Case Western Reserve Law Review

Volume 13 | Issue 1

1961

Housing--The Northern Civil Rights Frontier

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[Focusing upon state and municipal legislation designed to combat housing discrimination, the author describes the strong points and shortcomings of present day housing codes. His treatment of the topic begins with a discussion of the factors that have created the problem, progresses to an examination of housing discrimination from a constitutional viewpoint, and concludes with the opinion that fair housing legislation provides the opportunity to change the pattern of segregation. The author warns that the success of this legislation depends upon a drive by minority groups to test its effective enforcement. —Ed.]

INTRODUCTION

Housing has become the chief civil rights issue throughout the nation outside the South[1] — socially, politically, and legally. A number of factors have combined to bring this about.

First, there has been a steady increase in the extent and severity of housing discrimination against minorities generally, but particularly against Negroes.[2] This had already been a problem of concern prior to the end of World War II.[3] Since 1950, census and other data have established beyond question that non-white housing is worse than white housing on every count.[4] With the whole housing market dominated by patterns of discrimination, non-whites have been confined

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1. In the South, of course, offically enforced discrimination and segregation are still the major problems. Until the state-imposed patterns of exclusion from the ballot and government service and segregation in schools and other institutions are ended, attention will be diverted from the lesser problems that loom so large in the North. Indeed, segregation in housing is more common in the North than in the South. In 1944, Myrdal pointed out that "Residential segregation . . . is relatively more important in the North than in the South, since laws and etiquette to isolate whites from Negroes are prevalent in the South but practically absent from the North, and therefore institutional segregation in the North often has only residential segregation to rest upon." MYRDAL, AN AMERICAN DILEMMA 618 (1944). Moreover, in the South, a large part of the Negro population lives in unsegregated rural areas. Others live in the older cities like Charleston and Savannah where mixed housing dates

to the areas most in need of clearance and rehabilitation.[5] One of the most important studies of the subject made in recent years concluded that, "Segregation barriers in most cities were tighter in 1950 than ten years earlier," and that we are now seeing "an increasing separation of racial groups as non-whites accumulate in the central city areas abandoned by whites and the latter continually move to new suburban subdivisions from which minorities are barred."[6] One finds all over the country the pattern of the central city with ever increasing ghettoes surrounded by a ring of completely segregated suburbs.[7]

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back to the days of slavery. *Id.* at 621; WEAVER, THE NEGRO GHETTO 8-9 (1948). However, it has been found that "Southern cities as they develop and grow are following the pattern of a central concentration of non-whites, ringed by outlying white areas." U.S. COMM'N ON CIV. RIGHTS REP. 305 (1959).

(Note: After submission of this article, the U.S. Civil Rights Commission submitted its 1961 Report, Book 4 of which is entirely devoted to housing. It contains valuable additional material relevant to a number of the points made in the following paragraphs.)

2. Virtually every study of the subject reveals that the chief victim of discrimination in housing is the Negro. Nevertheless, there is also substantial evidence of discrimination in some parts of the country against Puerto Ricans, Mexican-Americans, Orientals, Indians, and Jews. MCENTIRE, RESIDENCE AND RACE 68-71 (1960); U.S. COMM'N ON CIV. RIGHTS REP. 366, 380-81, 545, 548 (1959); COMMISSION ON RACE AND HOUSING REPORT, WHERE SHALL WE LIVE? 1-2 (1958). Discrimination against Jews has steadily declined but survives in scattered areas. As summarized by the American Jewish Congress: "It is still a melancholy fact that any Jewish family seeking a home must wonder, each time they inquire about a house or apartment, whether this is the time they will receive the cold response that betrays concealed bias." Statement of Stanley H. Lowell on behalf of the American Jewish Congress, U.S. Commission on Civil Rights, Hearings on Housing 369-70 (1959).

3. MYRDAL, AN AMERICAN DILEMMA 348-53, 618-27 (1944); PRESIDENT'S COMM. ON CIV. RIGHTS REPORT, TO SECURE THESE RIGHTS 67-70 (1947). The evidence up to 1948 is summarized in Groner & Helfeld, *Race Discrimination in Housing*, 57 YALE L.J. 426, 426-433 (1948).

4. MCENTIRE, RESIDENCE AND RACE 36-39, 148-56 (1960); U.S. COMM'N ON CIV. RIGHTS REP. 343-54 (1959).

5. U.S. COMM'N ON CIVIL RIGHTS REP. 354-64, 374-80, 534-5 (1959); COMMISSION ON RACE AND HOUSING REPORT, WHERE SHALL WE LIVE? 1-5, 26-28 (1958).

6. COMMISSION ON RACE AND HOUSING REPORT, WHERE SHALL WE LIVE? 3 (1958). The Commission stressed that the housing industry has changed in the last twenty years and is now dominated by the builder of large developments so that "many new communities have come into existence into which no single Negro has been admitted, by policy of the private builders. . . ." *Id.* at 26. "The expanded power of private builders and the use of their power in the manner described go far to explain the paradox of increasing residential segregation during a period of generally weakening racial prejudice and discrimination." *Id.* at 27.

7. Grodzins, *Metropolitan Segregation*, Scientific American, October 1957, pp. 33-41.

The United States Census Bureau has released data on the white and non-white population of twenty-five standard metropolitan areas, which gives the racial breakdown separately for the central city and the area outside the central city. U.S. Dept. of Commerce, Release, March 26, 1961. It shows a uniform pattern of higher concentration of non-whites in the city than in the surrounding area. For example, non-whites were 14.0 per cent of the population of New York City and 4.8 per cent in the surrounding area. The figures for Chicago were 22.9 and 2.9; for Cleveland, 28.6 and 0.7.

Commenting on these figures, the Director of the Census Bureau, Richard M. Scammon, has pointed out that they refute the widely held belief that the "flight to the suburbs" is a flight from inmigrating Negroes. The shift revealed by the census occurs even in cities like Minneapolis where the proportion of non-whites is only 2.4 per cent. Washington Post, March 26, 1961 p. E3, col. 5. Thus, it is plain that the flight is due to fundamental factors in our cities having nothing to do with race. The racial problem arises from the fact that,

Second, faced with these obstacles, minority groups have begun to realize the ramifying effect of segregation in housing — its strong tendency to produce segregation in education, playgrounds, and all other aspects of our daily lives.[8] It is primarily responsible for the widespread segregation in Northern urban public schools.[9] It has even impaired the job opportunities opened up by fair employment laws.[10]

Third, pressure from within the minority group community for better housing has increased with the generally improved economic condition of non-white families. At the same time there has been an increased demand for housing of any kind for the large number of Negro families moving out of the South.[11]

Fourth, minority pressure for broader housing opportunity has revealed the strength of the forces that resist change in ghetto patterns. It seems clear that the prejudice-born distaste of associating with minority groups reaches a high peak of intensity in the case of housing.[12] In addition, the economic structure of the housing industry is such that the person who nominally controls sales and rentals is not normally free to abandon the pattern of discrimination. An employer, hotel owner, or school director who is persuaded to extend equal treatment to all applicants can usually put his decision into effect without too much interference from others. The land-owner must reckon not only with neighbors and tenants,[13] but also with financial institutions that take an active part

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with the strong attraction of the suburbs operating on all city residents, only majority group families can take advantage of the homes that are being constructed. The United States Commission on Civil Rights, referring to "the white noose around the city," has said: "There may be relatively few Negroes able to afford a home in the suburbs, and only some of these would want such homes, but the fact is that this alternative is generally closed to them. It is this shutting of the door of opportunity open to other Americans, this confinement behind invisible lines, that makes Negroes call their residential areas a ghetto." U.S. COMM'N ON CIV. RIGHTS REP. 378 (1959).

8. MYRDAL, AN AMERICAN DILEMMA 618 (1944); COMMISSION ON RACE AND HOUSING REPORT, WHERE SHALL WE LIVE? 35-36 (1958).

9. U.S. COMM'N ON CIV. RIGHTS REP. 389-90 (1959); Maslow, *De Facto Public School Segregation*, 6 VILL. L. REV. 353, 354-55 (1961).

10. N.Y. STATE COMM'N AGAINST DISCRIMINATION, IN SEARCH OF HOUSING, A STUDY OF EXPERIENCES OF NEGRO PROFESSIONAL AND TECHNICAL PERSONNEL IN NEW YORK STATE (1959).

11. COMMISSION ON RACE AND HOUSING REPORT, WHERE SHALL WE LIVE? 13-14 (1958).

12. COMMISSION ON RACE AND HOUSING REPORT, WHERE SHALL WE LIVE? 13-14 (1958). It has been found that ". . . the North is least tolerant toward residential proximity, while the South is more tolerant toward this than toward desegration in the schools or transportation." Hyman & Sheatsley, *Attitude Toward Desegration*, Scientific American, Dec. 1956, p. 37. See also, *The Negro-White Problem: Principles Versus Practice*, Catholic Digest, Aug. 1956, pp. 9-14; Friederichs, *Christians and Residential Exclusion, an Empirical Study of a Northern Dilemma*, 15 Journal of Social Issues, No. 4, pp. 14-23 (1959).

13. Neighbors are likely to be moved to opposition not only by their dislike of living next to minority group families but also by a belief that their neighborhood has lost status. COMMISSION ON RACE AND HOUSING REPORT, WHERE SHALL WE LIVE? 18-19 (1958). Even more important, however, they are likely to believe that the arrival of a Negro or Spanish-

in supervising the policies of those to whom they lend money[14] and real estate brokers who seek to enforce their own beliefs as to where minority group families should live.[15] Thus, it requires an assault on a very wide front to change occupancy patterns.

