

April 30, 1991

TIME FOR AN OMNIBUS CIVIL RIGHTS BILL

INTRODUCTION

American civil rights policy is at a crossroads. For the first time in many years, there is a clear choice between two starkly different visions of civil rights: one would extend and strengthen the same race-based policies that have failed to help the most disadvantaged Americans; the other would seek to give these disadvantaged Americans a greater degree of control over their own destinies.

These two visions are reflected in proposals currently before Congress. The race-based approach is contained in a House bill (H.R. 1) introduced by Representative Jack Brooks, the Texas Democrat; a Senate version has not yet been introduced. The Brooks bill is a slightly modified version of the civil rights bill sponsored in the last session of Congress by Senator Edward Kennedy of Massachusetts, and then Representative Augustus Hawkins of California, both Democrats. The Kennedy-Hawkins bill passed both houses of Congress, and was vetoed by George Bush. The Senate sustained Bush's veto by one vote, and no effort to override the veto was made in the House of Representatives.

The White House alternately opposed and sought to accommodate the Kennedy approach last year, finally vetoing the legislation. By contrast, the Administration this year has taken the initiative, introducing a "civil rights and individual opportunities" legislative package which combines greater civil rights protections with empowerment measures designed to expand economic opportunities for lower income Americans and to give them greater control over their own lives.

The Administration's proposals are a first step in shifting the terms of the debate over civil rights issues, away from divisive and counterproductive social engineering schemes and toward efforts to eliminate barriers to opportunity. They reflect the first attempt by a Republican administration to do something more in the civil rights area than merely to oppose or imitate liberal civil rights proposals. By linking with the concept of civil rights, moreover, such empowerment approaches as allowing parents to choose the public schools their children will attend, or permitting public housing tenants to manage their own projects, the Bush Administration is making an important contribution to the debate over how best to enable disadvantaged Americans to improve their situation.

More Commitment. The trouble is that while the White House links empowerment to civil rights, it has done so only rhetorically — and sparingly at that. For such a civil rights strategy to succeed, it will require far greater leadership and commitment than the Administration has given it to date. One problem is that the Administration so far has not pursued the empowerment strategy aggressively in key congressional votes. Another problem is that the Administration has balked at consolidating its entire package into one omnibus bill, to prevent congressional committees sidelining the empowerment proposals, and forcing the White House to debate civil rights entirely within the context of the revamped Kennedy bill. Still a third problem is that the Administration is hesitant to strengthen the empowerment provisions of its package and to make these provisions the centerpiece of its initiative.

The changing political dynamics on civil rights issues appear to favor a bold new approach. By pursuing an aggressive strategy linking civil rights and individual empowerment, the Bush Administration could turn the flank of those lawmakers who evidently wish to see *de facto* quotas in America, and, more important, who apparently do not care that recent civil rights measures have failed to improve the lives of many minorities and other disadvantaged Americans. George Bush now has the chance to prove that he can do far more for disadvantaged Americans than those who long have claimed to be their advocates.

THE CHANGED DYNAMICS OF THE CIVIL RIGHTS DEBATE

Much has changed since Kennedy early last year introduced a bill to overturn a series of 1989 Supreme Court civil rights rulings.¹ First, the Kennedy bill failed to attract veto-proof support in Congress: though the bill passed, it received fewer votes in each house than nearly any other major civil rights bill in the past decade.

1 The impact of these rulings is summarized in Clint Bolick, "The Supreme Court and Civil Rights: A Challenge for George Bush," Heritage Foundation *Background* No. 728, September 28, 1989.

Second, the specific provisions of the Kennedy bill turned out to be its undoing. Though some of these provisions were unremarkable (such as expanding the time within which individuals may challenge discriminatory seniority systems), other provisions clearly would have promoted racial quotas. The bill's most controversial provision would have made it virtually impossible for companies to defend their personnel practices against discrimination claims based solely on different statistical hiring rates for different groups.² This provision would have created a strong incentive for employers to avoid costly litigation by adopting *de facto*, though not official, quota systems.

Quota Approach. By creating a legal presumption that all differences in group outcomes are attributable to discrimination, the Kennedy bill thereby ignored other major problems that are experienced disproportionately by low-income minorities, such as inferior educational opportunities, welfare dependency, and crime. The bill's quota approach, in fact, flew in the face of findings by both liberal and conservative scholars in recent years that quotas and other forms of racial preferences primarily benefit relatively advantaged members of minority groups and do little to aid the disadvantaged.³ These flaws led a number of liberal writers and publications, including *The New Republic* and *The Christian Science Monitor*, to oppose a civil rights bill for the first time ever.

