

## PREFACE

On August 28, 1963, at the culmination of the historic March on Washington, Martin Luther King told the thousands who had assembled:

There are those who are asking the devotees of civil rights, "When will you be satisfied?" We can never be satisfied as long as the Negro is the victim of the unspeakable horrors of police brutality. We can never be satisfied as long as our bodies, heavy with the fatigue of travel, cannot gain lodging in the motels of the highways and the hotels of the cities. We cannot be satisfied as long as the Negro's basic mobility is from a smaller ghetto to a larger one. We can never be satisfied as long as our children are stripped of their selfhood and robbed of their dignity by signs stating "For whites only." We cannot be satisfied as long as a Negro in Mississippi cannot vote and a Negro in New York believes he has nothing for which to vote. No, we are not satisfied and we will not be satisfied until justice rolls down like waters and righteousness like a mighty stream.

On the legislative front, America attempted to address King's concerns with what was then heralded as the most far-reaching civil rights legislation since Reconstruction. Most notable is the Civil Rights Act of 1964. Its provisions guarantee blacks the right to vote and access to public accommodations such as hotels, motels, restaurants, and places of amusement. It authorizes the federal government to sue to desegregate public facilities and schools and to cut off federal funds where programs are administered discriminatorily. The Act also requires most companies and labor unions to grant equal employment opportunity. Furthermore, as an aid to voting rights enforcement, the Act requires that the Census Bureau gather voting statistics by race.

There can be little doubt that the scope of this legislation sought to address King's concerns, but we still cannot be satisfied. In the years since the March on Washington the economic climate has brought about what may be termed a "politics of scarcity." Public resources are scarce, forcing people to turn inward, away from big government, toward the certainty and predictability of individual achievement. Even time, in its infinite sense, has become scarce in that the threat of nuclear war has engendered anxiety about the future. Fierce competition for the tools of existence—college admission, jobs, and natural resources—has supplanted the preoccupation with rights that was prevalent in the sixties.

Thus, it came as little surprise to most blacks that Ronald Reagan was reelected. Civil rights do not fit within the construct of his political scheme in which rights, along with everything else, are severely limited commodities available only to those who are politically and financially powerful enough to seize them. The grant of an opportunity or right to a minority group is judged according to what it will cost in terms of the perceived right of the majority to maintain the status quo. Even for many whites whose political leanings were left of center in the sixties, the changing times has engendered a shift to the right in the eighties. Antibusing fervor and vehement opposition to affirmative action have all but eclipsed the days of lunch counter sit-ins and freedom marches. Remedies for school segregation and for past discrimination in hiring or college admission are seen as tenable only in times of plenty. Generally,

whites today are bored with charges of discrimination, preferring to characterize them as attempts to mask an inability or unwillingness to compete.

There are signs of hope. The overwhelming response to the famine crisis in Africa has been an unparalleled display of altruism. Similarly, the mounting opposition to South African apartheid cannot be overlooked. However, it may be that the anti-apartheid movement stems not so much from repugnance with the system of apartheid as from an underlying suspicion that the white South African government is somehow partly responsible for the entire continent's economic imbalance. White South Africans are feasting so richly and so greedily on that country's natural and human resources *at the same time* that Ethiopia and much of the rest of Africa literally starves. Perhaps this situation defines for Americans the outer limits of Darwinistic scarcity politics. On the other hand, the activism concerning South Africa and Ethiopia may seem less threatening than concerns which are closer to home and which might involve more immediate and significant personal sacrifice.

Of course, black people have not escaped unscathed from this new ego-centric mindset. More and more blacks are now suffering from what Shirley Chisholm might call "the illusion of inclusion," the growing tendency of black professionals and others who have achieved financial success to disaffiliate themselves from other blacks politically, economically and even socially, in the belief that their professional degrees will make them immune from the racial problems that plague blacks as a group. Thus, many successful blacks whose own prosperity is directly attributable to gains made by blacks collectively have now defected in the name of individualism, while the majority of blacks, who are still underfed, underpaid, and under-educated remain in desperate need of their political and economic loyalty.

The goals embodied in Martin Luther King's speech have been achieved only on paper. For example, while 42 U.S.C. Section 1983 grants a private cause of action for civil rights violations, including police brutality, the courts are systematically whittling away its effectiveness. Most recently, the U.S. Supreme Court in *Oklahoma City v. Tuttle* refused to characterize as official policy, and thus denied recovery for, what it termed an "isolated incident" of police brutality, thus making it more difficult to sue municipalities for unlawful police conduct. The paper victory is being further jeopardized by the Reagan administration's affirmative refusal to enforce the civil rights laws. The Justice Department has refused to use remedies that the courts have authorized to redress employment discrimination. In lawsuits where a pattern and practice of employment discrimination has been proven, the Justice Department will not use quotas and other statistical formulae that have been designed by the courts to remedy that discrimination. Similarly, the Justice Department is now seeking to overturn numerous consent decrees establishing affirmative action guidelines on the basis of an erroneous reading of the Supreme Court's decision in *Stotts*.

It is clear, therefore, that the problems King addresses still remain, albeit in different form. Nevertheless, the goals blacks set for themselves today must be broader than they were 1963. The protection of civil rights is only one prong of the solution. Alone, it will not solve the economic problems which blacks continue to have.

Were King alive today, he would see that we as a people have made much

progress since that summer afternoon in 1963. Yet, he would surely agree that goals would have to include recognition of the oppression we face on the economic front as well. A great deal of this oppression can be traced to the Reagan administration's desire to deal with those who thirst after economic equality by offering them a "trickle-down effect" when what is needed is more akin to a "mighty stream."

Thus, while realizing that many of the problems faced by blacks today continue to arise in a legal context, the *Black Law Journal* must expand its focus to encompass proposals for legal and economic solutions as well. In light of this, we begin this issue with John Jacobs' speech *Equity, Excellence and Entitlement*. It articulates economic and political goals for black Americans as well as aspirations of equal opportunity, equal rights, and an end to racism.

On another note, the *Journal* for the first time extends beyond domestic issues to cover current problems in Africa. *Democracy in Nigeria* is an article giving a legal/historical analysis of Nigeria's attempts to maintain a democratic government, and *In Support of Azania* is a timely student comment on the extent of United States investment in South Africa and the viability of divesting public pension funds of their apartheid investments.

In a more reflective vein, our lead article, *Reinterpreting "Person" in Section 1983*, analyzes the influence of *Brown v. Board of Education* in strengthening the effectiveness of Section 1983. In addition, Michael Harrington's speech entitled *The New American Poverty* discusses the impact of the Reagan administration's cutbacks on the poor and proposes an agenda for combatting this "new poverty." Finally, a student comment traces the course of what many believe was a flagrant miscarriage of criminal justice in *The Case of Elmer "Geronimo" Pratt*.

In addition to the articles and comments, Shirley Chisholm and Judge Billy Mills are profiled, and several book reviews critique recent works of interest in the fields of law, sociology and politics.

The *Black Law Journal's* ongoing objective is to provide a forum for solutions and guidelines for action to age-old problems facing black people, in terms to be understood by laymen and professionals alike. In recognition of the political, economic and social nature of this endeavor, the *Journal* welcomes submissions not only from legal scholars and law students, but from practicing attorneys, political figures, public officers, professionals in other fields and community leaders as well. Communication may be the first step to economic power.