Fifth, public attention has been concentrated on this problem by a large number of incidents of intergroup tension (the polite phrase for racial violence) growing out of housing problems. Names like Cicero, Levittown, and others without number[16] remind us that a very high proportion of such incidents outside the South in the last fifteen years have resulted directly from the movement of Negro families into new areas.

Sixth, increasing attention has been given to the harmful effects of housing segregation on the population at large. Because of their confinement to limited areas, minority group families are vulnerable to exploitation. They regularly pay more than majority group families for equivalent accommodations.[17] As a result, they are forced into doubling

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American family will depress the value of property in which they have invested their savings. *Id.* at 19-20; MYRDAL, AN AMERICAN DILEMMA 622-23 (1944). The belief that minority occupancy inevitably depresses market values has been firmly implanted by years of real estate propaganda. ABRAMS, FORBIDDEN NEIGHBORS 155-68 (1955). It is only very recently that this myth is being overcome by objective research. LAURENTI, PROPERTY VALUES AND RACE (1960).

14. U.S. COMM'N ON CIV. RIGHTS REP. 514 (1959); COMMISSION ON RACE AND HOUSING REPORT, WHERE SHALL WE LIVE? 29 (1958); MCENTIRE, RESIDENCE AND RACE 218-37 (1960); NATIONAL URBAN LEAGUE, MORTGAGE FINANCING FOR PROPERTIES AVAILABLE TO NEGRO OCCUPANCY (1954).

15. See generally MCENTIRE, RESIDENCE AND RACE 238-50 (1960). Until 1950, the code of ethics of the National Association of Real Estate Boards specifically stated: "A realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individual whose presence will clearly be detrimental to property values in that neighborhood." *Id.* at 245. In 1950, the Association modified this provision to read as follows: "A realtor should not be instrumental in introducing into a neighborhood a character of property or use which will clearly be detrimental to property values in that neighborhood." *Id.* at 246. This modification does not seem to have resulted in any large scale change in practice. *Id.* at 246; ABRAMS, FORBIDDEN NEIGHBORS 157 (1955). As recently as 1958, the Commission on Race and Housing stated flatly, "Real estate brokers, with occasional exceptions, will negotiate the sale or rental of property to minority persons only in areas where minorities are already living." COMMISSION ON RACE AND HOUSING REPORT, WHERE SHALL WE LIVE? 23 (1958). The Commission also made it clear that brokers take an "independent view of their responsibilities" and act in this matter "regardless of the wishes of individual sellers or buyers." *Id.* at 24. See also U.S. COMM'N ON CIV. RIGHTS REP. 514-15 (1959).

The owner may also meet with resistance from local municipal and county officials who can easily make a venture economically impossible by strict and even arbitrary enforcement of zoning and construction regulations. Grodzins, *Metropolitan Segregation,* Scientific American, Oct. 1957, pp. 33-34. See also Progress Dev. Corp. v. Mitchell, 286 F.2d 222 (7th Cir. 1961), where it was claimed that a project planned for "controlled" Negro-white occupancy was blocked by arbitrary enforcement of building regulations and use of the power of eminent domain.

16. ABRAMS, FORBIDDEN NEIGHBORS 103-06 (1955); MCENTIRE, RESIDENCE AND RACE 73-75 (1960); MYRDAL, AN AMERICAN DILEMMA 678 (1944).

17. ". . . [S]egregated groups receive less housing value for their dollars spent than do whites, by a wide margin." COMMISSION ON RACE AND HOUSING REPORT, WHERE SHALL WE LIVE? 36 (1958).

up and other expedients that breed slum conditions, with resulting increases in delinquency, fire losses, depressed health conditions, and other evils.[18] This has been one of the motivations behind legislation against housing discrimination.[19] Also, with the nation encountering increasing difficulty in providing housing for its expanding population and in eliminating slums and blight, it has been found that "racial discrimination enters into and magnifies every one of the factors producing the crisis."[20]

Finally, the nation today is "civil rights conscious." If the organized civil rights groups have accomplished nothing else, they have made the nation as a whole aware that inequities exist and that the oppressed minorities are not willing to endure them indefinitely. At least since publication of the report of President Truman's Committee on Civil Rights in 1947,[21] the issue of civil rights has never left the front pages for long. It has figured in every national and many local election campaigns. It has been before the United States Supreme Court in important cases year after year. Perhaps it is too much to say that the conscience of America has been aroused, but it has certainly been prodded vigorously and continuously. Unless the climate of the country is radically altered by war, depression, or other disaster, the civil rights issue will remain on

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18. U.S. COMM'N ON CIV. RIGHTS REP. 386-97 (1959); COMMISSION ON RACE AND HOUSING REPORT, WHERE SHALL WE LIVE? 5, 36-38 (1958); Groner & Helfeld, *Race Discrimination in Housing*, 57 YALE L.J. 426, 428-29 (1948); Linder, *The Social Results of Segregation in Housing*, 18 LAW. GUILD REV. 2 (1958).

19. See, for example, the findings in the 1957 New York City Fair Housing Law, NEW YORK, N. Y., ADMINISTRATIVE CODE § X41-1.0(a) (Supp. 1960-61): "In the City of New York, . . . many persons have been compelled to live in circumscribed sections under substandard, unhealthful, unsanitary and crowded living conditions because of discrimination and segregation in housing. These conditions have caused increased mortality, morbidity, delinquency, risk of fire, inter-group tension, loss of tax revenue and other evils. As a result, the peace, health, safety and general welfare of the entire city and all its inhabitants are threatened."

20. U.S. COMM'N ON CIV. RIGHTS REP. 340 (1959). See also COMMISSION ON RACE AND HOUSING COMM. REPORT, WHERE SHALL WE LIVE? 37-40 (1958). Non-white families are affected to a disproportionate degree by the large-scale displacement of site tenants which accompanies virtually all urban redevelopment proceedings, as well as many highway construction and other public improvement projects. This is because these programs are concentrated in the blighted areas to which minority groups are largely confined. Thus, from the beginning of the urban renewal program in 1949 up to 1960, slum clearance and urban renewal projects had relocated 85,000 families. Of the 61,200 families whose color is known, 69% were non-white. HOUSING & HOME FINANCE AGENCY, RELOCATION FROM URBAN RENEWAL PROJECT AREAS THROUGH JUNE, 1960, 7 (1961). See also U.S. COMM'N ON CIV. RIGHTS REP. 480-85 (1959). The fact that most of the housing market is closed to non-whites seriously complicates the process of relocation. Too often, little or no effort is made to cope with this problem and, as a result, the displaced non-white families merely crowd into new areas. As the ghetto is thus moved from one part of the city to another, the usual doubling up occurs with all its attendant evils (see notes 17-18 and accompanying text), so that blight is spread almost as fast as it is corrected. In addition, the whole program of urban renewal is slowed by the fact that municipal planning officials have encountered increasing resistance to their plans from non-white groups, who have come to regard slum clearance as "Negro clearance."

21. PRESIDENT'S COMM. ON CIV. RIGHTS REP., TO SECURE THESE RIGHTS (1947).

our conscience until it is solved. Inevitably, this means continued and increased pressure to do away with racial ghettoes.

This article deals primarily with state and local laws enacted during the last four years prohibiting discrimination in the general housing market. Before turning to those laws, however, we review the earlier legal moves against housing discrimination.

BACKGROUND

Constitutional Protections

During the long period between the Civil War and the last decade, discrimination in housing flourished with almost no legal restraint. Indeed, the restraints of law were even used to reinforce ghetto patterns. The principal defense available to the affected minority groups was the equal protection clause of the fourteenth amendment, backed in part by the due process clause of the fifth.[22] Legislation, as we shall see, was sparse and ineffective during this period.

The fourteenth amendment was invoked against housing discrimination in a series of cases that challenged zoning laws adopted by a number of Southern cities for the purpose of confining Negroes to specified areas. The United States Supreme Court held these laws and subsequent variations unconstitutional.[23]

While racial zoning never figured significantly in the housing scene and was condemned almost as soon as it was started, another legal device made tremendous impact on housing before it too fell under the ban of

22. U.S. CONST. amend. XIV, § 1. The fourteenth amendment provides in part "No State shall . . . deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . ." The fifth amendment provides in part "No person shall be . . . deprived of life, liberty or property without due process of law. . . ." U.S. CONST. amend. V. Despite the absence of an "equal protection" clause from the fifth amendment, the Supreme Court has consistently treated the two amendments as equally preventing racial discrimination by government agencies. Thus, in Bolling v. Sharpe, 347 U.S. 497, 499 (1954), which was the one public school segregation case that involved the schools in the District of Columbia, the Court said: "[T]he concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive. The 'equal protection of the laws' is a more explicit safeguard of prohibited unfairness than 'due process of law,' and, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process."

Similarly, in Hirabayashi v. United States, 320 U.S. 81, 100 (1943), which also involved the fifth rather than the fourteenth amendment, the Court said that "legislative classification or discrimination based on race alone has often been held to be a denial of equal protection." See also Hurd v. Hodge, 334 U.S. 24, 26 (1948); Stagg, Mather & Hough v. Descartes, 244 F.2d 578, 583 (1st Cir. 1957); Pfeiffer Brewing Co. v. Bowles, 146 F.2d 1006, 1007 (Emer. Ct. App. 1945), *cert. denied,* 324 U.S. 865 (1945); United States v. Yount, 267 Fed. 861, 863 (W.D. Pa. 1920).

