INTRODUCTION

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I always welcome the opportunity to say a few opening remarks at these annual colloquia of the *NYU Review of Law & Social Change* for several reasons. First, it provides me with an opportunity on one formal occasion to express my admiration for and appreciation of the work of the students who make up the staff and the board of the *NYU Review of Law & Social Change.* It is a first rate publication. It has made a significant impact in many areas of the law and it has fulfilled the initial mission which led to its creation, which was to have a journal dealing with the kinds of frontier issues in the fields of individual rights, social welfare, and human rights that traditional law journals and law reviews would not encompass. And so this is a word of thanks on behalf of the law school community and from me personally to the editors of the *Review,* and particularly the editors-in-chief, Lee Pershan and Christine Merriman, for the work that they have done.

I have a personal identification with these colloquia. The first Colloquium was on the subject of women and pornography. While I was teaching the law of obscenity one semester, I asked a woman student to present the perspective of the woman's view on the subject of obscenity and pornography. The subject of obscenity, when it is considered in a constitutional law class, particularly at this law school, usually has only one side—the pro-first amendment side. The class was, therefore, jolted by learning that there could be a sharp difference of opinion among groups that would traditionally be defined as liberal.

That led me to suggest to the *NYU Review of Law & Social Change* that perhaps we have a colloquium on the feminist view of pornography and that we institute a series of colloquia dealing with subjects that do not divide themselves along traditional liberal and conservative lines, but deal with issues on which those with basically similar outlooks could nevertheless disagree.

That mission has been fulfilled, and the topic that has been selected for this Colloquium is one that is particularly suitable—the subject of employment discrimination in the Eighties.

As a constitutional law teacher, I have observed what happens when a constitutional issue is taken over by legislation. This is generally a welcome development. One reason constitutional law becomes overly complex is because legislatures do not act. When the legislatures neglect individual rights,

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the courts step in. In the school desegregation area there was a century of legislative neglect. The federal courts properly moved into the area, and since the issues continued to be controversial, the legislatures stayed out. Courts were forced to resolve complex legal issues and to fashion detailed remedies. Critics of the courts would then ask, "Why are we constitutionalizing issues that really ought to be left to elected legislatures?" Well, the reason was that the legislatures abdicated their role as protectors of individual rights.

In the field of employment discrimination I think there has been a very healthy development in the other direction. Congress has acted. The result is that so many of the issues that will be discussed this afternoon and tomorrow during this outstanding program reach the courts in the form of legislative and administrative interpretations, and can be decided in that context rather than as constitutional judgments, which should involve broader issues. Of course, legislative issues are influenced by, and in turn influence, constitutional judgments, but the main drama of today's program is being played out on the stage of legislative and administrative interpretations and not solely or primarily in the field of constitutional adjudication. This program indicates the value of that type of approach.

I would now like to express my thanks to Paulette M. Caldwell, of our faculty, for the great assistance that she has provided to our student editors in this program. It should be a great program and I am pleased to have you here. I look forward to spending more time with you.