

INTRODUCTION TO THE
REVIEW OF FLORIDA LEGISLATION

E PLURIBUS UNUM IN A MULTI-RACIAL, MULTI-CULTURAL
STATE

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There is an old saying in Florida that aptly expresses the state's political philosophy: "If it ain't broke, don't fix it." This saying implies a generally conservative stance, but also a streak of liberalism. Floridians are reluctant to make changes in their laws and customs, but they will do so when necessary, that is, when things are broken.

Florida's philosophy of government causes its political process to have a certain rhythm. The state tends to go through political cycles characterized by long intervals of stability punctuated periodically by explosive eras of reform. Each cycle begins imperceptibly as population growth and economic development, both of which have been constants in modern Florida history, gradually alter the conditions for which the state's policies, laws, and institutions were designed. New kinds of people move in. Different businesses develop. Population centers shift from one area of the state to another. Eventually the old ways of government become outmoded; Floridians begin to see that something is broken; and the state moves into one of its eras of reform.

Today, we appear to be headed into just such an era. The electorate has shifted control of state government from the Democratic to the Republican Party, and significant change across a wide array of policy areas is being contemplated or is already in progress. However, as in prior reform eras, many of these changes are being met by intense opposition. Policies thought by some groups to be broken are perceived by other groups to be working fairly well, or at least well enough not to require fixing. The challenge for Florida's leaders is to introduce necessary and appropriate reforms without causing the electorate to become permanently polarized.

In this introduction to the *Florida State University Review of Florida Legislation*, we examine an earlier era of reform for patterns that may be useful to today's leaders as they navigate through these exciting but challenging times. However, we do not want to overstate the parallels between the past and the present, nor do we wish to be viewed as offering positions on current issues. We recognize that every era is unique. Our aim is simply to identify some reform-strategies that have succeeded before and might be worth considering again.

BACK TO THE FUTURE

There are some remarkable similarities between Florida's challenges now and those it faced in the reform era of the 1960s and 1970s. Consider a few of the key political initiatives in the two eras. In 1998, the Florida Constitution was extensively amended by the people of the state through the Constitution revision process, and how to implement the revisions must be decided by 2002, when most of them take effect. Also on the legislative agenda are proposed reforms in two of Florida's most important and most sensitive policy areas: growth management and civil rights. A little further out in time—but not much

further—is the issue of Florida’s tax structure, which, due to its heavy reliance on a goods-targeted sales tax, is becoming increasingly outmoded as commerce moves to the Internet and as Florida’s economy becomes more service-based. Any one of these matters by itself would be quite difficult to manage; having to address all of them more or less simultaneously raises the difficulty exponentially.

Thirty years ago during the most recent reform era in Florida history, the state confronted almost these very same issues. Culminating a revision process that began in 1966, the Florida electorate adopted a new State Constitution in 1968. Then, just four years later, constitutional changes anticipated in 1968 but left out of the 1968 Constitution were added when Article V was amended to reorganize the State’s judicial system. Contemporaneous with these reforms in state governance, social and political conflict erupted as African Americans, women, and other groups made legitimate demands for civil rights they had been long denied. Florida also needed to modernize its tax structure, upgrade its system of education at all levels, and address the pressures placed by population growth on the state’s natural environment and on public facilities and services. Fortunately, Florida benefited at this time, as it does today, from a booming economy and from having a single political party controlling the Governor’s office and both houses of the Legislature.

This previous era of reform is viewed in retrospect as having been successful, not because it was without mistakes or conflict, but because it achieved much and ended harmoniously. For the most part, the 1968 Constitution and its 1972 amendments were implemented as intended and produced their desired effects. Likewise, the Legislature was reapportioned several times to eventually give representation to the state’s urban areas commensurate with their population. The public schools were desegregated, and access was expanded for African Americans to jobs, voting, housing, public accommodations, and higher education. A corporate income tax was introduced to establish a more equitable tax structure. Home rule was granted to cities and counties so that they might modernize their political institutions. Public schools in rural areas were given state funding to allow them to be as good as schools in the urban counties. Single member districts were introduced in the Legislature, and this led to much greater racial and ethnic diversity among state lawmakers. Florida literally reinvented itself, turning from a staunch member of the Old Confederacy into one of the nation’s most cosmopolitan states and one of the most popular tourist destinations in the world.

FROM MANY, ONE

Given the similarities between Florida’s challenges now and in the reform era of the 1960s and 1970s, it may be fruitful to consider how the most difficult reform in this earlier period—racial desegregation—was achieved. Admittedly, in some respects the policy of desegregation was historically unique. In the United States, *de jure* (of law, as opposed to *de facto*, of fact but not of law) racial segregation was limited almost exclusively to the South. It developed after the end of Reconstruction, and it was reinforced by a Southern culture that was outside the mainstream of American life.

