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## BICENTENNIAL REFLECTIONS: A CALL FOR STATE LEADERSHIP IN CIVIL RIGHTS\*

*Governor Jerry Apodaca\*\**

### I. Introduction: The Bicentennial Challenge

As we in the United States prepare to commemorate our bicentennial, we are a nation troubled by economic recession at home and uncertainty abroad. This country might consider itself the model of a functioning democracy, but our practices often do not conform to our self-image. We have yet to transform the principles of freedom and equality, the very foundation of democracy, into realities for all people. We still have far to go to become a nation where mutual respect dominates among people and equality of opportunity is extended to all.

This is not to say we have not made progress. America has made great strides since 1776 when we were virtually impotent internationally, and domestically full rights were extended only to the few. Our history reveals a country where opportunities for education were limited, slavery and servitude were common, and large segments of the population were disenfranchised. From the changed perspective of 1976—public education extended virtually to everyone, slavery a relic of the past, and voting rights guaranteed by law—we can pause with pride. But only for a moment; these past accomplishments are not enough to carry us into the future.

The bicentennial is a most appropriate time to ponder those truly revolutionary ideals which led to the founding of this country. Those ideals of freedom, justice, and equality provide us with goals which we should commit ourselves to implementing. They are the essence of the "American Dream," a dream that despite past accomplishments remains still a dream.

Just at the time when expectations for a just and civil society have touched Americans from all walks of life, we seem most unable to fulfill them. As we ponder our unfulfilled revolutionary heritage, we should rededicate ourselves to making the American Dream a reality not just for a few but for all.

While the responsibility to extend social justice belongs to all of us, it falls particularly heavily upon those in government. Our country was founded on the principle that government at all levels should promote and protect the interests of those it represents. It has not always done so, and confidence in elected officials is now perhaps at an all-time low. If we are to succeed as a nation, we must restore this confidence. Those in government must demonstrate that it is responsive, that it is indeed the legitimate guarantor of the rights and freedoms of all. This language will sound to some like political rhetoric, posturing without substance; but this reaction only illustrates the depth of our cynicism and accentuates the importance of returning government to the people. Those of us in government must show by our actions that we indeed are sensitive to and are working for the interests of all our constituents.

\* This lecture was presented April 17, 1975, at the University of Notre Dame.

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## II. The Principle of Equality

### A. *History of Equality in America*

As a public official and a member of a minority group, I would like to address one specific area which deserves the attention of those of us in state government. The principle and practice of equality is fundamental to a truly democratic society. This principle is repeatedly expressed in the documents which support our society and is constantly affirmed in speeches and public announcements by Americans everywhere. Unfortunately the principle has yet to be fully translated into practice. The concept of equality—which in its fullest extension implies more than the absence of discriminatory and prejudicial actions and attitudes—has yet to be transformed into reality for most Americans. As long as discrimination and prejudice continue in any form, we have failed as people and as a nation. And this failure means more than an unfulfilled political ideology; it means crime, malaise, and a culture festered with fear and mistrust.

For much of our history, this nation—through coddling, coercion, and even outright terror—was able to contain the elements of discontent. But our society as a whole and especially those people who have been victimized by discrimination and prejudice are becoming more cognizant of their rightful positions. Minorities have begun to realize that discrimination extends to more people than previously recognized. It is directed against people not only because of ethnic or racial background but also because of age, sex, education or the lack of it, socio-economic status, etc. Slavery, while a tragic and stark example of inequality in our country, may be no more pernicious than subtler forms of repression. And now with growing awareness of the breadth of inequality, discontent and disruption are inevitable. Only when sufficient steps are taken to remove both the effect and cause of prejudice will our society be healthy.

In the past 20 years, and especially in the past 10, we have made great strides in the area of civil and human rights. More and more minorities—once effectively, if not legally, disenfranchised—have gained political access. We have witnessed increased minority participation in all aspects of our society—political, economic, and social. Yet the process is far from complete. Equality of opportunity is not a reality; discriminatory practices still continue, and while they may be less blatant, more subtle, more devious, they are nonetheless real.

### B. *Federal Leadership*

In recent decades, the federal government has led the way to some dramatic advances in equality of opportunity in American life. The United States Supreme Court in its landmark decision *Brown v. Board of Education*<sup>1</sup> signaled the advent of a new era in civil rights. Implementation of this decision required direct action by civil rights groups, federal intervention, and congressional action, and is still ongoing. Nevertheless, by striking down the “separate but equal” doctrine of *Plessy v. Ferguson*,<sup>2</sup> *Brown* provided a legal wedge to crack the doors of dis-

1 347 U.S. 483 (1954).