Third, supporters of the Kennedy bill misjudged the strong opposition among Americans to racial quotas. When Bush announced the principles behind his stance on civil rights at a Rose Garden ceremony last summer, he said he would sign a civil rights bill only if it met three standards: it must neither require nor encourage quotas; it must not violate the fundamental due process principle that the accused is presumed innocent until proven guilty; and it must not be so complex as to create a bonanza for lawyers. The Kennedy bill flunked all three standards. Still, the White House, apparently wanting to sign a civil rights bill at almost any cost, signalled its willingness to overlook Kennedy's failure to satisfy two of the standards. Only when Kennedy

2 This provision of the bill would have overturned the Supreme Court's decision in *Wards Cove Packing Co. v. Atonio*, 109 S.Ct. 2115 (1989), which allows plaintiffs to challenge employment practices on the basis of statistics, but requires plaintiffs to prove that such practices are truly discriminatory in that they do not serve a legitimate business justification. In such cases, plaintiffs do not have to demonstrate an intent by employers to discriminate, but merely that the practice challenged (such as tests or a high school diploma requirement) produces different hiring rates for different groups. The Kennedy bill would have placed the burden on the employer to prove himself innocent of discrimination, and, moreover, to show that his practices were not merely desirable or non-discriminatory, but actually necessary to the performance of the job — an almost impossible standard to meet. The Kennedy bill also would have overturned *Martin v. Wilks*, 109 S.Ct. 2180 (1989), which would have the effect of closing the courthouse doors to many victims of discrimination by limiting challenges to "consent decrees" that contain quotas. Although the bill states that its provisions are not intended to encourage quotas, its proponents consistently have rejected language prohibiting quotas.

3 See, for example, William Julius Wilson, *The Truly Disadvantaged* (Chicago: University of Chicago Press, 1987).

held out for language that could lead only to quotas did the frenzied negotiations between the White House and Kennedy collapse. Then last fall Bush vetoed the bill and the veto was sustained; the bill's supporters threatened retaliation at the polls in November.

The election results demonstrated, however, the shallowness of the bill's appeal and the extent of public opposition to quotas. Republicans who supported Bush's veto and made quotas an issue — such as Senator Pete Wilson, in his successful race for Governor of California, and Senator Jesse Helms in his successful re-election bid in North Carolina — used the issue to significant advantage.

At the same time, a post-election survey and series of focus groups sponsored by the Leadership Conference on Civil Rights, an umbrella group of approximately 200 organizations, revealed that while mainstream Americans favor efforts to expand opportunities for the less fortunate, they strongly oppose racial preferences. Americans also believe that quotas pervade American society.⁴

And fourth, there has been a marked increase in grass roots support for empowerment initiatives, such as parental choice in education and tenant ownership of public housing, as a means to improve the lives of minorities; these initiatives provide an alternative to the means enshrined in the Kennedy-Hawkins bill. One Republican who has benefited from his enthusiastic support for empowerment is Governor Tommy Thompson of Wisconsin, who won re-election last November as the first GOP candidate since 1946 to carry urban Milwaukee County. Thompson did so because of his support for such empowerment legislation in Wisconsin as the Milwaukee school voucher program for low income families.

Changing Liberals. These developments have helped create a political climate receptive to new thinking on civil rights. Both conservatives and liberals appear to be re-casting their traditional approaches to civil rights.⁵ The change on the liberal side is seen in the columns of William Raspberry, who is black. Raspberry supported the Kennedy bill, but last month urged Democrats to forget about the bill and move on to more important concerns. Argues Raspberry:

The problems most critically affecting black America are the joblessness and despair of our young people, the academic indifference of our children, the dissolution of our families, the destruction (by crime and drug trafficking) of our neighborhoods, the economic marginality of our

4 Thomas B. Edsall, "Rights Drive Said to Lose Underpinnings," *Washington Post*, March 9, 1991, p. A6.

5 See Jim Sleeper, "Moving Beyond Race to a Common Agenda," *Washington Post*, March 19, 1991, p. A19.

people. And the Civil Rights Act of '91 won't do a blessed thing about these problems.