23. Buchanan v. Warley, 245 U.S. 60 (1917); Harmon v. Tyler, 273 U.S. 668 (1927); City of Richmond v. Dean, 281 U.S. 704 (1930). A recent attempt by the City of Birmingham, Alabama, to ignore those cases was invalidated in City of Birmingham v. Monk, 185 F.2d 859 (5th Cir. 1950), *cert. denied,* 341 U.S. 940 (1951).

the fourteenth amendment. This was the racial restrictive covenant, under which whole communities were subjected to a restriction on purchase, occupancy, or use by specified minority groups. The device became popular in all parts of the country and was used against almost every racial, religious, and national minority.[24] Its effectiveness was destroyed when the Supreme Court held, in 1948, that enforcement of racial restrictive covenants by state courts violated the fourteenth amendment.[25]

The fifth and fourteenth amendments were also invoked to stem the racial segregation which was very widely practiced in public housing projects, North and South.[26] While the constitutional claim was rejected in early cases under the "separate but equal" doctrine,[27] the courts have regularly condemned segregation in public housing since that doctrine was overturned in the public school cases.[28]

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24. PRESIDENT'S COMM. ON CIV. RIGHTS REPORT, TO SECURE THESE RIGHTS 68-69 (1947); MYRDAL, AN AMERICAN DILEMMA 624 (1944); ABRAMS, FORBIDDEN NEIGHBORS 35 (1955).

25. Shelley v. Kraemer, 334 U.S. 1 (1948). In a companion case, Hurd v. Hodge, 334 U.S. 24 (1948), the Court barred enforcement of such a covenant by a federal court. It declined to place its decision on the basis of the fifth amendment but ruled, instead, that such enforcement was prohibited by the provision in the Civil Rights Act of 1866, 14 Stat. 27 (1866), as amended, 42 U.S.C. 1982 (1958), giving all citizens the equal right to possess property. See notes 32-35 *infra* and accompanying text. It also relied on the argument that enforcement was against the public policy of the United States as evidenced in the fourteenth amendment, saying, "We cannot presume that the public policy of the United States manifests a lesser concern for the protection of such basic rights against discriminatory action of federal courts than against such action taken by the courts of the states." 334 U.S. 24, 35-36. The history of the restrictive covenant litigation is reviewed in detail in VOSE, CAUCASIANS ONLY (1959). See also Saks & Rabkin, *Racial and Religious Discrimination in Housing: A Report of Legal Progress*, 45 IOWA L. REV. 488, 497-507 (1960).

26. Until recently, most public housing was segregated. MCENTIRE, RESIDENCE AND RACE 319 (1960). MYRDAL, AN AMERICAN DILEMMA 625 (1944); Groner and Helfeld, *Race Discrimination in Housing*, 57 YALE L.J. 426, 436 (1948). Most public housing has been built with Federal assistance under the various federal housing laws dating back to the Housing Act of 1937 (P.L. 412, 75th Cong., 1st Sess.) and prior PWA projects. MCENTIRE, RESIDENCE AND RACE 316 (1960). The federal housing authorities have never barred segregation in the projects they assist but have striven instead for "racial equity." This policy was formally adopted by the Public Housing Administration in 1951 (though applied earlier) in a provision in its Low-Rent Housing Manual of that year (§ 102.1, Feb., 1951) and still in effect. It provided that programs "must reflect equitable provisions for eligible families of all races, determined on the approximate volume and urgency of their respective needs for such housing." This, of course, does not bar segregation. Indeed, even since the court decisions condemning segregation in public housing (see note 28, *infra*), the Federal Government has continued to subsidize avowedly segregated housing on the theory that it must leave this question to local decision. U.S. COMM'N ON CIV. RIGHTS REP. 473-75 (1959); McGhee & Ginger, *The House I Live In*, 46 CORNELL L.Q. 194, 200-02 (1961).

27. See, *e.g.*, Favors v. Randall, 40 F. Supp. 743 (E.D. Pa. 1941) and Miers v. Housing Authority of Dallas, 266 S.W.2d 487 (Tex. Civ. App. 1954).

28. In Banks v. Housing Authority of San Francisco, 120 Cal. App. 1, 260 P.2d 668, decided in 1953 while the school segregation cases were pending in the Supreme Court, the California court issued a writ of mandamus requiring the defendant housing officials to certify the plaintiff to any housing unit under their management without regard to his race. The housing authority was operating segregated housing under a plan known as the "neighborhood pattern policy." The Court rejected its argument that the policy was protected from constitutional attack under the "separate but equal" doctrine. The case was taken to the United States Supreme Court, which denied the petition for certiorari (347 U.S. 974) one week after

The constitutional limitations, however, apply only to what the courts are prepared to view as "state action."[29] Hence, there is some question as to whether they can be used to halt discrimination in what is generally known as publicly assisted housing; that is, housing owned and operated by non-governmental corporations or other agencies which have received some form of assistance from a governmental agency. While efforts to subject such housing to constitutional restraints have not been very successful so far,[30] they will no doubt continue and are likely to meet with

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it decided the school segregation cases, in which it rejected the "separate but equal" doctrine at least in the area of education. Brown v. Board of Education, 347 U.S. 483 (1954). This has generally been taken as an indication that the Court would similarly hold segregation in public housing unconstitutional, as shown by the fact that the lower courts have regularly so held since 1954 and no case has been taken to the Supreme Court. Detroit Housing Comm'n v. Lewis, 226 F.2d 180, 183 (6th Cir. 1955); Davis v. St. Louis Housing Authority, Civ. No. 8637 (E.D. Mo. 1955), 1 RACE REL. L. REP. 353; Jones v. City of Hamtramck, 121 F. Supp. 123 (E.D. Mich. 1954); Askew v. Benton Harbor Housing Comm'n, Civ. No. 2512 (W.D. Mich. 1956), 2 RACE REL. L. REP. 611, 617; Eleby v. Louisville Municipal Housing Comm'n, Civ. No. 3240 (W.D. Ky. 1957), 2 RACE REL. L. REP. 815. See also Heyward v. Public Housing Administration, 238 F.2d 689, 697-98 (5th Cir. 1956); Tate v. City of Eufaula, 165 F. Supp. 303, 306 (M.D. Ala. 1958) (dictum). For cases so holding before the 1954 decisions see Vann v. Toledo Metropolitan Housing Authority, 113 F. Supp. 210 (N.D. Ohio 1953); Taylor v. Leonard, 30 N.J. Super. 116, 103 A.2d 632 (1954); Seawell v. MacWithey, 2 N.J. Super. 255, 63 A.2d 542 (1949).

29. Civil Rights Cases, 109 U.S. 3 (1883). While the principle is "embedded in our law," see Shelley v. Kraemer, 334 U.S. 1, 13 (1948), it has been stretched to cover a lot of ground. For a recent case, see Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). For general discussions, see *State Action, a Study of Requirements under the Fourteenth Amendment,* 1 RACE REL. L. REV. 613 (1956); St. Antoine, *Color Blindness but not Myopia, A New Look at State Action, Equal Protection, and "Private" Racial Discrimination,* 59 MICH. L. REV. 993 (1961).

30. In Dorsey v. Stuyvesant Town Corp., 299 N.Y. 512, 87 N.E.2d 541 (1949), *cert. denied,* 339 U.S. 981 (1950), the New York State Court of Appeals, by a four to three vote, rejected a claim that the fourteenth amendment, as well as the state constitution, barred discrimination by a corporation operating a housing project built under the provisions of the state's Redevelopment Corporations Law. N.Y. UNCONSOL. LAWS §§ 3401-26 (McKinney 1949). The contract with New York City under which the project was built called for use of the power of eminent domain to assemble the site, substantial tax exemption, and close city supervision of the project including maintenance of a ceiling on rents. The court held that a ruling which applied the fourteenth amendment would jeopardize the "increasing and fruitful participation of government, both State and Federal, in the industrial and economic life of the nation. . . ." *Id.* at 535, 87 N.E.2d at 551. It said that extension of the requirement of equality to this area must be accomplished by "political processes." *Id.* at 534, 87 N.E.2d 551.

A similar result was reached in a case charging discrimination in a project to be built under the urban redevelopment provisions of the Housing Act of 1949, 63 Stat. 417 (1949), 42 U.S.C. §§ 1450-63 (1958), in Barnes v. City of Gadsden, 174 F. Supp. 64 (N.D. Ala. 1958), *aff'd,* 268 F.2d 593 (5th Cir. 1959). In the Court of Appeals, however, one judge dissented, distinguishing the *Dorsey* decision on the ground that there was a greater degree of governmental aid involved under the Federal law.

Efforts to prevent discrimination in FHA developments, on rather vague and apparently non-constitutional grounds, were rejected in Novick v. Levitt & Sons, 200 Misc. 694, 108 N.Y. Supp. 615 (Sup. Ct. 1951), *aff'd,* 279 App. Div. 617, 107 N.Y. Supp. 1016 (Sup. Ct. 1951); and in Johnson v. Levitt & Sons, 131 F. Supp. 114 (E.D. Pa. 1955). More recently, however, a state court has upheld the contention that the Constitution bars discrimination in such projects. Ming v. Horgan, No. 97130, Sacremento County Cal. Super. Ct., 3 RACE REL. L. REP. 693 (1958). No appeal was taken from this ruling.

