

Uncle Sam vs. Jim Crow

THE CIVIL RIGHTS ERA Origins and Development of National Policy 1960-1972

By Hugh Davis Graham
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By **David J. Garrow**

MOST BOOKS on America's civil rights years focus either on the famous public dramas that occurred in towns such as Birmingham and Selma, or on the black activists and organizations who represented the cutting edge of the southern freedom struggle. Except for several books that offer legislative histories of the 1964 Civil Rights Act and the 1965 Voting Rights Act, scholars so far have devoted relatively little attention to studying how the federal government—apart from the FBI and the White House—responded to the civil rights revolution. In particular, aside from several articles in law reviews, little has been said about how federal agencies defined and implemented many of the most potent provisions of those landmark statutes, especially the 1964 Act.

Now Hugh Davis Graham, a historian who teaches at the University of Maryland, Baltimore County, offers a comprehensive account of the evolution of executive-branch civil rights policies. Although his book includes several chapters concerning the post-1964 development of gender discrimination issues and two other chapters focusing upon voting rights, Graham's emphasis is on federal efforts to combat racial discrimination in employment. Although his extensively researched survey of these efforts reaches back all the way to the first fair employment executive order issued by Franklin D. Roosevelt in 1941, Graham focuses on the creation and expansion of the Equal Employment Opportunity Commission (EEOC), an agency born of the 1964 Act.

Graham's book will be essential reading for anyone whose professional work involves federal anti-discrimination efforts, but his account may well be slow going for anyone not eager to know the early history of the EEOC or the Office of Federal Contract Compliance. "Policy history" is one of the most notable growth areas in American historiography, but the road to important and insightful conclusions is inescapably strewn with lengthy explanations of the difference between "Order No. 4" and "Revised Order No. 4."

Graham has every intention of rising above the minutiae, and on some occasions he succeeds. One of his most notable interpretive efforts concerns the relative continuity, rather than disjuncture, between Nixon and Johnson administration civil rights enforcement efforts. "Nixon confirmed the Kennedy-Johnson legacy in civil rights law in much the same way that Eisenhower had confirmed the New Deal—not by embracing it, but by accommodating to it." In the long view, Graham writes, "the real Richard Nixon was not only the demagogue of busing and the hypocrite of quotas" but "was also the expedient and successful defender of the Philadelphia Plan," which mandated racially proportional employment, "the careful but quiet enforcer of school desegregation in the South," and "the architect of judicial empowerment for the EEOC." Graham repeatedly acknowledges that most credit for those latter policies should go to cabinet or sub-cabinet officers, and not to presidential initiatives, but he nonetheless risks overstating his case.

Indeed, Graham's most fundamental and important interpretive emphasis is how relatively autonomous most of the executive branch agencies—what he terms "the subgovernment of regulatory administration"—were able to become in the years after 1965. Graham's best example of this pattern is the striking story of the extent to which the EEOC, with a helping hand from Warren Burger's Supreme Court in the 1971 case of *Griggs v. Duke Power*, was able to transform to the point of outright reversal some of the statutory language of the 1964 Act that otherwise would have extensively limited the EEOC's enforcement powers.

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OTHER SCHOLARS, particularly political scientist Theodore Lowi, have previously highlighted what Graham terms "the advantages over Congress that accrue to permanent bureaucracies in a contest of administrative aggrandizement." Graham wants, however, to use his story of the EEOC's success, and its judicial helping hand, to illuminate what he calls "a fundamental shift in authority and power since 1965—one that had been determined more in the federal courts and the agencies of the permanent government than in the White House or the halls of Congress." That change, he explains, involved "a deep, national shift in the American administrative state . . . away from the consolidation that followed the New Deal and World War II, and toward a regulatory apparatus that paradoxically combined disaggregation with growth and with even greater intrusiveness by government." Although Graham characterizes this shift as "quiet, massive, unanticipated, and largely unperceived," his explanation is not wholly persuasive.

In the civil rights enforcement context, Graham believes that this shift of governmental authority away from elected officials and towards bureaucratic regulators was the crucial influence in moving the federal government "from a goal of equal treatment to one of equal results." Graham is ambivalent about this shift, and about what he calls "the growing insider role of the civil rights lobby within the executive establishment." Since he does not discuss to what degree his interpretations would be altered by executive-branch developments during the Reagan administration, the direct links Graham would draw between his Nixon era analysis and later years remain partially unclear. Nonetheless, Graham concludes this useful study by observing that the civil rights era has had a "mixed legacy" and that "the organized beneficiaries of affirmative action programs have entrenched themselves with no less energy than have the beneficiaries of similar group-based entitlements among farmers, veterans, homeowners, rentiers, [and] the elderly." ■