2 163 U.S. 537 (1896).

crimination. Federal legislation, such as the Civil Rights Act of 1964<sup>3</sup> and the Voting Rights Act of 1965<sup>4</sup> among others, further advanced the principle of equality by applying the guarantees of the fourteenth and fifteenth amendments to the United States Constitution.

These early advances, while promising initially, have had a checkered progress. Recognition of the applicability of these guarantees to minorities other than southern blacks was slow in materializing and, indeed, is far from complete. Class action relief has been virtually unattainable for certain minorities due to the courts' reluctance to recognize these minorities as legally cognizable classes. Chicanos, for example, have failed to acquire legal recognition as a national class and generally have had to rely on proof of local discrimination to secure relief.

Thus, while federal action has provided a legal framework for the extension of civil and human rights, the sensitivity of the federal government to the broader and more fundamental aspects of civil and human rights seems to be diminishing. The people most subject to prejudice and discrimination are usually those at the lower end of the socioeconomic scale, and recent actions serve to only intensify their problems. Cutbacks in federal spending for social programs, and Presidential vetoes of such critically needed legislation as the Emergency Employment Bill and the Housing Bill, appear to signal a retrenchment by the federal government. These measures, rationalized in the name of limiting the national deficit and controlling inflation, reflect a reliance on often archaic and unrealistic economic theories and an absence of concern for the human element involved. People are the "economy." The economy is not some abstraction, nor is it Wall Street and big business, but rather it is the people whose labor produces the goods and services and profits. Policies and programs which neglect their needs are economically unsound and discriminatory. By continuing the economic suppression of people, by perpetrating fear of job loss and competition for scarce jobs, the federal government is contributing to prejudice and discrimination. A climate of economic instability and unrest dominated by fear is one which is conducive to the continuation and even intensification of prejudicial and discriminatory actions and attitudes. In denying the poor, an economic class into which many ethnic and racial minorities fall, the economic opportunities and social programs which afford them escape from the vicious cycle of poverty, we are contributing to the still prevalent attitude that somehow these people are inferior.

But it is neither possible nor desirable to turn back the clock in the area of civil and human rights. Even if the federal government is becoming less responsive to the more fundamental economic and social factors of prejudice and discrimination, the people victimized by these actions and attitudes are cognizant that remedies are available. Unfortunately when those in positions of authority ignore their responsibilities, less peaceful and acceptable forms of redress become fashionable. Even now, minorities have too often found that violence is the most effective political instrument, and the quickest and surest means of focusing

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<sup>3</sup> 28 U.S.C. § 1447(d), 42 U.S.C. §§ 1971, 1975a *et seq.* (1970) (originally enacted as Act of July 2, 1964, Pub. L. No. 88-352, 78 Stat. 241).

<sup>4</sup> 42 U.S.C. § 1973 *et seq.* (1970) (originally enacted as Act of August 6, 1965, Pub. L. No. 89-110, 79 Stat. 437).

national attention on their problems. The current prevalence of violence, historically the *ultima ratio*, clearly demonstrates that the process of accommodating the needs of all citizens is far from complete. Even our law, which is more form than content, indicates this inadequacy. While the law represents considerable progress, inequities still obviously exist: certain minorities have been unable to secure class action relief, they have had to fight for their rights on an expensive and time-consuming case-by-case basis, and the ratification of such a much-needed constitutional amendment as the Equal Rights Amendment has yet to be secured.

But we must recommit ourselves to ensuring that this process is completed, and we in government have the responsibility of demonstrating, clearly and indubitably, that government is capable of fulfilling all aspects of civil and human rights. But in light of growing federal retrenchment, the challenge of moving into the forefront in this area now belongs to state governments.

### B. *The States: Opportunity to Take the Initiative*

State governments have changed significantly since earlier in this century when the federal government assumed leadership in civil and human rights quite literally by default. State governments were simply unwilling to do what was necessary. Although human rights commissions were established in a few states as early as the 1940's, their scope was narrow; in general, the states were passive or even opposed to the extension of equality. Now, however, the ambience of state government has altered. The right to vote has been extended, and minorities have gained political access; thus, state governments can no longer afford to represent the interests of a limited constituency. Furthermore, state government can be closer and more receptive to its constituents than a distant and cumbersome federal bureaucracy.

States are not strangers to leadership in advancing social causes. Many of the earlier progressive movements were born and nurtured in the states, and many state leaders—Robert La Follette, Teddy Roosevelt, Gilford Pinchot, among others—have been in the forefront of reformist crusades. Now the states have the opportunity to reclaim their leadership role. State leaders, working closely with their constituencies, have the responsibility to ensure the extension of equality of opportunity. If we can end discrimination in practice, then we can look to the end of discriminatory attitudes. These attitudes exist in the minds of people and cannot, of course, be legislated away. Over the long run, however, behavior can shape attitudes. If we can eliminate overt discriminatory practices—and we can through legislation and its rigorous enforcement—then attitudinal change will follow.

