

PANEL V: NEW FRONTIERS IN CIVIL RIGHTS

INTRODUCTION: A WALK THROUGH THE CIVIL RIGHTS WORLD

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This splendid Symposium has been a walk through the civil rights world—a world which is often polarized, contentious, and anything but civil. Covering many difficult and emotional issues, we started with the panel, “What Are Civil Rights and to Whom Do They Belong?” If neither of these two questions was directly answered, it was partly because we, as a society, do not wish to answer them specifically and permanently. The world of civil rights is an ever-evolving world.

The next panel addressed the role of government in closing the socio-economic gaps faced by minorities. Although the term “civil rights” was not mentioned in the title of this panel, the speakers very quickly began to address the consequences and efficacy of affirmative action. The following panel proceeded directly to the nitty-gritty of quotas.

When I first joined the Equal Employment Opportunity Commission (EEOC), “quota” was akin to a four-letter word not uttered in polite company. The Commission discussed prospective relief, formula relief, goals and timetables, affirmative discrimination, even employment opportunity enhancement, but never quotas. It is a sign of how far we have come, of how much the terms of discourse have changed, that the debate over the Civil Rights Act of 1990¹ is cast specifically and explicitly in terms of quotas. The battle cry of the Act’s proponents—“this is not a quota bill”—is, for those of us old enough to remember, reminiscent of a similar political disclaimer by a president soon to resign.²

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1. H.R. 4000, 101st Cong., 2d Sess. (1990); S. 2104, 101st Cong., 2d Sess., 136 CONG. REC. S1019-20 (daily ed. Feb. 7, 1990). The Civil Rights Act of 1990, as passed by Congress, was vetoed by President Bush on October 22, 1990, Message to the Senate Returning Without Approval the Civil Rights Act of 1990, 26 WEEKLY COMP. PRES. DOC. 1632 (Oct. 22, 1990).

2. See *Nixon Declares He Didn't Profit from Public Life*, N.Y. Times, Nov. 18, 1973, at A1, col. 6 (President Nixon stating that “I’m not a crook” at press conference). *But see*

The next panel covered the limits of judicial power, a subject in whatever form near and dear to the Federalist Society. After our panel, the Symposium will turn to what has been and will continue to be an increasingly important question in the area of civil rights: the intersection of free speech, civility, and civil rights. My job is to introduce and moderate this distinguished panel, which will tour the topic, "Frontiers in Civil Rights," which encompasses the future of civil rights—the subject of this entire Symposium.

As we have often heard during the Symposium, this is a propitious time to take this tour. The year 1989 saw the twenty-fifth anniversary of the Civil Rights Act of 1964,³ an anniversary marked by a spate of decisions involving employment discrimination and civil rights law.⁴ These decisions, depending on one's perspective, were seen as either felicitous or disastrously counter-revolutionary. Yet, however one views these decisions—and I believe that, like most things in life, they ranged from excellent to mediocre—the legislative activity they spawn will largely define the civil rights agenda for the next twenty-five years.

In closing, I would like to call attention to one piece of legislation at the frontier of civil rights, legislation that no one else is likely to mention. The Americans with Disabilities Act⁵ extends civil rights protection to integrate twenty-seven million disabled citizens more fully into this nation. The EEOC will have responsibility for enforcing this law, and we will probably be hearing a great deal more about it in the future.

Proclamation No. 4311, 39 Fed. Reg. 32,601 (1974) (President Ford pardoning former President Nixon "for all offenses against the United States which he, Richard Nixon, has committed or may have committed or taken part in during the period from January 20, 1969 through August 9, 1974").

3. Pub. L. 88-352, 78 Stat. 241 (codified as amended at scattered sections of 28 and 42 U.S.C.).

4. See *Patterson v. McLean Credit Union*, 109 S. Ct. 2363 (1989) (racial harassment in the course of employment held not actionable under 42 U.S.C. § 1981); *Lorance v. AT&T Technologies, Inc.*, 109 S. Ct. 2261 (1989) (claim of discrimination regarding a facially neutral seniority system accrues when the seniority system is adopted); *Martin v. Wilks*, 109 S. Ct. 2180 (1989) (white firefighters can challenge employment decisions made pursuant to consent decrees in cases to which they were not parties); *Wards Cove Packing Co. v. Atonio*, 109 S. Ct. 2115 (1989) (burden of persuasion to prove lack of bona fide business purpose for allegedly discriminatory employment practices shifted to plaintiff); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (city's minority set-aside held not justified by a compelling governmental interest and not narrowly tailored to remedy the effects of prior discrimination, and thus unconstitutional).

5. Pub. L. No. 101-336, 1990 U.S. CODE CONG. & ADMIN. NEWS (104 Stat.) 327.