The cases described above are discussed in Saks & Rabkin, *Racial and Religious Discrimination in Housing: A Report of Legal Progress,* 45 IOWA L. REV. 488, 510-13; Note, 28 GEO. WASH. L. REV. 758, 763-67 (1960); Comment, 59 COLUM. L. REV. 782 (1959).

better reception as the concept of state action continues to expand. Moreover, since almost all publicly-assisted housing receives some form of aid from the federal government, it may be subjected to a nondiscrimination requirement by federal executive action. Civil rights groups have given high priority to the effort, so far unsuccessful, to obtain a Presidential Executive Order barring discrimination in housing receiving federal assistance, similar to the successive Executive Orders dating back to 1941 barring discrimination in employment by federal contractors.[31]

Early Legislation Against Housing Discrimination

The direct legislative approach to discrimination in housing was used only very sparingly up to recent years. True, one of the civil rights laws enacted by Congress during the post-Civil War Reconstruction Period declared that, "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."[32] It is also true that this provision, unlike many of its companions,[33] survives to the present day. Yet, it has had little impact on the course of events. The prevailing view is that it limits only government action and thus duplicates the restraints of the fourteenth and fifth amendments.[34] It has been used chiefly as a makeweight in cases decided primarily on constitutional grounds.[35] No other federal laws on discrimination in housing have been adopted, although attempts have been made to add anti-discrimination provisions to pending federal housing bills.[36]

31. The first order barring discrimination by federal contractors was Exec. Order No. 8802, 6 Fed. Reg. 3109 (1941). The most recent was Exec. Order No. 10925, 26 Fed. Reg. 1977 (1961).

Demand for a broad executive order on discrimination in housing receiving federal assistance has been strengthened by the Democratic Party Platform of 1960 which specifically promised use of "its full executive powers" in combating discrimination and pledged: "Similarly the new Democratic Administration will take action to end discrimination in Federal housing programs, including Federally assisted housing." This pledge was backed by then Senator Kennedy in a number of speeches which stressed the power of the government to end discrimination in federal housing by an executive order and gave assurance that he would use that power if President Eisenhower did not.

32. 14 STAT. 27 (1866), as amended, 42 U.S.C. § 1986 (1958).

33. CARR, FEDERAL PROTECTION OF CIVIL RIGHTS: A QUEST FOR A SWORD 35-55 (1957). Also compare Carr's Appendix 1 which gives the text of the Reconstruction statutes (pp. 221-251) with Appendix 2 which sets forth the present laws (pp. 251-268). See also KONVITZ & LESKES, A CENTURY OF CIVIL RIGHTS 43-70 (1961); Maslow & Robison, *Civil Rights Legislation and the Fight for Equality, 1862-1952*, 20 U. CHI. L. REV. 363, 370-72 (1953).

34. Hurd v. Hodge, 334 U.S. 24, 31 (1948); Corrigan v. Buckley, 271 U.S. 323, 331 (1926). See also Comment, 59 COLUM. L. REV. 782 (1959).

35. *E.g.*, Buchanan v. Warley, 245 U.S. 60 (1917). While the Supreme Court stressed this statute in Hurd v. Hodge, see note 25 *supra*, there can be little doubt that the same result would have been achieved without it.

36. See Maslow & Robison, *Civil Rights Legislation and the Fight for Equality, 1862-1952*, 20 U. CHI. L. REV. 363, 390-91 (1953). Separate bills have been introduced in almost every session of Congress to bar discrimination in the federal housing program but none has made any progress. See, *e.g.*, Representative Adam Clayton Powell, Jr.'s bill this year, H.R. 544, 87th Cong., 1st Sess. (1961).

Early state and local laws dealing with housing discrimination followed no clear pattern. A 1921 Kansas law prohibited discrimination by planning commissions.[37] In 1923, Colorado barred racial zoning restrictions.[38] Illinois, in 1941, prohibited discrimination in hiring minority groups to construct redevelopment projects,[39] and a similar law was adopted in Indiana in 1945.[40] A 1919 Minnesota statute which displayed a nice sense of delicacy in prohibiting only those restrictive covenants that were based on religion was amended in 1953 to apply also to racial restrictive covenants.[41]

One of the earliest effective anti-discrimination laws was adopted in New York State in 1939, applicable to all housing built under the state housing statutes. It provided simply, "For all the purposes of this chapter, no person shall, because of race, creed, color or national origin be subjected to any discrimination."[42] Primarily, this meant public housing.[43] Thereafter, a number of other states adopted similar prohibitions of discrimination in public housing, including Massachusetts in 1948, Connecticut and Wisconsin in 1949, New Jersey in 1950, Rhode Island and Michigan in 1952, and, most recently, Indiana in 1961.[44]

Because of the absence of effective enforcement provisions from all but the latest of these statutes, they accomplished very little. Moreover, as we have seen, the "separate but equal" doctrine left room, even here, for segregated facilities. Finally, those statutes that supplied no enforcement provisions added nothing to the prohibition of discrimination by state agencies already embedded in the fourteenth amendment.

As publicly assisted housing became an important part of the housing market, pressure began to accumulate for legislation in this area also. An appealing argument supported such legislation. Housing built with government assistance should be open to all; else, some taxpayers would be excluded from sharing in benefits made possible by their money. An early example of legislation prohibiting discrimination in a particular

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37. KAN. GEN. STAT. ANN. § 12-713 (1949).

38. COLO. REV. STAT. ANN. § 139-60-10 (1953).

39. ILL. ANN. STAT. ch. 67-1/2, § 157(9) (Smith-Hurd 1959).

40. IND. ANN. STAT. § 48-8503(b) (1950).

41. MINN. STAT. ANN. § 507.18 (1947), as amended, MINN. STAT. ANN. § 507.18 (Supp. 1960).

42. N.Y. PUB. HOUSING LAW § 223 (1955).

43. While the statute also applies to a small amount of "limited dividend" housing, it seems clear that this aspect of the law was entirely ignored.

44. MASS. ANN. LAWS ch. 121, § 26FF (1957); CONN. GEN. STAT. ANN. § 53-35 (1958); WIS. STAT. ANN. § 66.405(2m) (1957); N.J. STAT. ANN. §§ 55:14A-7.5, 55:14B-5.1, 55:14C-7.1 (Supp. 1960); R.I. GEN. LAWS ANN. § 11-24-3 (1956); MICH. STAT. ANN. § 28-343 (Supp. 1959); IND. ANN. STAT. § 10-901 (Supp. 1961), as amended, Ind. Laws 1961, ch. 256.

form of publicly-assisted housing was that adopted in New York City in 1944, providing that no tax exemption was to be given to any future projects where discrimination was practiced.[45] The first comprehensive statute barring discrimination in publicly-assisted housing was the Wicks-Austin law of New York State in 1950, which applied to all housing receiving such substantial forms of public aid as tax exemption, land write-down, and exercise of the power of condemnation.[46] In the same year, New Jersey adopted similar legislation.[47] In 1953, Connecticut adopted an amendment to its general civil rights law prohibiting discrimination in "publicly-assisted" housing, without defining that term.[48]

By 1954, it had become increasingly evident that public and redevelopment housing, which was the principal subject of the laws adopted up to that date, was only a very small portion even of the publicly-assisted housing that was being constructed. It was the housing aided by the Federal Housing Administration and the Veterans Administration that formed the great bulk of the homes going up with government assistance. That housing has accounted for the major portion of all non-farm housing constructed since the war.[49]

In 1954, New York City adopted the first Sharkey-Brown-Isaacs Law, barring discrimination in rental housing receiving FHA or VA mortgage insurance after the effective date of the law.[50] The following year, the New York State Legislature adopted the first Metcalf-Baker Law which banned discrimination in new apartment housing and also in for-sale housing in projects of ten or more units, aided by government-insured mortgages.[51] At this time also, the Connecticut Civil Rights Commission, which administers the Connecticut law barring discrimination in

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45. NEW YORK, N.Y. ADMINISTRATIVE CODE § J41-1.2 (1957).

46. N.Y. CIV. RIGHTS LAW, §§ 18-a to -3 (Supp. 1961). Support for this law had been generated by the controversy over the Stuyvesant Town housing development in New York City, erected by the Metropolitan Life Insurance Company with substantial assistance from the City. See Dorsey v. Stuyvesant Town Corp., note 30 *supra*. However, the statute did not cover that project because it applied only to housing built after its effective date. See § 18-b(3). The following year, New York City adopted a local law prohibiting discrimination in publicly assisted housing which followed the formulation of the state law but applied to existing as well as future housing. NEW YORK, N.Y. ADMINISTRATIVE CODE, § W41-1.0 (1957). Thereafter, the insurance company abandoned its policy of discrimination at Stuyvesant Town.

47. N.J. STAT. ANN. §§ 55:14A-7.5, 55:14A-39.1, 55:14B-5.1, 55:14C-7.1, 55:14D-6.1, 55:14E-7.1, 15:16-8.1 (Supp. 1960). Earlier, in 1946, New Jersey had prohibited discrimination in veterans housing. N.J. STAT. ANN. § 55:14G-21 (Supp. 1960).

48. CONN. GEN. STAT. ANN. § 53-35 (1960).

49. U.S. COMM'N ON CIV. RIGHTS REP. 462, 497 (1959). In the early years of its operations, the FHA affirmatively recommended use of racial restrictive covenants in FHA developments. MYRDAL, AN AMERICAN DILEMMA 349-50 (1944). The subsequent modifications of this policy are detailed in U.S. COMM'N ON CIV. RIGHTS REP. at 463-67 (1959). See also, ABRAMS, FORBIDDEN NEIGHBORS 229-37 (1955).

