

CIVIL RIGHTS

FALL 1997

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U.S. COMMISSION ON CIVIL RIGHTS'

40

th Anniversary

The Road Ahead for Civil Rights

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices;
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin;
- Submit reports, findings, and recommendations to the President and Congress;
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

In furtherance of its fact-finding duties, the Commission may hold hearings and issue subpoenas (within the State in which the hearing is being held and within a 100-mile radius of the site) for the production of documents and the attendance of witnesses.

The Commission consults with representatives of Federal, State, and local governments, and private organizations.

Since the Commission lacks enforcement powers that would enable it to apply specific remedies in individual cases, it refers the many complaints it receives to the appropriate Federal, State, or local government agency, or private organization for action.

The Commission is composed of eight Commissioners: four appointed by the President and four by Congress. Not more than four of the members can be of the same political party. From among the Commission's members, the President designates the Chairperson and Vice Chairperson with the concurrence of a majority of the members.

Commissioners serve staggered terms of six years. No Senate confirmation is required. The President may remove a Commissioner only for neglect of duty or malfeasance in office.

Except in August, the Commissioners hold monthly meetings and convene several other times a year to conduct hearings, conferences, consultations, and briefings.

The Commission has 51 Advisory Committees—one for each State and the District of Columbia. Each is composed of citizens familiar with local and State civil rights issues. The members serve without compensation and assist the Commission with its fact-finding, investigative, and information dissemination functions. Members are nominated by Commissioners or the regional director for the area and voted on at a regular meeting of the Commission. The term of office is two years.

A full-time Staff Director oversees the day-to-day activities of the Commission, headquartered in Washington, DC. The Staff Director is appointed by the President with the concurrence of a majority of the Commission's members, and serves at the pleasure of the President. All Commission personnel are employed under Federal civil service regulations and job classification standards.

Each of the Commission's six regional offices coordinates the Commission's operations in its region and assists the State Advisory Committees in their activities. Regional offices are in Washington, Atlanta, Chicago, Kansas City, Denver, and Los Angeles.

The Commission's Robert S. Rankin Civil Rights Memorial Library is situated in Commission headquarters, 624 Ninth St., N.W., Washington, DC 20425.

The Commission and its State Advisory Committees have produced hundreds of reports and studies on national, regional, and local civil rights matters. Copies of these publications are available free to the public, as is a "Catalog of Publications," by request to the Publications Office, U.S. Commission on Civil Rights, 624 Ninth St., N.W., Room 600, Washington, DC 20425.

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THE ROAD AHEAD FOR CIVIL RIGHTS

A Symposium

A 1982 issue of *Perspectives*, as this journal was known at the time, celebrated the 25th anniversary of the Civil Rights Act of 1957 and the creation of the U.S. Commission on Civil Rights. The issue focused on the history and consequences of the civil rights movement, and included two articles, musings on the meaning of civil rights by nine writers, a selection of famous and infamous editorial cartoons of the movement era, and several departments, one identifying seminal books about civil rights. That issue of the journal published by this independent, bipartisan Federal agency was well received.

In planning this special issue of the newly titled *Civil Rights Journal* com-

memorating the 40th anniversary of the same Commission, the editors walked a tightrope. Certainly we wanted to avoid covering the same ground highlighted in those pages 15 years ago. Moreover, while noting some of the contributions that the Commission has made during the past 40 years we had to avoid being congratulatory and self serving. Planning also had to take into account budget constraints affecting all Commission programs and activities. Finally, to meet the agency's statutory and clearinghouse responsibilities, even a commemorative issue of the journal had to be about civil rights matters of undeniable importance to the American people; it had to be worth reading.

The symposium in this issue of the *Civil Rights Journal* reflects the increasing complexity and controversy over civil rights matters such as affirmative action. It offers a wide range of perspectives on civil rights realities and what they might

bode for the future.

Three context-setting articles introduce the symposium, one by Vanderbilt University professor of history Hugh Davis Graham on the history of the U.S. Commission on Civil Rights, another by Duke University professor emeritus of religion and culture C. Eric Lincoln linking key aspects of the civil rights movement to current developments, and the third by Rabbi Marc Gellman of Temple Beth Torah in Melville, NY, focusing on the moral dimension of civil rights then, now, and in years to come.

The symposium continues on page 15 with 28 leaders of civil rights organizations and research centers sharing their views about what are the most pressing civil rights problems confronting the Nation today. These statements are followed by 30 short essays by scholars, journalists, and literary figures on how current civil rights conflicts are shaping directions that

intergroup relations in the United States are likely to take in the foreseeable future.

What the issue lacks in illustrations we hope is more than compensated for by the depth and breadth of views presented in the symposium. We also hope, of course, that you enjoy our "Yesterday" department piece on Selma by longtime civil rights journalist Wayne Greenhaw on page 3 and our Books department beginning on page 55.

This issue of the Commission journal was conceived before President Clinton's call for a national dialogue on racial problems and his appointment of a race relations advisory board headed by historian John Hope Franklin. Even so, we trust that our symposium contributes to that dialogue and to the important work of the President's advisory board.