Even worse, Raspberry warns, H.R. 1 "threatens to divide America along racial lines," just when "white America stands ready to support racial programs and policies it believes to be fair." Raspberry calls for "end[ing] production of the old model" of civil rights legislation exemplified by the Kennedy bill, and replacing it with "a new model whose chief marketing points would be its orientation toward solutions (as opposed to blame-assignment) and its unambiguous fairness."⁶

CIVIL RIGHTS AND EMPOWERMENT: THE CASE FOR LINKAGE

Empowerment is not a new idea. Neighborhood activists such as Robert Woodson, president of the National Center for Neighborhood Enterprise, and political leaders such as Housing and Urban Development Secretary Jack Kemp, for years have pioneered efforts to reduce barriers that separate low-income individuals from the opportunities available to other Americans.

The new dimension in the discussion is the linkage between empowerment and civil rights.⁷ Critics of an empowerment-based civil rights strategy predictably contend that civil rights and empowerment are separate concepts. These critics argue that Congress should pass civil rights legislation (that is, the new version of the Kennedy bill) first, and later consider empowerment proposals.⁸

Two-Century Struggle. But empowerment is not a logical "next step" after quotas and other forms of social engineering; empowerment is an alternative to such ill-conceived schemes. Viewed in historical context, empowerment is a logical third and final stage in America's two-century struggle for civil rights: the first stage was the abolition of slavery; the second was the legal guarantee of equal opportunity; and the third now is the elimination of barriers that prevent some Americans from controlling their own destinies.

In contrast to quotas, which focus on collective rights and attempt to compel equality of outcomes, empowerment emphasizes individual rights and equal opportunities. An empowerment-based civil rights strategy assumes that discrimination is not the only serious obstacle to opportunity afflicting

6 William Raspberry, "Why Civil Rights Isn't Selling," *Washington Post*, March 13, 1991.

7 A legislative strategy combining civil rights and individual empowerment was proposed by Clint Bolick and Mark Liedl in "Fulfilling America's Promise: A Civil Rights Strategy for the 1990s," Heritage Foundation *Backgrounder* No. 773, June 7, 1990.

8 This suggestion rings hollow considering the opposition of many within the civil rights lobby to such empowerment proposals as parental choice in education, repeal of the Davis-Bacon Act, funding for the Homeownership and Opportunity for People Everywhere (HOPE) proposal, enterprise zones, and anti-crime proposals.

disadvantaged members of minority groups today. Empowerment thus consists of strategies designed to eliminate these obstacles. Conversely, H.R. 1 ignores or glosses over these problems and presumes they will be solved by racial quotas.

A civil rights strategy based on empowerment thus offers a comprehensive solution to the problems of disadvantaged Americans. It would strengthen civil rights protections without embracing quotas. At the same time, however, it would increase access to quality education, provide economic incentives and other opportunities to escape poverty, and provide greater protection from crime. To do anything less, or to substitute quotas for the elimination of barriers to opportunity, is to compromise the promise of civil rights for all Americans.

THE BUSH ADMINISTRATION AND EMPOWERMENT

The Bush Administration has championed or endorsed a number of empowerment initiatives, such as tenant management and ownership of public housing, enterprise zones, and anti-crime legislation. Bush linked civil rights and empowerment for the first time in his Rose Garden civil rights speech last summer, declaring that empowerment, rather than quotas, should form the cornerstone of future civil rights policies. The Administration, however, then spent the remainder of the year either negotiating over or opposing the Kennedy bill, and did not present a comprehensive alternative approach.

Positive Alternative. When the veto of the Kennedy bill was sustained by one vote in the Senate, the Administration decided it needed to craft a positive alternative to it. News reports and off-the-record comments by Administration officials suggested that a civil rights and empowerment strategy would play a prominent role in the President's domestic policy agenda in 1991.

Bush unveiled his "civil rights and individual opportunities" package on February 27. The package includes expanded civil rights protections and empowerment measures in the areas of education, economic opportunities, home ownership, welfare reform, and crime. However, the overall package was not presented as an omnibus bill; instead, each of its components is, or will be, introduced as a separate bill. The President emphasized that the common theme of these proposals is to "expand opportunity and choice for all."⁹ Bush's announcement marked a potential turning point in civil rights policy by breaking from policies that have focused for decades on redistribution rather than the expansion of opportunities.