50. NEW YORK, N.Y., ADMINISTRATIVE CODE § W41-1.0(b) (1957).

51. N.Y. CIV. RIGHTS LAW § 18-b(3) (Supp. 1961).

publicly-assisted housing, ruled that it applied to housing receiving FHA or VA assistance.[52]

In 1957, four additional states, Massachusetts, New Jersey, Oregon, and Washington, and in 1959, one more, California, adopted laws of varying degrees of coverage, prohibiting discrimination in housing receiving government insured mortgages.[53]

Meanwhile, attention was also being given to the matter of enforcement procedures. Simple prohibitions accomplish little or nothing in the area of civil rights and penal provisions accomplish little more.[54] Since enactment of the first fair employment laws in 1945 in New York and New Jersey, the trend has been toward enforcement through the administrative process.[55] Starting in 1948, a number of states broadened the jurisdiction of their fair employment agencies by directing them to enforce the already existing laws against discrimination in hotels, railroads, and other places of public accommodation.[56] As early as 1949, Connecticut applied this approach to the matter of discrimination in public housing.[57] On a larger scale, the enforcement of the detailed 1950 and 1955 New York laws against discrimination in publicly-assisted housing, described above, was placed under the jurisdiction of that state's Commission Against Discrimination by 1956.[58] Today, as we shall see, most of the major laws against discrimination in housing are administered by a general state anti-discrimination agency.[59]

FAIR HOUSING LAWS

By 1957, the stage had been set for a break-through into the general private (non-publicly-assisted) housing market. Pressure for action

52. The writer has been informed by the Executive Secretary of the Commission that this ruling was made at a meeting of the Commission in June, 1955.

53. CAL. HEALTH & SAFETY CODE §§ 35700-35741 (1959); MASS. ANN. LAWS ch. 151B, §§ 1-10 (1957); N.J. STAT. ANN. §§ 18:25-1—28 (Supp. 1960); ORE. REV. STAT. §§ 659.032-.034 (1957) (this was repealed in 1959 by the fair housing law adopted that year, note 63 *infra);* WASH. REV. CODE § 49.60.040 (1959).

54. KONVITZ & LESKES, A CENTURY OF CIVIL RIGHTS 177-80 (1961); Maslow & Robison, *Civil Rights Legislation and the Fight for Equality,* 1862-1952, 20 U. CHI. L. REV. 363, 405-06 (1953), and authorities there cited.

55. Robison, *The New Fair Employment Law,* 20 OHIO ST. L.J. 570-73 (1959).

56. *Id.* at 573.

57. CONN. GEN. STAT. ANN. § 53-36 (1960).

58. N.Y. EXECUTIVE LAW §§ 292(10), 296(3) (1951), as amended, N.Y. Sess. Laws 1961, ch. 414.

59. The procedure used by these agencies is studied and analyzed in detail in Bamberger & Lewin, *The Right to Equal Treatment: Administrative Enforcement of Anti-discrimination Legislation,* 74 HARV. L. REV. 526 (1961).

The text above omits a number of laws, particularly local ordinances and resolutions, dealing with specific types of publicly assisted housing. All the laws adopted up to October 1958 are set forth in full in a publication of the Housing and Home Finance Agency. *Nondiscrimination Statutes, Ordinances, and Resolutions Relating to Public and Private Housing and Renewal Operations* (1958).

in this area had mounted. Moreover, while there was no proof that the laws against discrimination in publicly-assisted housing had achieved miracles, it was clear that they had not wrought any disasters.[60]

The lead was taken by New York City at the end of 1957 when it adopted the second Sharkey-Brown-Isaacs Law, prohibiting discrimination in a portion of the general housing market — multiple dwellings (buildings containing three or more housing units) and one and two family homes in projects of ten or more units.[61] A year later, a somewhat broader ordinance was adopted in Pittsburgh.[62]

In 1959, four states enacted fair housing laws of varying degrees of coverage — Colorado, Connecticut, Massachusetts, and Oregon.[63] In 1961, additional laws were enacted in Minnesota, New Hampshire, New Jersey, New York, and Pennsylvania,[64] and the New York City, Connecticut, and Massachusetts laws were strengthened in a number of respects.[65] In a number of other states, fair housing bills received active consideration and are quite likely to be passed during the next few years.[66]

Terms of the Various Fair Housing Laws

The eleven laws mentioned above vary greatly both in their substantive provisions and in their enforcement procedures. Of principal importance is the "primary coverage"; that is, the kinds of housing as to which the law prohibits discrimination by the owner in sales and rentals.

Primary Coverage

The broadest law is that of New York City, as amended in 1961. It applies to all housing except the rental of one of the apartments in a

60. U.S. COMM'N ON CIV. RIGHTS REP. 309-406 (1959); COMMISSION ON RACE AND HOUSING REPORT, WHERE SHALL WE LIVE? 48 (1958).

61. NEW YORK, N.Y., ADMINISTRATIVE CODE § X41-1.0 (Supp. 1960-61).

62. Pittsburgh, Pa., Ordinance No. 523, Dec. 15, 1958; recorded in Vol. 62, p. 303, office of City Clerk.

63. COLO. REV. STAT. ANN. §§ 69-7-1—69-7-7 (Supp. 1960); CONN. GEN. STAT. ANN. §§ 53-35 to -36 (1960) (enforced pursuant to §§ 31-122—31-128); MASS. GEN. LAWS ANN. ch. 151B, §§ 1—10 (1957); ORE. REV. STAT. §§ 659.010—.115, as amended, Ore. Laws (1959), ch. 584.

64. MINN. STAT. ANN. §§ 363.01—.13 (1953), as amended, WEST'S MINN. SESS. LAW SERV. ch. 428 (1961). (The law as it applies to housing does not take effect until December 31, 1962). N.H. REV. STAT. ANN. §§ 354.1-.4 (1955), as amended, N.H. Laws 1961, ch. 219; N.J. STAT. ANN. §§ 18:25-1—18:25-28 (Supp. 1960), as amended, N.J. Laws 1961, ch. 106; N.Y. EXECUTIVE LAW §§ 290-99, as amended, N.Y. Sess. Laws 1961, ch. 414; PA. STAT. ANN. tit. 43, §§ 951-63 (Supp. 1960), as amended, PURDON'S PA. LEG. SERV. No. 19, Mar. 13, 1961.

65. NEW YORK, N.Y., ADMINISTRATIVE CODE § X41-1.0 (Supp. 1960-61), as amended by 1961 Local Law No. 642; CONN. GEN. STAT. ANN. § 53-35 (1960), as amended, WEST'S CONN. LEG. SERV. No. 472 (1961); MASS. GEN. LAWS ANN. ch. 151B, §§ 1-10 (1957), as amended, LAW. CO-OP. LEG. SERV. chs. 128, 570 (1961).

66. See NAT'L COMM. AGAINST DISCRIMINATION IN HOUSING, TRENDS IN HOUSING 2 (May-June 1961).

two family home, where the other apartment is occupied by the owner.[67] This is the only law now in effect that applies to the sale or rental of single family homes occupied by the owner.

The new Minnesota law applies to all housing except the rental of an apartment in an owner-occupied two family home and the sale or rental of an owner-occupied one family home. However, this last exception does not apply if the home is covered by a government insured mortgage or has received other forms of public assistance.

The Colorado law applies to all housing except "places maintained by the owner or lessee as the household of his family." It is not clear whether this extends to rentals or sales of an owner-occupied two-family home.

Pennsylvania prohibits discrimination in all housing except owner-occupied one and two family homes.

Oregon uses a somewhat different approach. Its law applies to any person who sells or leases real property "as a business enterprise" or "in connection with or as an incident to his business enterprise."

The New Hampshire law is difficult to classify. It rather ambiguously prohibits discrimination "in the matter of rental or occupancy of a dwelling in a building containing more than one dwelling." It is not clear whether this applies to sales as well as rentals.

The remaining states substantially limit the scope of their laws by numerical minimums. The Connecticut law applies to owners of three or more housing units on contiguous land. This covers both the owner of a three unit building and the owner of three single homes. The Pittsburgh ordinance places the minimum at five housing units without regard to contiguity. The New York State law applies to all multiple dwellings; that is, buildings with three or more units.[68] As to one and two family buildings, the minimum is ten units and they must be located on contiguous land. The Massachusetts law similarly applies to multiple dwellings and one and two family homes in developments of ten or more contiguous units. However, it also applies to housing which was at any time one of ten or more lots on a tract which was submitted to a planning board under the state's Subdivision Control Law.[69] The New Jersey law applies to all real property except owner-occupied one, two, and three family buildings and those one and two family buildings

67. This and a number of other laws also contain exemptions for the renting of rooms within an apartment to "roomers" and "boarders." Even in the absence of such a provision, it is unlikely that any of the laws would be invoked in the matter of such rentals.

68. Although the law applies generally to all buildings with three or more units, there is a provision that, in counting the number of families in the building, the residence of the owner of the building shall be excluded. This excludes from the coverage of the law owner-occupied three family dwellings.

69. MASS. GEN. LAWS ch. 41, §§ 81K—81GG (1932).

that are not in developments of ten or more houses constructed or to be constructed on contiguous land.

The provisions described above are those applicable to "housing," that is, buildings available for human occupancy. However, a number of the laws go beyond this. The New York State law applies also to "commercial space," that is, space in a building designed for manufacture, sale, storage, and other business and professional purposes. The Minnesota, New Jersey, and Oregon laws apply to all "real property" and therefore include not only commercial space but also vacant land. The Pittsburgh ordinance applies to vacant land that is "available" for housing accommodations. The Connecticut and New York State laws include vacant land if the owner has indicated his intention to build housing on it.

Prohibited Conduct by Owners and Their Agents

All the laws except those in Connecticut, New Hampshire, and New York City use detailed language to prohibit discrimination based on race, religion, or national origin[70] not only in selling and renting the covered housing but also in the terms and conditions of a sale or lease. The New York City law is less detailed, containing no provision on terms and conditions. The Connecticut law differs from the others in a number of respects, chiefly because it is not basically a fair housing law. This state prohibited discrimination in housing by adding housing accommodations to the definition of "place of public accommodation" in the law prohibiting discrimination in such institutions as hotels, railroads, and bathing beaches. The prohibition applies to "denial of such accommodations." The New Hampshire law is also primarily a law against discrimination in places of public accommodation. As already noted, its terms apply only to "rental or occupancy," leaving some doubt as to its scope.[71]

Real Estate Brokers

Most of the statutes have express language making them apply not only to owners but also to their "agents." Even without such provisions, it may be assumed that a real estate agent who discriminates on instructions from his principal is participating in an illegal practice. However, that does not, by itself, take care of the whole problem of discrimination by real estate brokers. As we have seen, there is substantial evidence that

70. The Colorado law also prohibits discrimination based on "sex" but at the same time provides that the act shall not bar any person from "leasing premises only to members of one sex." It is not easy to see how these two provisions are to be administered.