If state government is to fulfill its responsibility to guarantee civil and human rights, the commitment must be much more than verbal. State government must close the gap between theory and practice, and eliminate philistinism as well. We can no longer express our commitment to the ideal of equality and then by our actions show that this commitment lacks substance. We must eliminate or at least control our own prejudices. This is not only morally right, but

politically expedient. State officials no longer can afford to cater to the few, because those previously excluded from the political process now have the political sophistication to recognize such superficiality, however well-disguised by rhetoric, and the political clout to cast out those who traffic in illusions.

### III. Education

One area in which the states can do much to extend equality is education. In a democratic society based on the principle of equality, the right to an education is fundamental and should not be abridged because of birthplace, heritage, or any factors other than one's abilities and desire. Education can be the path out from the cycle of poverty which entraps so many of our people. Education is a great equalizer of men. Equality in education does not mean that everyone attains the same goal or achieves equal results, but it does mean equality of opportunity—the chance for each individual to fulfill his or her potential.

But again, as in other areas of civil and human rights, we have not fully transformed the principles of equality of educational opportunity into a reality for all citizens. This transformation has been blocked by economic barriers. Individual economic restraints have severely limited minority educational access, particularly to postsecondary education. Furthermore, the economic restraints of a localized economy or the narrow financial base of a local property tax discriminate against low-income localities and other enclaves of poverty.

Strides to correct the inequities of our educational system are being made. Evidence of this trend is found in the policy statement on equal opportunity in the Education Act Amendments of 1974:

Recognizing that the Nation's economic, political, and social security require a well-educated citizenry, the Congress (1) reaffirms, as a matter of high priority the Nation's goal of equal educational opportunity, and (2) declares it to be the policy of the United States of America that every citizen is entitled to an education to meet his or her full potential without financial barriers.<sup>5</sup>

Not surprisingly, the federal government has led the way in making educational equality a national priority for the past two decades. Now it is time for the states to move to the forefront. The federal government should not be expected to act alone; education is, after all, primarily a state responsibility.

The people of New Mexico and their elected representatives are working to provide the opportunities for a quality education for all New Mexicans, and have made considerable progress. Long before any federal court mandated such a policy, New Mexico was working toward equalized financial support for public schools. A child's right to be educated cannot be tied to the economic prosperity of the community in which he lives. Local economies fluctuate, but the needs of children do not, and financial support of the educational system should be based on those constant needs.

We in New Mexico are also reshaping our postsecondary institutions to

5 20 U.S.C.A. § 1221-1 (Supp. 1975).

provide access to all who wish to learn. Through student assistance programs, we hope to ensure that no student will be barred from postsecondary education for economic reasons. We also recognize that the educational needs and talents of our population are diverse, and we are now trying to implement postsecondary educational alternatives. The aim is to provide junior colleges and technical vocational schools as well as universities. In addition, we are trying to reach a new clientele—adults of all ages, military personnel, and minorities—so that they will have a greater range of choice for their futures.

New Mexico has not resolved all of its educational problems, nor is equality of educational opportunity a reality in the state. But we are moving forward. We have recognized the state's obligation to provide educational opportunities to meet the needs of all its citizens, and we are making changes that cut away at the inequalities in our educational system. We are a case in point of sincere state concern over helping people realize all their rights.

#### IV. Employment

It is incumbent upon state government to take the initiative not only in equalizing educational opportunities but in implementing other civil and human rights as well.

In the area of equal employment, state government can set the example for the private sector. Women, ethnic and racial minorities, and certain age groups are victimized by employment discrimination in the public and private sectors. That such discrimination persists despite legal guarantees at both the federal and state levels has been explained in many ways: educational patterns, traditional roles, and location outside the prime job market areas. Such variables may indeed account for some of the inequities in employment, but they do not excuse their continuation. The states must take strong steps to ensure fair and equitable treatment of all in the employment process.

In New Mexico, a state of minorities, the issue of equal employment opportunities has fostered considerable concern. With an approximate population distribution of two percent black, 10 percent Indian, 40 percent Spanish-surnamed, and 48 percent white,<sup>6</sup> equality of opportunity is not yet a reality for many citizens. Even state government employment reflects this. The most recent report on New Mexico state government employment provides the following breakdown: 39.5 percent white, 56.4 percent Spanish-surnamed, 1.9 percent Indian, 0.9 percent black, 0.2 percent Oriental, and an additional 1.1 percent whose ethnic or racial background is not stipulated on employment records.<sup>7</sup> Approximately 42 percent of the state work force is female, a percentage which corresponds with the number of women in the job market.<sup>8</sup>

Certain problems are immediately evident; for example, Indians are under-

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6 U.S. BUREAU OF THE CENSUS, CENSUS OF POPULATION: NEW MEXICO (1970). Information on Indian population was also obtained from the files of the New Mexico Indian Affairs Commission.