9 Remarks of the President in "Announcement of Opportunity Action Plan to Civic and Charitable Organizations," Washington, D.C., February 27, 1991.

The trouble with the Bush announcement is that his welcome and creative package has remained just rhetoric. The White House has offered little in the way of leadership or commitment since Bush's announcement. By not offering the package as an omnibus bill, the President runs the risk that the empowerment elements in his proposal will languish in committee while the legislative battle is fought in terms of H.R.1.

Worse still, empowerment advocates who worked closely with the Administration are puzzled and disappointed by the lack of action to promote its bold new strategy. With the exception of an aggressive education reform agenda championed by new Education Secretary Lamar Alexander — an agenda that includes empowerment of low-income parents through choice of public or private schools — the Administration has done little to take the offensive.

The White House in fact acts in a manner to suggest that it will place no political muscle behind and spend no political capital on the empowerment agenda. Indeed, White House actions suggest a lack of commitment.

Example: The term "empowerment" itself mysteriously has been stricken from the approved White House lexicon for speeches by the President.

Example: No linkage with civil rights was made when the President introduced his anti-crime bill.

Example: Jack Kemp, the most experienced and effective empowerment proponent in the Administration, has not been assigned a significant role in promoting the legislative package.

Example: The Administration has made no effort to sell its empowerment strategy where it can do the most good and where it can win new support — in the inner cities.

Example: When Kemp urged Congress to earmark funds in the fiscal 1991 budget to launch his HOPE program, he received no political support from the White House. And when Congress rejected the Kemp request, Bush remained silent.¹⁰

Example: When Congress blocked the Labor Department's efforts to issue new rules under the Davis-Bacon Act, to permit more "helpers" in government-funded construction projects — which would have opened up many job opportunities for young inner-city minorities — the White House could have rigorously condemned empowerment opponents in Congress, but did not do so.

Thus, once again, the Bush Administration is in danger of allowing the opposition to dictate the terms of the debate on a vital domestic policy issue. While the Administration spins its wheels, the forces behind the new Ken-

¹⁰Carl F. Horowitz. "Why Kemp's HOPE Program Should Be Funded," *Issue Bulletin* No. 162, March 12, 1991.

nedy bill are gaining ground. If the Administration fails to take the offensive on civil rights and empowerment, it may wind up fumbling away the chance to offer real hope and tangible opportunities to disadvantaged Americans.

WHAT THE ADMINISTRATION SHOULD DO

The President's civil rights and individual opportunities package covers a range of issues under the general headings of civil rights protection and empowerment. In each area the Administration has made a credible start, identifying and reducing barriers that separate disadvantaged individuals from opportunities. But in addition to demonstrating strong political support for the package, it should strengthen the empowerment provisions in the package. Even more important than the substance of any particular provision, however, is the imperative that the President establish vocally and aggressively the clear link between civil rights and empowerment. He should state unequivocally and frequently that protection from crime is a civil right; that freedom to pursue entrepreneurial or professional opportunities free from excessive government interference is a civil right; and that the opportunity of parents to choose where their children shall be educated is a civil right. The White House also should combine such empowerment initiatives with strengthened provisions to reduce actual discrimination by employers in a single omnibus bill.

Tangible Opportunities. Bush can take steps to make this civil rights vision a reality. The President should go to America's inner cities and present his vision directly to the people. He should challenge leaders of both parties to join in giving low-income people tangible opportunities. He should challenge mainstream Americans to extend to more disadvantaged individuals the opportunities that are essential to upward mobility. If he does these things, he can revitalize a noble quest for civil rights that for a generation has been drifting off course.

In addition, he should modify his package in several key areas. Among them:

1) Civil rights protections.

The White House has proposed several changes to strengthen existing civil rights laws, specifically in a bill sponsored on behalf of the Administration by minority leaders Robert Dole of Kansas, in the Senate (S.611) and Robert Michel, of Illinois, in the House (H.1375).

