Awakening from the Dream

Civil Rights Under Siege and the
New Struggle for Equal Justice

Edited by

Denise C. Morgan, Rachel D. Godsil, and Joy Moses

CAROLINA ACADEMIC PRESS
Durham, North Carolina
CONTENTS

Foreword xi
Introduction xv

Part I
The Rehnquist Court’s Federalism Revolution and Civil Rights

1 What is Federalism and What Does It Have to do with Civil Rights?
   Federalism: The Double-Edged Sword of Liberty and Oppression 3
   Paul Finkelman

2 The NCRCR Conference Introduction
   Reversing the Retreat on Civil Rights 25
   Wade Henderson and Janell Byrd-Chichester

Part II
The Impact of the Federalism Revolution on the Lives of Americans

3 African Americans
   The Rehnquist Court, the Resurrection of Plessy, and the Ever-Expanding Definition of “Societal Discrimination” 39
   Lia B. Epperson

4 Latinos
   Un Pasito Pa’lante, Un Pasito Pa’tras: Latinos and the Rollback of Civil Rights 55
   Sandra Del Valle

5 Asian Americans
   Asian Americans under the Rehnquist Court: A Protracted and Ongoing Struggle for Justice and Recognition 67
   Vincent A. Eng and Julianna Lee
6 Women
Making a Federal Case out of Women's Concerns: The Supreme Court's Hostility to Civil Rights for Battered Women
Emily J. Martin

7 Older Americans
"Narrowing the Nation's Power": The Impact on Older Americans
Simon Lazarus

8 Americans with Disabilities
Judicial Revision of the Americans with Disabilities Act of 1990: Mere Fine-Tuning? Or Ideological Backlash?
Caroline Palmer

9 Sexual Minorities
The Federalism Revolution and the Sexual Minority Federal Legislative Agenda
Arthur S. Leonard

10 Language Minorities
Rose Cuison Villazor

11 Immigrant Workers
The Rollback of Immigrant Workers' Civil Rights
Marielena Hincapié and Ana Avendaño-Denier

Part III
The Impact of the Federalism Revolution on Access to Courts to Protect Essential Services and Fundamental Rights

12 Public Education
Reneging on the Promise of Brown: The Rehnquist Court and Education Rights
Denise C. Morgan

13 Health Care
The Civil Rights Rollback: It's Bad for Your Health
Jane Perkins
14 The Environment
Permitted to Pollute: The Rollback of Environmental Justice 193
Olga Pomar and Rachel D. Godsil

15 Our Criminal Justice System
Federalism, Race, and Criminal Justice 205
Michelle Alexander

16 Our Civil Liberties
Who's Watching the Home Front? 219
Barbara J. Olshansky

17 Immigration
Abuse of (Plenary) Power? Judicial Deference and the Post-9/11 War on Immigrants 229
Lori A. Nessel and Anjum Gupta

Part IV
The Federalism Revolution: Principle or Politics?

18 It's Not About States' Rights
Double-Talk by the Activist Supreme Court Majority 239
Herbert Semmel

19 Workers' Rights
Federalist Hypocrisy and the Preemption of State Labor Laws 251
Nathan Newman

Part V
Strategies for Reversing the Civil Rights Rollback

20 Lessons from the Right
Fighting the Civil Rights Rollback: Lessons from the Right 267
Lee Cokorinos and Alfred F. Ross

21 Restoring the Balance of Power in the Federal Courts
Saving the Courts 283
Susan Lerner
22 Revitalizing Federal Civil Rights Legislation
Protecting Ideals of Equality and Justice for All: Progressive Legislation in a Conservative Era
Joy Moses

23 State Reform Strategies
State Strategies to Reverse the Civil Rights Rollback
Dennis D. Parker

24 Activist Strategies
We Shall Be Moved: Community Activism as a Tool for Reversing the Rollback
Andrew Friedman
Robert García & Erica Flores Baltodano
Julie Hyman, Brad Williams & Tracie Crandell

25 Student Advocacy
Building a Student Movement: Lessons Learned and Suggestions for the Future
Lisa Zeidner and Luke Blocher

26 Litigation Strategies
Lawyering and Litigation during the Rollback:
Legal Strategies to Pursue Social Justice
Marianne Engleman Lado

Appendix A
Glossary of Terms

Appendix B
Websites with Information about Federal Judicial Nominations

Appendix C
The Constitution of the United States

About the Contributors
Index
Table of Cases