto racial segregation; (2) that such segregation as does exist is due entirely either to the "natural" impulse of all persons to segregate themselves or to the homeowner's wishes which the agents simply execute; and (3) that there is only one solution to segregated housing, namely, gradualism and enlightenment; irrespective of the immediate and awful discomfort

25. *Id.* 185-86.

26. *See, e.g., id.* 121, 125-27.



of black people, they must realize that the only answer is time and education.<sup>27</sup>

As was indicated at the outset of this review, there are several respects in which Professor Dulles's inquiry is flawed. First there is a matter that, on the surface, may be more one of style than of substance. Professor Dulles often uses language which seems either unduly imprecise for a scholarly work or else simply false if taken literally. For instance, when talking about the Commissioners he says at one place that "all six were *always* ready to give a high priority to Commission affairs . . ."<sup>28</sup> Now "always" is a tough condition to satisfy. At another place he describes the Commission staff as "wholly committed from the very first to civil rights . . ."<sup>29</sup> Every member of the staff during the eight year period? Wholly committed? And committed to what exactly? Much earlier in the work he asserts that when Autherine Lucy was expelled on a pretext by the trustees of the University of Alabama "[t]he entire nation was deeply shocked."<sup>30</sup> The entire nation? Still again, Commissioner Storey is described as a man who "was held everywhere in the highest respect."<sup>31</sup> A rare bird, surely.

Language such as this both reflects and helps to create the perspective of good will and benevolence from which are interpreted the motives and activities of virtually all of the actors discussed in the book. This is an issue to which I shall return shortly. But even if Dulles's use of language may be justifiable as rhetoric, there seems to be no possible justification for his use and selection of sources. What I found so surprising was the degree to which popular news media were cited as apparently authoritative. It is one thing to cite *Time* to illustrate a mood of popular thought and quite a different thing to identify the characteristics of a person by quoting *Time's* description of him. Thus *Time* becomes the authority for the proposition that the Battle of Virginia was "a resonant voice for political moderation."<sup>32</sup> *Look* is cited for an assessment of Father Hesburgh.<sup>33</sup>

The use of some of the sources seems to me to be no less disturbing. At times a kind of uncritical acceptance of the written word takes over—often when it should be most suspect. To take just one

27. See, e.g., *id.* 50-61, 123-24, 157-62.

28. *Id.* 250 (emphasis added).

29. *Id.* 259.

30. *Id.* 10.

31. *Id.* 20.

32. *Id.* 21.

33. *Id.*

example, the intentions and actions of the Kennedy administration are viewed largely through the eyes of Sorensen's *Kennedy* and Schlesinger's *A Thousand Days*. Reliance on such first-hand accounts can, of course, be defended in certain contexts. But when assessing such matters as motives and intent in the area of civil rights, one is entitled to ask the historian at least to be suspicious of such non-objective interpretations. In particular President Kennedy is consistently portrayed by these authors, and hence often by Dulles, as one thoroughly committed to civil rights and constrained solely by the exigencies of politics. Thus, Sorensen said that the *only* reason Kennedy did not propose civil rights legislation in 1962 was "arithmetic."<sup>34</sup> Still later Schlesinger and Sorensen are jointly cited for the proposition that "Kennedy had postponed action [on civil rights legislation] only through an astute sense of timing."<sup>35</sup> This may be right, but it surely smacks of Panglossianism. In this crucial area, one would hope for a greater reliance on less committed interpreters of presidential behavior.

This uncritical use of sources is a fairly minor criticism compared with what seems to me to be the basic defect in Professor Dulles's account—the perspective from which he approaches his subject and the effect this perspective has on framing and selecting the questions that are asked. Let me try to illustrate what I have in mind. At one point Professor Dulles, in discussing some of the criticism that greeted the Commission's more innovative 1961 proposals concerning voting, says "Even the staunchest adherents of civil rights were unwilling to go as far as the Commission majority."<sup>36</sup> To document this assertion he refers the reader to the editorial comments of the *Washington Post*, the *New Republic*, the *New York Herald Tribune*, and the *Christian Science Monitor*. To do so, I submit, tells us more about Professor Dulles's views than it does about contemporaneous reaction to the Commission's thinking. If, as seems to be the case, the *New Republic* ideology (to say nothing of that of the late *New York Herald Tribune*) constitutes for Professor Dulles the full-blown commitment to "freedom now," then we can better understand and assess the perspective through which he interprets the events of this period. There are some, like myself, who would insist that this particular quartet of establishment voices hardly comprises the core of the staunchest supporters of civil rights.<sup>37</sup>

34. Quoted in *id.* 153; see also *id.* 104-05.

35. *Id.* 190.

36. *Id.* 136.