One troublesome aspect of this bill, however, is its provision to modify the Supreme Court's *Wards Cove* decision. Yet no modification is necessary, since *Wards Cove* created a level playing field in which plaintiffs can still win

valid discrimination challenges, but employers can successfully defend practices that are not discriminatory.¹¹ The Administration bill thus makes matters worse by tilting the playing field. The Bush bill would do this by placing on the employer the burden of proving its practices are justified by "business necessity." Although the Administration bill defines this term in a less onerous fashion than does H.R.1, this provision would make it difficult for the bill to satisfy the President's own Rose Garden standard that the legislation must not lead in practice to quotas. The Administration should defend vigorously the *Wards Cove* decision, not undermine it the way the Dole-Michel bill does.

Other aspects of the Administration bill are very reasonable. For instance, the bill would allow reasonable monetary damages to victims of on-the-job racial or sexual harassment, for whom existing remedies often are inadequate. The Administration also would allow arbitration as an alternative to litigation in employment discrimination cases, thereby reducing the costs to both parties and providing speedier justice to victims of discrimination. It also would extend protection of the Civil Rights Act of 1964 to congressional employees, ending the current double standard under which Congress exempts itself from laws to which it subjects the rest of the country.

How the Administration should strengthen its package. The administration should propose to re-define "affirmative action" as the term is used in federal regulations, contracts, consent decrees, and other official documents. Most Americans now assume affirmative action means racial preference. Indeed, it often has come to mean this in practice. Originally, however, affirmative action was a legitimate strategy to give disadvantaged individuals the tools necessary to compete on an equal basis. This original meaning should be restored. It would lead to such actions as basic skills training, literacy training, transportation of inner-city workers to suburban jobs, apprenticeships, and expanded recruitment — in short, a range of steps designed to increase the pool of employable disadvantaged individuals.¹² The original advocates of affirmative action did not conceive it as a racial preference scheme, and such preferences do nothing to help individuals overcome real disadvantages.

The Administration similarly should propose a streamlining of all federal civil rights laws and regulations. Laws passed at different times covering overlapping subjects, and regulations imposed by the many agencies charged with enforcing civil rights laws have created confusion among those seeking to abide by the law and those who seek to assert their rights under the laws. A comprehensive effort to harmonize federal civil rights laws and to make their enforcement more efficient and effective is long overdue.

11 See Bolick, *op. cit.*

12 See Clint Bolick and Susan Nestleroth, *Opportunity 2000: Creative Affirmative Action Strategies for a Changing Workforce* (Washington: U.S. Department of Labor, 1987).

2) Empowerment: parental choice in education.

The most devastating barrier to opportunity in the inner city is the public school system. Because it has a virtual monopoly on schooling of low-income youngsters who cannot afford to go elsewhere, public schooling often consigns such youngsters to inferior education in crime-ridden environments.

Education choice programs in Milwaukee, New York City's East Harlem, and other areas for the first time give parents the opportunity to select high quality educational opportunities for their children.¹³ Parental choice also forces public schools to compete for low-income youngsters and the funds they bring with them, creating a strong incentive for improvement. Probably more than any other single initiative, parental choice in education could help disadvantaged Americans gain the tools necessary to escape poverty.

To give low-income parents a chance to send their children to better schools, the White House plans to introduce an "Educational Excellence Act," which will offer funds to school districts to develop and introduce choice programs. This proposal would expand the benefits of choice that today are available only in a few cities.

How the Administration should strengthen its package. Rather than the carrot of increased funding, which is the inducement for introducing choice favored by the White House, the Administration should instead wield the stick of withholding funding. It should propose that any school district failing to offer quality educational opportunities to disadvantaged youngsters must as a condition of receiving federal education funds introduce choice programs for such youngsters. The Administration also should propose that parental choice rather than forced busing should be the preferred remedy in school desegregation cases.

3) Empowerment: economic opportunities.

In recent years, the movement of jobs to the suburbs, government regulations, rising taxation, and other factors have reduced the number of traditional entry-level jobs in the inner city, thus effectively cutting off the bottom rungs of the economic ladder. To stimulate job creation in the inner city, the Bush Administration has supported the "Enterprise Zone Jobs Creation Act of 1991." This bill (H.R. 23), introduced by Representative Charles Rangel, the New York Democrat, would direct the Secretary of Housing and Urban Development to designate fifty economically depressed areas as enterprise zones. This designation would spur investment and jobs in the zones by eliminating capital gains taxes on new business investments, providing other tax incentives for business development, and reducing taxes on low-income workers. By removing such burdens, jobs would return to places where

¹³ See Clint Bolick, "A Primer on Choice in Education: Part I -- How Choice Works," Heritage Foundation *Backgrounder* No. 760, March 21, 1990.

people need them the most. Giving young and unskilled inner-city residents steady jobs, regular paychecks, and inculcating good work habits would help solve serious problems ignored by the old-line approach to civil rights.