Charles R. Rivera
Editor

THE CIVIL RIGHTS COMMISSION: THE FIRST 40 YEARS

By Hugh Davis Graham

In 1957 President Eisenhower signed the first national civil rights law in 82 years. Coming just three years after the Supreme Court ruled school segregation unconstitutional in *Brown v. Topeka Board of Education*, and two years after Dr. Martin Luther King, Jr. won international attention leading the bus boycott against the all-white city government in Montgomery, AL, the new law created a mechanism for guaranteeing African American voting rights in the South. It also created the U.S. Commission on Civil Rights, a two-year advisory commission on civil rights issues. Veteran political observers knew that blue-ribbon advisory commissions came and went in Washington, usually with little follow-up or impact. What mattered were the action requirements of the new voting rights law.

This time, however, they were wrong. The voting rights law, geared to slow, expensive court procedures for registering voters, was a failure. So was a patched-up second attempt in 1960, and for the same reasons. The Civil Rights Commission, on the other hand, was renewed and became something of a giant-killer. Lacking authority to enforce civil rights laws, the Commission was limited to holding hearings, publishing reports, and issuing findings and policy recommendations. Yet within a decade the legal and political underpinnings of the South's elaborate "Jim Crow" caste system would be destroyed by the Civil Rights Act of 1964 and the Voting Rights Act of 1965, statutes whose theory and enforcement provisions the Commission heavily influenced.

The Commission's first decade coincided with the heroic era of the civil rights movement. The moral issues were posed with stark clarity: racist white governments in the southern states challenged by impoverished, disfranchised black citizens. The Commission, an independent, bipartisan body chaired during its first dozen years by John Hannah, President of Michigan State University, was effective in policy persuasion largely because it was not an enforcement or policymaking arm of government. In an era of Cold War competition and televised racial violence, the Commission appealed to the Nation's sense of fairness, to the American creed of equal rights for all. Commission reports won high visibility in the national media, where editorials reinforced Commission proposals for desegregating schools, enforcing voting rights, banning discrimination in employment.

The Commission in its first years concentrated on the denial of voting rights to African Americans. Holding hearings in the Deep South, the Commission used its single coercive

weapon, the authority to subpoena witnesses, to require testimony from recalcitrant local officials—including a county judge in Montgomery, George C. Wallace, who became the South's leading segregationist governor and ran for President in 1968. In 1959 and 1961 the Commission issued hard-hitting reports, demonstrating the failure of the voting rights laws and proposing the kind of direct Federal intervention in voter registration that made the Voting Rights Act of 1965 both radical and effective. Commission reports on employment discrimination and education helped shape the breakthrough Civil Rights Act of 1964, especially Title VII, establishing the Equal Employment Opportunity Commission (EEOC), and Title VI, prohibiting discrimination by businesses and state and local governments receiving Federal financial assistance.

Commission reports on housing segregation contributed to the Fair Housing Act of 1968. This law, the last of the great civil rights statutes of the 1960s, marked a transition in the civil rights movement and in the Commission's history as well. The urban riots of 1965-1968, which scorched major cities throughout the North and West but rarely occurred in the South, signaled a sea change in race relations. For southern blacks, the civil rights legislation of the mid-1960s had produced immediate benefits. But segregated stores, voting barriers, and whites-only jobs were not pressing issues for African Americans outside the South. On the other hand racial concentration in housing, less pressing in the rural South, was increasing in the urban North. The Fair Housing Act of 1968, while banning racial discrimination in the sale and rental of housing throughout the Nation, included no effective enforcement provisions.

Thus began the Commission's transition to a second phase. It was characterized by shifts from a regional to a national focus, from foundational antidiscrimination legislation to Federal enforcement efforts, and from a concentration on African American rights to claims from an expanding array of civil rights constituencies to similar protections and remedies. This transition coincided with a shift in the basic enforcement paradigm in civil rights policy, from prohibitions against discrimination on account of race, sex, national origin, and religion, to affirmative action requirements emphasizing proportional representation of protected classes in employment, admissions, and government contracts.

The shift from nondiscrimination to color-conscious remedies began in school desegregation. Between 1968 and 1971 the Federal courts, impatient with the slow pace of desegregation since *Brown*, began requiring southern school districts to accelerate integration by assigning pupils and staff on the basis of race. Paralleling this was a shift in executive branch

remedies for past discrimination in employment. Labor Department officials in the Nixon administration required government contractors to develop a workforce reflecting the minority and gender makeup of the labor pool.

This enforcement trend led to the "disparate impact" model of equal opportunity, which emphasized proportionally equal results over equal treatment. It avoided the complexities of proving intentional discrimination, instead using statistics to demonstrate underutilization and thereby establish targets for remedy. By 1972 the disparate impact approach, criticized by opponents as racial quotas and "reverse discrimination," was adopted by the EEOC and approved by the Federal courts. The Commission, strongly supporting these initiatives, closely monitored their enforcement during 1970-1975 in a multi-volume report on "Federal Civil Rights Enforcement Effort."