However, despite these special circumstances, the challenge of ending segregation was archetypical of democratic politics throughout the ages. On the

dollar bill, in the seal of the United States, is written the Latin phrase, *e pluribus unum*, which translates as “from many, one.” Perhaps the most important characteristic that distinguishes democracy from other forms of government, not merely in the modern era but all the way back to ancient Rome and Athens, is that it unites people with radically different backgrounds under the same laws. This is not a very common form of government, either in the world today or in the past. Much more typical is government embodying a tyranny of one race, religious sect, economic class, or ethnic group over another.

The existence of democracy, combined with the fact that it is relatively rare and always hard to keep, shows that humankind is conflicted in its political instincts or tendencies. On the one hand, people compete individually and in groups for esteem in their own eyes and in the eyes of others. Such competition is natural and produces many benefits for our species. But it is also a source of racial, ethnic, and other divisions, of the tendency for one group to seek to dominate another, and of invidious distinctions that are expressed subtly, cause so much pain, and scar the psyches of all human beings.

On the other hand, every person also expects to be treated, by government and by society at large, at least as well as the vast majority of other people. Admittedly, this expectation can be beaten, raped and humiliated almost to the point of extinction among any group, but even in the most extreme cases, a remnant of this spark in the human spirit will remain among a few, who will guard it like an ember and at some point use it to relight the democratic ethos. In Western civilization, democracy always returns. The problem, of course, is that this tendency, too, like the impulse to compete, can be extended too far. The human desire to be treated equally has morphed more than once in history into a tyranny of the majority, which demands conformity and discourages excellence.

One of the great achievements of modern representative government is that it has allowed both the instinct to compete and the desire for political equality to operate simultaneously, and indeed has created a marvelous tension between them, a tension in which each places a check on the other so that both yield their rewards but neither of them runs amok. Competition is the engine that drives our progress in the arts, the sciences, and the production of goods and services. The expectation of political equality underlies our progress toward universal tolerance and mutual respect. Through the interaction of these powerful forces in human nature, the Western industrial democracies have simultaneously grown more prosperous and more accepting of social differences.

The synchronicity between prosperity and tolerance is no coincidence. Each is dependent on the other. The growth of tolerance has produced enormous economic benefits by making it more likely that the talents of all people are developed and employed, while economic expansion has contributed to the growth of tolerance by reducing scarcity and helping assure that one group's success does not occur at another group's expense.

This is the context in which the idea of “one from many” should be understood. *E pluribus unum* does not mean creating the one through the obliteration of the many. It does not mean ignoring the histories of different peoples, or treating people as if none had special needs or special gifts. It means somehow enabling the plural elements of society to unite under a common framework of law and governance. The *pluribus* and the *unum* must be allowed to exist side by side.

THE RIGHTS AT STAKE IN DESEGREGATION

Florida's desegregation in the 1960s and 1970s offers some clues about how leaders can facilitate the working-through of this tension between competition and political equality. The key to finding the lesson for today in this event of the past is in understanding why it was so difficult for Southern whites to recognize the rightness of the African-American cause. For those who did not live through the years in question, this requires effort, because many of the political solutions arrived at two or three decades ago to resolve very complex problems seem now to be obvious and maybe even inevitable. This is especially true with respect to civil rights for African Americans. In looking back on the civil rights movement, we see now that the claims of African Americans were thoroughly legitimate, and it shocks and saddens us that their demands went so long unheeded and were met by such bitter resistance. But we look at it this way only because we have forgotten or are not aware of how the issue was framed at the time, and this prevents us from seeing both how this earlier period resembles the situation today, and what the solution of the past may suggest for resolving the controversy of the present.

Just as the issue of affirmative action is today seen as a conflict of rights, a conflict between the rights of whites for equal treatment and the rights of African Americans for access to opportunities often closed off to them because of the widespread prejudice still with us, so also were the civil rights issues of the 1960s. Back then, opponents of the Civil Rights Act and the Voting Rights Act at the national level, and of desegregation initiatives in Florida and elsewhere, believed that an expansion of civil rights for African Americans entailed an illegitimate diminution of their rights over property and their freedom to associate with those of their own choosing. Hotel and restaurant owners asserted that their property rights gave them the lawful discretion to serve, or not to serve, whomever they wanted. Employers claimed, similarly, that they had the right, by virtue of the private ownership of their businesses, to decide whom to hire, fire, and promote. Those who were members of segregated clubs and organizations made the same argument, that these were their organizations and that they alone had the right to determine who would be allowed in. Clearly, however much we may now disagree with these views today, they were not trivial or baseless; property rights and freedom of association are at the very foundation of American liberty.