How the Administration should strengthen the package. Economic regulations imposed at every level of government — particularly by states and cities — prevent low-income individuals from starting businesses or entering occupations for which they are qualified.¹⁴ Laws regulating entry into professions from hairstyling to plumbing, limits on the number of taxicabs and garbage collectors, union wage requirements placed on government contracts by the federal Davis-Bacon Act, and similar state laws set arbitrary restrictions on entrepreneurial and employment opportunities. Such restrictions burden especially those currently outside the economic mainstream. These Americans are disproportionately minorities and the poor.

Bush should restore the civil rights guarantee of economic liberty — one of the most basic rights secured by post-Civil War legislation but left unprotected by the courts. He could do this by proposing an Economic Liberty Act. This bill would require governments to justify the limits they place on economic opportunities by demonstrating that such limits are reasonably necessary to protect a valid public health, safety, or welfare objective. The Administration also should support efforts to repeal the Davis-Bacon Act. This legislation was passed explicitly to reduce competition for government-funded construction jobs from black and Hispanic workers, and it continues to have that impact today.¹⁵

4) Empowerment: emancipation from dependency.

The current welfare system contains perverse incentives that lead to broken families and long-term dependency. The result is that those trapped in the cycle of poverty have few avenues of escape. One reason for this is that only a fraction of the funds intended to help the poor actually reach the poor, with the welfare bureaucracy taking the rest to provide “help” that actually encourages dependency.¹⁶ Worse still, the incentives of the system discourage work and contribute to the collapse of families by granting more assistance to households headed by single mothers than to poor but intact families.

14 See Clint Bolick, *Unfinished Business: A Civil Rights Strategy for America's Third Century* (San Francisco: Pacific Research Institute, 1990), pp. 47-91.

15 See Scott Hodge, "Congress vs. Minorities: The New Davis-Bacon Rules," Heritage Foundation *Executive Memorandum* No. 299, April 9, 1991. See also, Scott Hodge, "Davis-Bacon: Racist Then, Racist Now," *The Wall Street Journal*, June 25, 1990.

16 See Stuart M. Butler, "Welfare," in Charles Heatherly and Burton Yale Pines, eds., *Mandate for Leadership III* (Washington: The Heritage Foundation, 1989), pp. 265-267.

The empowerment approach would reform the welfare system in several key ways. It would, whenever possible, replace welfare bureaucracies with service organizations composed of the poor themselves, so that their interests would be better served. It would give the poor greater control over their own lives, through such things as parental choice in education. And it would foster the economic independence of the poor by eliminating the incentives in the welfare system that discourage work.

The Bush Administration, building on the foundation of the Reagan Administration, has proposed such an empowerment approach to welfare reform. For example, the Administration has emphasized resident management and ownership of public housing as an essential solution in helping poor people escape poverty by strengthening community institutions and fostering self-improvement. Pilot "urban homesteading" programs in Washington, D.C., St. Louis, and elsewhere have demonstrated the benefits of giving low-income people greater control over their housing. Where they exercise this control, crime drops, property values climb, and welfare dependency decreases.¹⁷

Resident Management. The Bush Administration last year won congressional approval for its HOPE (Homeownership and Opportunity for People Everywhere) program, which gives funds to resident management corporations and other entities to allow public housing tenants to gain ownership of their homes. The Administration this year proposed an acceleration of funding for HOPE, but that was rejected by Congress.¹⁸

The Administration also is proposing the "Community Opportunity Act of 1991." This would give local communities greater flexibility to tailor federal welfare benefits to the needs of the beneficiaries, by making it easier to obtain exemptions from government rules that currently thwart welfare reforms proposed by states. Freedom from bureaucratic regulations can result in a much more innovative and effective welfare system.

How the Administration should strengthen its package. Bureaucrats have a vested interest in preserving their powers by resisting the empowerment of the poor. The Administration thus should propose a statutory right to resident management and ownership of public housing, setting forth the precise conditions for management and ownership and sharply limiting the ability of public housing officials to frustrate these objectives. Unnecessary regulations hampering resident management and ownership, such as restrictions on evictions of tenants who persistently violate rules and Davis-Bacon wage requirements for resident employees, should be eliminated.