37. Another example of what I mean is found in Professor Dulles's description of

One cannot be certain whether or not this perspective is causally connected to the omissions that occur in the book. But it is evident that there are important unasked questions and significant unexplored topics. The first concerns the relationship of the Commission to the Movement. If Professor Dulles had regarded Movement organizations and leaders as paradigmatic examples of the staunchest supporters of civil rights, he might well have sought to focus more extensively on their opinions of what the Commission should have done and what it should have proposed. Instead, he gives little attention to the ways in which segments of the black community assessed the workings of the Commission. In writing and thinking about the work and composition of the Commission it does seem to me to be of more than casual interest to reflect upon how the Commission—and perhaps even the country—might have thought differently about issues if it had more actively solicited and seriously considered the views of persons like Robert Moses, James Foreman, James Farmer, Howard Zinn, and a host of others. For all we can tell from Professor Dulles's book, this never happened. More importantly for the point directly under consideration, he never seems to have concerned himself with why this never happened or what the consequences might have been.

Just as it might have been helpful to elicit Movement opinion of the Commission, so it would have been equally important to ask more directly why the Movement and Movement personnel were so little involved in the work and deliberations of the Commission. There were no hearings that concerned themselves in any very significant way with eliciting the direct testimony of Movement workers and leaders. And apparently there was never a staff report or Commission publication that focused directly on the Movement and related agencies for social change.

Similarly, the whole question of how the Commission was staffed is not analyzed. If there is one thing that more than anything else reflects the degree to which the Commission never left the mainstream of white America, it is the degree to which it was and still is dominated by whites. Reference has already been made to the unvarying

the views of Eugene Patterson, the editor of the *Atlanta Constitution* and a Johnson appointee to the Commission. Dulles says ". . . [Patterson's] realistic attitude toward the Negro demand for equal rights was set forth in an editorial . . ." *Id.* 217 (emphasis added). Now, "realistic" in this context is a difficult notion to make clear, but it is evident, at least, that Dulles approves of Patterson's views. It also suggests rather strongly that views and attitudes to the "left" of Patterson's would be regarded by Dulles as "unrealistic." This, too, constitutes a perspective for understanding and assessment.

token representation of black people on the Commission itself. The same point could equally well be made about the senior staff positions. The staff director—the key man on the Commission—has never been black, nor, with one brief exception, has the general counsel. But my concern here is not with the substantive issue of racial control of the Commission; it is rather with the way in which analytic history in this area ought to be done. Although Professor Dulles does tell us the race of those Commissioners who were black, he almost never considers the general question of the racial or ideological composition of the staff, nor does he seek to probe or to question the limited role that black people played throughout the period under investigation in formulating the policies and programs of the Commission.

At one point Professor Dulles does comment, admittedly obliquely, on this matter, and the comment is instructive. The Commission established State Advisory Committees in each of the fifty states. In describing the composition of the committees Professor Dulles says: "The State Advisory Committee personnel included lawyers, labor leaders, clergymen, former government officials, civic leaders, and *whenever possible, one or more Negroes.*"<sup>38</sup> That is all; no further comment. But what does it mean to say "whenever possible"? That there were states in which there were so few Negroes that none could be found who were willing to serve? Or that there were states in which there were so many Negroes that it was impolitic to appoint any? Or that there were states in which the "right kind" of Negroes could not be found? Or that there were states in which influential whites would have refused to serve if eligible Negroes had been appointed? The point is that what was probably at issue in staffing these committees were matters of fundamental policy concerning their composition and the kind of advice they would receive. If I am right, Professor Dulles both fails to elucidate and analyze these matters of policy and implies that it was not a matter of policy at all—only one of what was "possible."

Finally, there are important omissions concerning both the internal operation of the Commission and the relationship of the Commission with other departments of the Government. We learn, for instance, that there was friction between the staff and the Commission.<sup>39</sup> We learn, too, that this is because the staff on occasion seemed too zealous and unobjective on behalf of civil rights. What does this really mean?

38. *Id.* 29 (emphasis added).

39. *See, e.g., id.* 155, 227.

It tells us far less than what we would know were we told what sorts of proposals had been made by the staff and rejected by the Commission. We would then see more clearly what the Commission considered a lack of "objectivity" about civil rights. In the same way, we are left with an unsatisfactory understanding of the nature of the controversy between the Department of Justice and the Commission. This could have been elucidated only by probing beneath the level of public statement and official communication. But it is a route Professor Dulles never elects to attempt. Nor does he endeavor to explore the variety of informal, more devious means that the Commission almost surely employed to get its views considered seriously by the rest of Government.

It is easy to write the history of the Civil Rights Commission if one makes the comforting assumption that the Commission—and the Government, generally—were fully committed to the rapid and complete satisfaction of the needs of black people, with the Commission representing, if anything, the radical fringe of legitimate response. The more difficult but vastly more illuminating undertaking for the scholar is to write a history of the Commission—to say nothing of other agencies of Government—which turns this assumption into one of the central hypotheses that needs to be proved. Such a history remains to be written.