71. To a greater or lesser extent, the laws also prohibit discriminatory advertising, use of application forms containing discriminatory questions and discriminatory oral inquiries and records concerning race, religion, or national origin. These provisions may apply to real estate agents and financial institutions as well as owners.

much of the discrimination in housing is generated by real estate brokers who, on their own motion and independent of instructions from home owners, refrain from showing property in specified areas to minority groups they regard as undesirable.[72] Moreover, even when the broker's discrimination has the approval of the principal, that fact cannot always be shown. Hence, the laws in Massachusetts,[73] Minnesota, New Jersey, New York State, and New York City contain specific provisions prohibiting discrimination by real estate brokers and salesmen in all housing in which discrimination is prohibited on the part of the owner. The Oregon and Pittsburgh laws go further. Although the primary coverage of the Oregon law, as already noted, is limited to persons engaged in the business of selling real property, a separate provision makes it illegal for a real estate broker or salesman to accept a listing of any "real property" with the understanding "that a purchaser may be discriminated against."[74] The Pittsburgh law, in which the primary coverage has a limitation of five or more units, prohibits discrimination by real estate brokers and salesmen as to all housing and vacant land available for housing.

In California and Connecticut, the activities of real estate agents have been reached by a different route. In each of these states it has been ruled that real estate agents fall within the scope of the law prohibiting discrimination in places of public accommodation.[75]

Financial Institutions

As in the case of real estate brokers, there is substantial evidence that some discrimination originates with banks, insurance companies, and other financial institutions, independent of the instructions of the seller or renter. Thus it is claimed that minority groups are sometimes prevented from buying property in specified areas, even after they have concluded a sales agreement with a willing owner, because they find it impossible to obtain a mortgage from any financial institution.[76]

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72. See note 15 *supra.*

73. In Massachusetts, a separate statute makes a violation of the anti-discrimination law by a real estate broker grounds for suspension or revocation of his license. MASS. GEN. LAWS ANN. ch. 112, § 87AAA (Supp. 1960), as amended, LAW. CO-OP. LEG. SERV. ch. 181 (1961).

74. In Oregon, as in Massachusetts, a separate law permits the suspension or revocation of a license of a real estate broker who violates the anti-discrimination law. ORE. REV. STAT. § 696.300(1) (1957).

75. In Connecticut, the ruling was announced by the Commission on Civil Rights in a letter from its chairman, Allen F. Jackson, dated December 15, 1955, to Charles M. Lyman, counsel to the New Haven Real Estate Board. Copies of the letter were then sent to all licensed real estate agents and brokers in the state.

In California the ruling was made by the State Attorney General. OPS. CALIF. ATTY. GEN. No. 59/294 (Nov. 23, 1959). The validity of this ruling is now being litigated See Vargas v. Hampson, now on appeal in the California Supreme Court (No. LA-26594).

A similar ruling was made by the Attorney General of Massachusetts before the 1961 laws on this subject were passed. MASS. COMM'N AGAINST DISCRIMINATION ANN. REP. 6-8 (1958-59).

76. See note 14 *supra.*

The laws in Colorado, Minnesota, New Jersey, Pennsylvania, and New York City deal with this by expressly prohibiting discrimination by financial institutions in housing within the primary coverage of the various laws. New York State and Pittsburgh go further. New York State prohibits discrimination by financial institutions as to all housing accommodations and commercial space, and Pittsburgh as to all housing and vacant land available for housing, without regard to the limitations in the primary coverage.[77]

Enforcement Provisions

All but one of the laws described above follow the trend toward administrative enforcement already mentioned. The exception is the New Hampshire statute, which provides only that violators may be fined $10 to $100.[78] The New York City and Pittsburgh laws, enacted under the limited powers of municipalities, lack the full-dress provisions of the usual administrative statute. They provide for the filing of complaints with an administrative agency, which has power to investigate, to attempt conciliation, and to hold a public hearing. If that does not halt discrimination, the agency must turn the matter over to the city's law officer to bring enforcement proceedings in the courts. The remaining statutes all provide for enforcement by the state agency that has jurisdiction over discrimination in employment and places of public accommodation. The ultimate sanction is the usual provision for a court-enforced agency order.[79]

Two unusual features of the enforcement provisions may be mentioned. The newly enacted Minnesota law was amended in its final stage in the legislature to provide that, when a proceeding is brought in court to review or enforce an order of the administrative agency, the proceeding "shall be de novo and the person complained against shall be entitled, at his request, to a trial by jury." This provision could seriously impair the effectiveness of the new law.

77. In addition, Washington, which prohibits discrimination only in publicly-assisted housing (see note 53 *supra*), has empowered its anti-discrimination agency to prevent any institution from requiring a designation of race, creed, or national origin on *any* application for credit. WASH. REV. CODE. § 49.60.175 (1959). This does not appear to prohibit the actual practice of discrimination.

78. The New Hampshire statute amended a 1919 law which prohibited discriminatory advertising, but not discrimination itself, by places of public accommodation, such as hotels, restaurants, and theatres. The 1961 law replaced the prohibition of discriminatory advertising by a prohibition of discrimination itself in places of public accommodation, while also adding the provision on housing described above. However, the legislature indicated its fears as to the boldness of the action it was taking by amending the penalty clause of the 1919 law so as to remove the provision for a jail sentence of 30 to 90 days.

79. Some of the statutes have retained other sanctions that were in effect before the anti-discrimination agency was given jurisdiction. Thus, in Connecticut, violators of the law may be fined $25 to $100 or imprisoned up to 30 days, or both.

An amendment adopted in Massachusetts this year is designed to deal with a problem that is particularly acute under fair housing laws, including those dealing with publicly-assisted housing. It frequently happens that, by the time the statutory proceedings have been completed, there is no house or apartment available for the complainant.[80] To meet this problem, Massachusetts this year adopted an amendment to its 1959 fair housing law. This provides that, after the administrative agency has investigated a complaint and made an initial determination that there is probable cause to credit its allegations, it may file a petition in court seeking appropriate injunctive relief pending final determination of the proceedings. The court is to grant "such relief, as it deems just and proper."

Analysis of Statutory Provisions

The wide divergence among the various laws on the scope of coverage reflects a number of practical considerations, chief among which is legislative strategy. Thus, numerical limitations are dictated primarily by the fact that a limited bill has a better chance of enactment.

Sometimes, the limitations are introduced while the bill is pending, as a part of the process of compromise that figures so large in any deliberative body.[81] At other times, the limitations appear in the bill as originally introduced with the support of the organized civil rights forces.[82] That is done without any concession that principle requires exclusion of the small landowner but merely in recognition of the efficacy of the step-by-step process.

In fact, however, sound practical arguments can be made for these limitations, particularly the exclusion of the owner-occupied home. Should not the government be concerned primarily with those who deal in hous-

80. This problem is discussed in Bamberger & Lewin, *The Right to Equal Treatment: Administrative Enforcement of Anti-discrimination Legislation,* 74 HARV. L. REV. 526, 550-51 (1961).

81. For example, the bill enacted this year in New York State was a slightly more limited bill than that sponsored unsuccessfully the previous year by the Republican administration. That, in turn, had been offered as a compromise with the far broader bill backed both years by the New York State Committee on Discrimination in Housing, which co-ordinates the housing activities of the civil rights organizations in the state.

In New Jersey, the bill ultimately passed was first approved in the lower house in the form supported by the New Jersey Committee Against Discrimination in Housing. In that form, its primary coverage was equivalent to that of the bill later passed in New York City. See note 67 *supra* and accompanying text. In addition, the bill contained a provision for interim relief similar to that adopted in Massachusetts. See note 80 *supra* and accompanying text. In the Senate, the latter provision was stricken and the primary coverage was cut down close to that of the New York state law, approved earlier in the year. The Assembly then concurred in the Senate amendments to insure passage of a bill.

82. In New York State, the 1950 Wicks-Austin law and the 1955 Metcalf-Baker law dealing with publicly-assisted housing were both adopted in the form originally proposed by the New York State Committee on Discrimination in Housing.

ing as a business, to the exclusion of the seller who enters the market only because he is moving from one residence to another? The Oregon law, as we have seen, is expressly based on that distinction. The large commercial operators, together with the real estate brokers, play a large, and perhaps, the largest, part in setting patterns of occupancy. Once they abandon segregation, the market as a whole is likely to follow.

Administrative considerations also count here. Proof of discrimination frequently rests on showing a pattern of conduct — of repeated rejection of a particular minority group over a period of time.[83] This line of investigation is not available in the case of the single home owner. Also, the agency can use more effective enforcement and policing techniques in the case of operators who stay in the housing industry.

However, omission of the owner-occupied home leaves a large part of the housing market uncovered by a non-discrimination requirement.[84] It has been estimated that the 1961 fair housing law in New York State covers only about twenty per cent of the housing outside New York City.[85] Leaving so large a part of the total supply subject to unlimited restriction may make it impossible to achieve a truly open market or to give substantial relief to those in need of it.