The fallacy with the argument of those who were resisting the expansion of civil rights for African Americans was that it failed to recognize that other, equally important rights were also at stake. Notable among these was the right to equal treatment before the law. The rights of property and association are not and can never be exercised entirely in isolation; they depend on government in a variety of ways, and hence they generally contain a public element. Many businesses, schools, and universities receive funding from federal, state, or local government, and government is supported by taxes paid by blacks and whites alike. By the same token, hotels, restaurants, clubs, and all other businesses and organizations receive many public services—police protection, fire protection, roads, water, electricity, etc.—from the public sector. Because government is involved in this sense in the private businesses, private schools, and private lives of this nation, government has a responsibility to assure some degree of equal treatment within the private sphere.

CONSTRUCTING THE ARENA OF PUBLIC DISCOURSE

During the turbulent 1960s and 1970s, Floridians who were still rooted in the culture of the Old South gradually came to understand this, but not without much foot dragging and rancor. A good example of the kinds of political obstacles that were directed at desegregation, and the political leadership required to overcome them, took place between 1971 and 1972. Within the Florida Legislature, opponents of desegregation succeeded in having the Legislature place a question before the electorate on a straw ballot in the March 1972 Presidential preference primary election. The item asked voters if they favored “an amendment to the U.S. Constitution that would prohibit forced busing and guarantee the right of each student to attend the appropriate public school nearest his home?” Although results of a straw ballot are not legally binding, electoral support for this anti-busing proposal would have placed pressure on elected officials to work against school desegregation.

The Askew Administration and other progressive forces countered this initiative by convincing the Legislature to add another question to the straw ballot to pose the desegregation issue in another way. This additional item asked voters, “Do you favor providing an equal opportunity for quality education for all children regardless of race, creed, color, or place of residence and oppose a return to a dual system of public schools.” The outcome was that both questions passed; voters disliked busing, but they did not want to return to segregated schools.

In retrospect, this result may not seem major, but at the time it had far-reaching impacts. One effect, of course, was to blunt any pressure that might have been placed on policy makers by passage of the anti-busing amendment alone. But the outcome of the straw ballot also altered the terms and tone of public discussion about busing specifically and desegregation in general. The debate leading up to the March primary allowed voters to see a number of competing perspectives and gave moderates a place to turn, while the decision at the polls demonstrated to the citizenry as a whole that most people did not want to return to segregation even though many disliked some of the methods used to desegregate. In short, multiple items on the straw ballot gave voice to the moderate majority. Florida by its vote on the second question may have been the first state with segregation *de jure* to openly reject it in a public vote.

As this example suggests, it is often best to fight fire with fire, that is, to fight one referendum question with another. An unavoidable weakness of most ballot items, whether they are put forward by the Legislature or through the initiative process, is that they pose multifaceted issues in terms of crude, either-or choices. This tends to push groups to extremes and close off possibilities for compromise. Nevertheless, policy makers will usually find it difficult or impossible to prevent simplistic, polarizing proposals from reaching the ballot once such proposals have achieved some initial momentum. In these circumstances, an alternative worthy of consideration is to develop another, related ballot item that re-frames the issue, expands the range of options placed before the electorate, and adds another dimension to public debate on the issue in question.

POLITICS AS MORAL EDUCATION

An important lesson to draw from Florida's experience with the civil rights movement is that the process of making and implementing laws can be as in-

portant—perhaps even more important—than the laws= actual substance. One reason to use a deliberative process is that people simply expect to be consulted. Even a very good law, if enacted hastily or without sufficient deliberation, will often prove unpopular and difficult to carry out.

But participatory decision-making is essential for more than just buy-in. It also fosters mutual adjustments between the perspectives of political combatants. The democratic process almost always involves balancing one right against another. The conflict can be and often is intense, because rights are dearly held and are usually seen by their possessors as inherent in the order of things. The moral development of Floridians, as well as of humankind in general, has almost always depended on face-to-face interactions between people whose rights are in conflict. Both sides must come to recognize that the rights of others limit their rights, and this recognition, this mutual respect, seldom comes easily or quickly. A critical role of representative government is to provide these kinds of political processes, which educate while they legislate.

In the 1950s, President Eisenhower had said that morality cannot be legislated, and in one sense he was right, but should not government share in the responsibility of calling citizens to a high moral plane? In the 1960s and 1970s, white Floridians and whites in other southern states came to a new viewpoint on race, because they were forced, by the civil rights and voting rights laws of the 1960s, to come face to face with African Americans, hear their side of the argument, and see, in human form, the righteous expectation that people of all races deserve equality before the law. It was never enough for whites just to interact with or engage in dialogues with African Americans. Whites had done this for a century, and the South's system of racial apartheid had softened very little if at all. The races had to be brought together on equal ground before they could reach common ground. The law did not legislate morality, but it did legislate conditions that helped make moral progress possible.