During the 1970s the Commission, chaired by the Rev. Theodore Hesburgh (1969-1972), President of Notre Dame University, and Arthur Flemming (1974-1982), appointed by President Ford, struggled with an agenda rapidly expanding in scope, complexity, and controversy. Newly mobilized social movements, seeing impressive gains in black civil rights, won protected-class status from Federal courts, executive agencies, and Congress. Newly covered groups included women, the physically and mentally handicapped, non-native speakers of English, the aged.

This expansion strengthened the Commission's support from the civil rights coalition, but also brought headaches. The Commission during the 1970s was hard pressed to cover the growing and sometimes conflicting agendas of the various groups regarding rights claims and enforcement attention. In the field of education, for example, tensions developed among African American leaders, feminists, and disability rights organizations over Office of Civil Rights enforcement priorities involving school desegregation, women's athletic opportunity, and access for the handicapped.

Also troubling the Commission: major national efforts on behalf of school desegregation and open housing during the 1970s lost momentum. School desegregation quickened in the South but worsened in the North, where in the early 1970s violence in Boston and a Supreme Court ruling against cross-district busing in Detroit frustrated integrationist hopes. During the late 1970s a drive in Congress to put teeth in the fair housing law, strongly pushed by the Commission, lobbied effectively by the Leadership Conference on Civil Rights, and supported by President Carter, passed the House in 1980. But it was blocked when Republicans won the White House and the Senate in the 1980 elections. Ronald Reagan's election marks a

third phase for the Commission, throwing it on the defensive.

The conservative movement, led by Reagan, attacked many of the measures the Commission had supported during the 1970s. Those included the Equal Rights Amendment, racial transportation of students across school district boundaries, mandatory native-language instruction in bilingual education, minority set-asides in government contracts, “comparable worth” pay standards in gender equity, “race norming” employment test scores, and minority preferences in higher education admissions (as in the controversial *Bakke* case). Conservatives criticized social engineering by Washington bureaucrats, whose agencies—including the Environmental Protection Agency, the EEOC, the Labor Department, education’s Office for Civil Rights, and the Commission on Civil Rights as well—had allegedly been captured by feminists, black militants, abortionists, and other groups benefiting from government social regulation.

Capitalizing on growing white resentment of minority preference policies, President Reagan attempted to countercapture the offending Washington agencies, including the Commission on Civil Rights. In 1982 President Reagan replaced Commission Chairman Flemming, a white liberal Republican, with a black conservative Republican, Clarence Pendleton. Reagan’s attempt to stack the Commission with conservatives angered not only the civil rights coalition, but also offended some conservative legislators who resented executive heavy-handedness with independent agencies established by Congress. The result was a testy standoff, ultimately resolved by a compromise that increased the Commission from six to eight members, four (including the chairperson) appointed by the President and four by Congress.

The 1980s were years of turmoil for the Commission. Its agenda showed greater ideological variety and a wider range of policy debate, but weaker programmatic coherence and less civility. Leaks to the media from warring factions damaged the Commission’s prestige.

Yet despite the conservative counteroffensive, by the end of the Reagan-Bush regime there appeared to be more continuity than change in Federal civil rights policy. Congress in 1988 passed the Civil Rights Restoration Act over Reagan’s veto. That same year Reagan signed a fair housing enforcement law that looked remarkably similar to the strong bill champi-

oned by the Commission in the Carter years. In 1990 President Bush signed the Americans With Disabilities Act, extending new protections to an estimated 43 million Americans. And the following year, Bush signed a civil rights law that greatly expanded protections and remedies available to women.

Not surprisingly, in light of the Commission’s high-profile history during its first three decades, the agency’s image in the unsettled 1990s has been blurred. This is partly because all government agencies have felt the sting of public cynicism. Furthermore, even agencies born in the excitement of reform and new expectations—TVA, the Peace Corps, the Civil Rights Commission, the EEOC—follow a maturing process wherein changed conditions require fresh vision.

By the 1990s the “rights revolution” had expanded the civil rights agenda to include claims by groups with increasingly diverse needs and experiences, including more than 15 million Hispanic and Asian immigrants, whose cultures of origin and economic progress in America varied widely, yet whose ancestry qualified them for protected-class status in the United States. These changes strained the coherence of a paradigm for harm and remedy rooted in African American slavery. Moreover, since 1989 a conservative majority on the Supreme Court has sharply narrowed the exercise of affirmative action remedies nourished by the Commission during the 1960s and 1970s. And a new generation of Americans has no memory of the epic struggles of the 1950s and 1960s.

These new circumstances, facing the Commission as it enters its fifth decade, arguably pose a greater challenge of leadership than the social convulsions of the 1960s. Even in the ideologically polarized climate of the 1990s, there is bipartisan consensus among elected officials that the Nation needs a strong Commission on Civil Rights. Ironically, the Commission’s unusual statutory legacy—a temporary agency periodically renewed for 40 years—masks a deeper national self-awareness. In a constitutional democracy so economically dynamic and socially diverse, civil rights issues necessarily belong on the permanent agenda. How the Commission responds to this test of national leadership will help shape the 21st century.

Dr. Hugh Davis Graham is a professor of history at Vanderbilt University. He is the author of “The Civil Rights Era” and “The Uncertain Triumph.”