Moreover, this part of the market is particularly important to the under-privileged minority group families. Much of the new housing is closed to them by economics, regardless of whether the law has removed the racial barrier. It is only in the largest urban areas that apartment houses are a significant factor. Elsewhere, the poorer families must look primarily to the large supply of older single-family houses.

Finally, as we shall see, a prohibition of discrimination in this sector may be necessary to deal effectively with discrimination by real estate brokers in their dealings with such properties.

The New York City law, as amended this year, covers this part of the housing market. Experience under that law will show whether significant gains can be made in dealing with discrimination in the sale of owner-occupied single family homes.

The inclusion of vacant land under a number of the laws is unques-

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83. Note, *An American Legal Dilemma — Proof of Discrimination,* 17 U. CHI. L. REV. 107, 120-122 (1949).

84. There is little argument about the exclusion of roomers and boarders and of the rental of an apartment in a two family house in which the owner occupies the other apartment. Where this degree of "togetherness" is involved, legislators are quite naturally inclined to give the owner latitude in deciding who will live in his home. In the sale of owner-occupied single homes, that is not a factor; the seller is gone by the time the buyer moves in.

85. In a statement issued February 18, 1961, while the New York bill was pending in the legislature, the New York State Committee on Discrimination in Housing said that the pending bill would cover less than twenty per cent of the housing in upstate New York. It gave figures for specific areas ranging from twenty-five per cent for Westchester and Nassau Counties, next to New York City, to seventeen per cent in the Buffalo Standard Metropolitan Area, at the other end of the state. N.Y. TIMES, Feb. 19, 1961, p. 72, col. 1.

tionably a valuable provision. Minority groups are discriminated against in the purchase of building lots, both those on which the developer does the building after the sale and those in which the buyer acquires nothing more than the title. However, the inclusion of commercial space, as in the New York State law, is probably worth very little. The writer knows of no evidence that discrimination in such property has become a problem.

There is hardly any question that discrimination by real estate brokers should be prohibited, at least as to all housing within a statute's primary coverage. If an owner may not discriminate, a broker should not be allowed to encourage him to discriminate, to aid him to do so, or to discriminate for him without his knowledge or instructions.

It is particularly important to cover brokers in the case of single family homes. As already noted, it is difficult both to prove discrimination by the single family home owner and to remedy its effects. In fact, it may well be that, as such homes are brought under the various laws, following the example in New York City, enforcement will be accomplished primarily by dealing with the brokers. Even though few actions are taken against owners, the fact that they are not allowed to discriminate will make it easier to deal with their agents.

As to housing not within the primary coverage, it seems proper at least to forbid the *initiation* of discrimination by brokers. The state should be able to reach effectively the all too frequent practice of simply not showing housing in a specified area to certain minorities. Where that is done without instructions from, or even the knowledge of, the owner, it is an unwarranted limitation on his opportunity to sell.

No statute directed specifically at this practice has yet been adopted. Its drafting presents some problems. If the broker is allowed to discriminate on instructions from the owner, must the instructions be in writing? If that requirement is not imposed, the prohibition may be difficult to enforce. But requiring written instructions would come close to prohibiting discrimination by the owner, since few would be willing to sign their names to such instructions.

The Pittsburgh and Oregon laws, however, go further and prohibit discrimination by real estate brokers even on instructions from the owner. Thus, the Oregon law prohibits brokers from accepting discriminatory listings. The theory here is that the owner may discriminate but, if he does, he may not use the services of a broker licensed by the state. There has been strong legislative opposition to this type of provision. It is argued that it places the broker in an almost impossible position and that, as to the owner, it takes away with one hand what is given with the other.

As to financial institutions, there are no corresponding reasons why

provisions barring discrimination should be confined to the area of primary coverage. When financial institutions discriminate, they do so as principals. Hence provisions like those in the New York State and Pittsburgh laws barring discrimination in financing as to all housing seem entirely appropriate.

Constitutionality of Fair Housing Laws

Unlike their predecessors in the areas of public accommodations, employment, and education, the fair housing laws have led to substantial litigation in which their validity has been challenged. The early laws on discrimination in public accommodations, familiarly known until recently as "civil rights laws," were challenged from time to time and were uniformly held constitutional.[86] On the two occasions such laws came before the United States Supreme Court, the question of their constitutionality generally was not raised. The issue, in one case, involved interference with foreign commerce[87] and, in the other, the powers of the former District of Columbia legislature.[88] In the latter case, the Supreme Court expressed in a dictum its assurance that such laws were a valid exercise of the police power.[89]

Prior to enactment of the first broad fair employment law in 1945, a narrower law prohibiting discrimination by labor unions[90] was upheld by the United States Supreme Court. Appellant's claim that the law violated the fourteenth amendment was described by the Court as "a distortion of the policy manifested in that amendment which was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color."[91] This firm decision probably accounts for the

86. Darius v. Apostolos, 68 Colo. 323, 190 Pac. 510 (1920); Crosswaith v. Bergin, 95 Colo. 241, 35 P.2d 848 (1934); Baylies v. Curry, 128 Ill. 287, 21 N.E. 595 (1889); Pickett v. Kuchan, 323 Ill. 138, 153 N.E. 667 (1926); Bolden v. Grand Rapids Operating Corp., 239 Mich. 318, 214 N.W. 241 (1927); Brown v. J. H. Bell Co., 146 Iowa, 89, 123 N.W. 231 (1910); Rhone v. Loomis, 74 Minn. 200, 77 N.W. 31 (1898); Messenger v. State, 25 Neb. 674, 41 N.W. 638 (1889); People v. King, 110 N.Y. 414, 18 N.E. 245 (1888); Commission v. George, 61 Pa. Super. 412 (1915).

In addition, the Supreme Court in 1907 upheld a law calling for equal treatment in public places but without any mention of race. Western Turf Ass'n v. Greenberg, 204 U.S. 359 (1907).

A possible departure from the uniform pattern occurred in Marshall v. Kansas City, No. 622,387, Jackson County Mo. Civ. Ct., July 1, 1960, in which the court held a Kansas City ordinance barring discrimination in public places unconstitutional. Since the court issued no opinion, it is quite possible that the decision was based not on broad due process grounds but on the argument, pressed by counsel, that the state had not empowered the city to adopt such legislation. An appeal has been taken to the state supreme court.

87. Bob-Lo Excursion Co. v. Michigan, 333 U.S. 28 (1948).

88. District of Columbia v. John R. Thompson Co., 346 U.S. 100 (1953).

89. The Court said: "And certainly as far as the Federal Constitution is concerned there is no doubt that legislation which prohibits discrimination on the basis of race in the use of facilities serving a public function is within the police power of the states." *Id.* at 109.

90. N.Y. CIV. RIGHTS LAW, § 43 (Supp. 1961).

91. Railway Mail Ass'n v. Corsi, 326 U.S. 88, 94 (1945).

fact that none of the broad fair employment laws has yet been put to the test in the courts.[92]

In contrast, the housing laws, with only a comparatively brief history, have prompted a substantial amount of litigation. That is again an indication of the depth of resistance to efforts to end discrimination in housing. Apparently, owners of housing believe that far more is at stake under an anti-discrimination order than do employers and resort owners.[93]

Even the more limited laws that prohibit discrimination in FHA housing have been tested in three cases. In New York, the owner of a rental development covered by an FHA-insured mortgage challenged an order issued by the State Commission Against Discrimination. New York Supreme Court Justice Eager rejected his claims that the law as drafted did not apply to him and that it was unconstitutional.[94] On the due process issue, Justice Eager said: "I am satisfied that the legislature did act within the bounds of the police power in enacting provisions against racial and religious discrimination in publicly-assisted housing accommodations."[95] No appeal was taken from this decision.

Thereafter, in New Jersey, the owners of the mammoth Levittown housing development resisted application of that state's law against discrimination in publicly-assisted housing. The Supreme Court of New Jersey affirmed the finding that the statute applied to the project and, although the point was not raised, strongly implied that such laws do not violate due process requirements.[96]

An order issued by the Washington State Board Against Discrimination against the owner of a single FHA-financed home, however, resulted in an adverse decision. There, a lower court held the law a violation of the due process clause, at least as applied to a single home owner. On appeal, the Washington Supreme Court ruled against the law by a five to four vote. Three of the five judges in the majority held the statute invalid, under both the state and federal constitutions, on the ground that it made an unreasonable classification between housing having a federally insured loan and all other housing. The other two majority judges condemned the law on a number of grounds, including due process, unreasonable classification, improper delegation of power, and

92. The various cases that have reached the courts under the state fair employment laws are noted in Robison, *The New Fair Employment Law,* 20 OHIO ST. L.J. 570, 580-81 (1959).

93. It has also been suggested that "a reputation for discrimination may even enhance the reputation of a broker or builder. . . ." Bamberger & Lewin, *The Right to Equal Treatment: Administrative Enforcement of Anti-discrimination Legislation,* 74 HARV. L. REV. 526, 541 (1961).

94. New York State Commission Against Discrimination v. Pelham Hall Apartments, 10 Misc. 2d 334, 170 N.Y.S.2d 750 (Sup. Ct. 1958).

95. *Id.* at 342, 170 N.Y.S.2d at 759.

96. Levitt & Sons, Inc. v. Division Against Discrimination, 31 N.J. 514, 531, 158 A.2d 177, 185-86 (1960).

unreasonable interference with "private affairs." Thus, only two members of the court ruled on grounds that would upset a general fair housing law.[97]

The first housing law applicable to the general housing market, the New York City law of 1957, was challenged even before it went into operation. A landlord in that city announced his intention to test the constitutionality of the law and on the day before the law's effective date posted a sign in his building with the blunt statement: "I am refusing to show apartments to Negroes on constitutional grounds." It was not until 1959 that a proceeding against him reached the state court. At that time, the supreme court held, in a brief decision, that the law was clearly constitutional.[98] No appeal was taken.