17 See John Scanlon, "People Power in the Projects: How Tenant Management Can Save Public Housing," Heritage Foundation *Background* No. 758, March 8, 1990.

18 Carl F. Horowitz, "Why Kemp's HOPE Program Should Be Funded," *Issue Bulletin* No. 162, March 12, 1991. See also Jack Kemp, "Democrats' Double Talk on Affordable Housing," *Washington Post*, April 11, 1991, p. A21.

The Administration also should press for far more sweeping reforms in the welfare system. It should propose legislation to tighten work requirements for those receiving welfare, and legislation to reduce taxes on very low-income working families. These measures would reduce the powerful disincentive to leave welfare and join the workforce. The Administration too should propose far more generous exemptions from federal rules for major state-sponsored welfare reform proposals.

5) Empowerment: freedom from crime.

The most basic civil right is personal security, and the most important duty of a government is to protect its citizens from crime. Yet freedom from crime is the least-protected civil right, particularly for those who live in poor, inner-city neighborhoods. Crime destroys schools, job opportunities, property, and lives.¹⁹

The President's anti-crime bill (S. 635), introduced by Senator Strom Thurmond, the South Carolina Republican, would strengthen law enforcement in several ways. It would extend the federal death penalty to several additional crimes. It would reform *habeas corpus* procedures, which today lead to seemingly endless death penalty appeals that clog the criminal justice system. It also would modify the "exclusionary rule," under which crime evidence is suppressed because police erred in obtaining it. This rule as currently applied often allows confessed criminals to go free. In sum, the White House proposals would increase the odds of bringing criminals to justice.

How the Administration should strengthen its package. Recognizing the devastating effect of crime in the inner city, the Administration should sponsor legislation to protect victims' rights in federal cases, and to encourage states to adopt uniform standards for victims' rights. Prosecutors should be required to take the victims' interests into account in the criminal justice process, in such areas as sentencing, parole, and plea bargaining, and to secure restitution for loss of life or property. The right of Americans to be free from crime should be accorded the same importance as society's interests and the rights of criminal defendants in the criminal justice process.

CONCLUSION

The obsession of the established civil rights lobby with enactment of a bill that will lead inevitably to racial quotas, threatens to turn civil rights into a zero-sum game in which one American's gain is necessarily another American's loss. This is not necessary. It is possible to pursue a civil rights strategy in which everyone wins. Such a civil rights strategy is based on em-

¹⁹ See Carl F. Horowitz, "An Empowerment Strategy for Eliminating Neighborhood Crime," Heritage Foundation *Background* No. 814, March 5, 1991.

powerment and provides a welcome alternative to the racially divisive features of H.R.1. As such, the Bush Administration's civil rights and individual opportunities package is the first step of a promising new strategy designed not only to better ensure equality of opportunity, but to assist those who are excluded from such opportunities.

Now Bush must go beyond the first step. He must mount an aggressive campaign to explain to Americans that empowerment and civil rights are linked closely together. He must give legislative form to that link by combining his empowerment proposals with his antidiscrimination proposals in an omnibus civil rights bill. He must give strong White House support to his Cabinet secretaries when they seek legislation on Capitol Hill to empower Americans. And he must continue to declare his adamant opposition to any measure that will in practice lead to racial quotas in employment. Strong public opinion and sound public policy have converged to create an unprecedented opportunity. This Administration has the chance to enter history as the administration that finally made good on America's promise of opportunity for all Americans. The Administration's decision can determine in large part whether the most disadvantaged members of society are allowed to participate fully and equally in the American Dream, or if America will become a land of competing racial groups vying for legal advantage.

Prepared for The Heritage Foundation
by Clint Bolick

Clint Bolick is director of the Landmark Center for Civil Rights, in Washington, D.C., and author of *Unfinished Business: A Civil Rights Strategy for America's Third Century* (San Francisco: Pacific Research Institute, 1990).

All Heritage Foundation papers are now available electronically to subscribers of the "NEXIS" on-line data retrieval service. The Heritage Foundation's Reports (HFRPTS) can be found in the OMNI, CURRNT, NWLTRS, and GVT group files of the NEXIS library and in the GOVT and OMNI group files of the GOVNEWS library.