7 NEW MEXICO STATE PERSONNEL OFFICE, 1975 MINORITY REPORT (1975) (available in the New Mexico State Personnel Office).

8 *Id.*

represented. This could be explained by lower educational levels, location outside the prime job market area, and higher wages for the better educated Indian in private industry and the federal government. There is some truth in these explanations. For instance, relatively few state jobs are available in the three counties with the largest Indian populations: McKinley (132 jobs), San Juan (159), and Sandoval (21).<sup>9</sup> However, in these three counties the percentage of Indians employed by the state rises significantly from the overall state percentage of 1.9. In McKinley County, 39.4 percent of state jobs are filled by Indians; in San Juan, 22 percent; and in Sandoval, 14.3 percent.<sup>10</sup>

The high percentage (56.4) of Spanish-surnamed individuals employed by the state can be similarly explained. The largest number of state jobs are to be found in three counties: Santa Fe (4645 jobs), Bernalillo (2040), and San Miguel (1231).<sup>11</sup> The populations of two of these counties are predominantly Spanish (Santa Fe with approximately 65 percent Spanish and San Miguel with approximately 82 percent). The Spanish-surnamed population of Bernalillo, at 39 percent, is also significant.<sup>12</sup>

Such explanations, however, do not excuse inaction on the part of state government. If New Mexico's employment statistics are examined in depth, patterns of discrimination emerge. While 55.2 percent of "Anglo" employees fall in the lower paid, loosely termed "nonprofessional" categories, the percentage rises dramatically for Spanish-surnamed (82.4 percent) and Indian (86.2 percent) employees.<sup>13</sup> The data on male-female employment is also disturbing: 63.0 percent of all men employed are in these "nonprofessional" jobs, while 83.1 percent of all women hold such jobs.<sup>14</sup> Especially for women, opportunities for job mobility have been limited. Once again, there are explanations: education, traditional roles, and better wages elsewhere. But these are not sufficient.

New Mexico is moving to eliminate discriminatory employment practices in state government and to remove the need for these "explanations." This movement will set an example for the private sector. As previously noted, the state is also working steadily to ensure equality of educational opportunity. To encourage educational improvement and hence offer increased opportunities for job advancement, New Mexico state government has a plan which permits paid educational leave, and agencies are encouraged to arrange work schedules so that employees who wish to pursue their education on a part-time basis can do so. Postsecondary educational opportunities for state employees, as well as for the general public, in Santa Fe and surrounding areas will be enhanced in the fall of 1975 with the opening of a branch of the University of New Mexico in Santa Fe. This center will offer a graduate program and a schedule of courses of particular interest to state employees. The New Mexico Legislature recently approved a 10 percent salary increase for state employees. Higher salaries for public employees will hopefully stimulate higher salaries for private employees

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9 See note 6 *supra*.

10 See note 7 *supra*.

11 *Id.*

12 See note 6 *supra*.

13 See note 7 *supra*.

14 *Id.*

and will help to prevent the emigration of talent to other states where better opportunities might be available.

To encourage correction of the inequities in state employment, the New Mexico Human Rights Commission has recently been given the responsibility to evaluate and oversee implementation of affirmative action plans for all state agencies. Although the 1972 amendments<sup>15</sup> to the federal Equal Employment Opportunity Act of 1964 require affirmative action plans, these plans too often have been weak and ineffective. While there is currently in New Mexico no specific state mandate to file affirmative action plans, the statutory authority of the Human Rights Commission is sufficient to allow it to determine what affirmative action should mean to New Mexico. The idea of bolstering this authority by executive order is under consideration.

The Human Rights Commission is now effecting an intensive review of all state affirmative action plans. To ensure that these plans are not merely written exercises but are vehicles for the extension of equality of opportunity, the Commission is implementing procedures for affirmative action audits, on-the-spot inspections, and the creation of fair grievance committees in state agencies.

## V. Conclusion

These few examples illustrate the steps New Mexico state government is taking to transform the principle of equality into a reality for all citizens. It is time for all state governments to become the instruments for this transformation. If we fail in this responsibility, we must accept the consequences of our failures. Those consequences may be more shattering than many realize; a people aware of their rights will not tolerate a political system insensitive to those rights.

We have spoken of the civil rights of individuals in society, but we can also look at the issue as one of the rights of individuals in a civilized society. Some 200 years ago, courageous and inspired individuals fashioned a concept of a just society, a concept which has been broadened and strengthened through the intervening years. As we approach our bicentennial, the time has come to make that concept a reality for all Americans.

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15 42 U.S.C. § 2000e *et seq.* (Supp. II, 1972), *amending* 42 U.S.C. § 2000e *et seq.* (1970).