Subsequently, the laws of Colorado, Connecticut, and Massachusetts were involved in litigation. In Colorado, a trial court has held the law unconstitutional and an appeal is pending in the state supreme court.[99] In Connecticut, a builder asked the court to set aside a commission order both on the ground that the law was unconstitutional and on the ground that it did not apply to his operations. The court upheld the second contention but took occasion to express its opinion in detail that the constitutional claims were not well founded.[100] The Massachusetts proceeding has not yet reached a decision in any court.[101]

Despite the adverse decisions in Washington and Colorado, the case for the constitutionality of these laws is very strong, as almost all commentators agree.[102] Since the arguments have frequently been set forth in detail, a summary may suffice here.

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97. O'Meara v. Washington State Board, No. 535996, King County Super. Ct., July 31, 1959. This decision was affirmed by the Supreme Court of Washington on September 29, 1961.

The three judges who relied on the equal protection ground expressly noted: "The power of the legislature to vest the appellant-board with authority to order any or all owners to sell their homes to particular persons is not presented."

Although the court relied on the state as well as the federal constitution, consideration is being given to seeking review by the United States Supreme Court on the theory that the state court treated the federal and state constitutional issues as identical.

98. Martin v. City of New York, 22 Misc.2d 389, 201 N.Y.S.2d 111 (Sup. Ct. 1960).

99. Case v. Colorado Anti-Discrimination Comm'n, Civ. Ac. No. 39682, El Paso County Colo. Dist. Ct., June 2, 1961.

100. Swanson v. Commission on Civil Rights, No. 94802, New Haven County Conn. Super. Ct., July 11, 1961.

101. Fowler v. A. J. Colangelo, described in MASS. COMM'N AGAINST DISCRIMINATION ANN. REP. 15 (1960).

102. McGhee & Ginger, *The House I Live In,* 46 CORNELL L.Q. 194, 228-36 (1961); Comment, *Constitutional Aspects of Legislation Prohibiting Discrimination in Housing,* 26 Fordham L. Rev. 675, 677-80 (1957-8); Note, *Racial Discrimination in Housing,* 107 U. PA. L. REV. 515, 525-30 (1959); Note, *Prospects for Supreme Court Approval of Anti-Bias Housing Statutes,* 45 VA. L. REV. 428 (1959); Comment, 56 MICH. L. REV. 1223 (1958); Note, 28 GEO. WASH. L. REV. 758, 778 (1960); Ross & Freedman, *The Constitutionality of a Bill Prohibiting Discrimination in Housing,* 18 LAW. GUILD REV. 30 (1958). On the constitutionality of laws against discrimination in publicly-assisted housing, see Forster & Rabkin, *The Constitutionality of Laws Against Discrimination in Publicly-Assisted Housing,* 6 N.Y.L.F. 38 (1960); Bamberger & Lewin, *The Right of Equal Treatment: Administrative Enforcement*

In any constitutional test, the proponents of the legislation will seek victory by a pincers movement. One thrust will be along the line of cases, already mentioned, regularly sustaining laws prohibiting discrimination based on race, religion, or national origin in areas other than housing — particularly employment and public places.[103] The other thrust will start from the decisions generally upholding welfare legislation and rejecting the nineteenth century doctrine of "freedom of contract."[104] It will move along the line of cases specifically upholding restraints on owners of real property with respect to land usage[105] and rents[106] and generally declaring that "there is no such inherent difference in property in land, from that in tangible and intangible personal property, as exempts it from the operation of the police power in appropriate cases, . . ."[107] The point at which these two lines of cases intersect is that occupied by fair housing legislation.

Power for these two thrusts will come from the convincing evidence, already referred to, that the legislation is designed to deal with a pressing evil.[108] This evidence, plus the familiar presumption of validity of legislation having a reasonable basis, provides a strong case for any fair housing law.

In the long run, however, the most telling argument is likely to be the one stressed by the Supreme Court in its 1945 decision upholding the New York law against discrimination by unions — that it would be incongruous to invalidate a law aimed at racial equality by invoking a constitutional amendment passed to do away with the effects of slavery. As Justice Frankfurter said in that case, "To use the Fourteenth Amendment as a sword against such State power would stultify that Amendment."[109]

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of Anti-Discrimination Legislation, 74 HARV. L. REV. 526, 586-88 (1961); Note, *The New Jersey Housing Anti-Bias Law: Applicability to Non-State-Aided Developments*, 12 RUTGERS L. REV. 557, 558-67 (1958).

The opposite conclusion was reached in Avins, *Trade Regulations*, 12 RUTGERS L. REV. 149, 150-60 (1957); Avins, *Anti-Discrimination As An Infringement on Freedom of Choice*, 6 N.Y.L.F. 13 (1960); Note, *Anti-Discrimination Legislation as it Affects Real Property Rights*, 23 ALBANY L. REV. 75 (1959).

103. See notes 86—92 *supra* and accompanying text.

104. See, *e.g.*, Day-Brite Lighting v. Missouri, 342 U.S. 421 (1952); United States v. Carolene Prods. Co., 304 U.S. 144 (1938); West Coast Hotel v. Parrish, 300 U.S. 379 (1937); Nebbia v. New York, 291 U.S. 502 (1934).

105. Gorieb v. Fox, 274 U.S. 603 (1927); Euclid v. Ambler Realty Co., 272 U.S. 365 (1926); Cusack Co. v. Chicago, 242 U.S. 526 (1917); Hadacheck v. Los Angeles, 239 U.S. 394 (1915); Reinman v. Little Rock, 237 U.S. 171 (1915).

106. Bowles v. Willingham, 321 U.S. 503 (1944); Levy Leasing Co., Inc. v. Siegel, 258 U.S. 242 (1922); Block v. Hirsh, 256 U.S. 135 (1921).

107. Levy Leasing Co. v. Siegel, 258 U.S. 242, 247 (1922). For an early expression of this view, see United States v. Distillery in West Front Street, 25 Fed. Cas. 866, 867 (No. 14965) (D. Del. 1870).

108. See notes 2-20 *supra* and accompanying text.

109. Railway Mail Ass'n v. Corsi, 326 U.S. 88, 98 (1945).

Prospects for the Future

A substantial part of the population now lives in states having fair housing legislation. The nine states having such laws have a population of 49,395,683, or 27.5% of the country's total population of 179,323,175, according to the 1960 Census. Of the total non-white population of 20,491,443, the nine states have 3,259,971, or 15.9%. They number an estimated 3,712,400 Jews, or 67.1% of the country's estimated total of 5,531,500.[110]

The roll of states with fair housing laws will undoubtedly grow in the years ahead. Assuming that the courts establish the validity of these laws, the demand for further legislation will certainly continue. In 1963, when most of the state legislatures meet again, vigorous campaigns can be expected in such states as Alaska, California, Illinois, Michigan, Ohio, Rhode Island, Washington, and Wisconsin. In the states that have already acted, efforts will be made to broaden the coverage of the laws to include owner-occupied houses. In addition, there will be virtually continuous activity to obtain municipal legislation such as that in New York City and Pittsburgh.

This continued demand will not necessarily constitute proof that the laws have had direct, measurable results. It is still too early to draw any elaborately documented conclusions as to the success or failure of the fair housing laws so far enacted. Indeed, we do not even have satisfactory

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110. The 1960 census (Census Bureau, Series PC(1), General Population Characteristics) gives the figures below for total and non-white population. The figures for the Jewish population are the most widely used estimates, appearing in American Jewish Yearbook 1961 62-63.

	Total Population	*Non-white Population*	*Jewish Population*
Colorado	1.753,947	53,247	21,300
Connecticut	2,535,234	111,418	101,300
Massachusetts	5,148,578	125,434	226,100
Minnesota	3,413,864	42,261	34,900
New Hampshire	606,921	2,587	5,200
New Jersey	6,066,782	527,779	326,300
New York	16,782,304	1,495,233	2,533,900
Oregon	1,768,687	36,650	8,800
Pennsylvania	11,319,366	865,362	454,600
9-state Total	49,395,683	3,259,971	3,712,400
U.S. Total	179,323,175	20,491,443	5,531,500

It should be noted that these figures do not show any close correlation between the proportion of non-whites in a state and the enactment of fair housing legislation. For example, New York and New Jersey, with a relatively high proportion of non-whites, were both tardy and cautious in enacting fair housing laws. On the other hand, two of the earliest and broadest laws were enacted in Colorado and Oregon, each of which has a very small non-white population. It seems likely that the presence of a large non-white population increases both support for such legislation and resistance to it.

information on just how much has been accomplished under the older laws against discrimination in employment and public places.[111]

Rather, the demand will reflect the urgent need felt by Negroes and other minorities to combat the evil of housing discrimination. Enactment of a law is a visible symbol of progress — a public condemnation of bias — even before it turns a single key in a formerly withheld apartment or split-level.

At this point, we can at least say that the fair housing laws have not aroused violent resistance, nor have they hampered housing construction or financing.[112] On the other hand, they have caused no sudden millennium. We still have ghettoes. It is probable that only a small number of Negro and other minority group families can be said to be living in integrated situations as a result of the legislation. The various enforcement commissions are able to report successes in specific cases,[113] and efforts will no doubt be made, both by agency personnel and by interested civic groups, to make the procedures under the laws both faster and more comprehensive. Yet the laws are not likely to bring about extensive change unless there is a large amount of voluntary compliance without administrative action.

There are some signs that that is taking place,[114] but no convincing proof. A recent survey by the National Committee Against Discrimination in Housing arrived at the following conclusions: that a substantial number of middle income minority group families have moved into housing previously denied to them, that the laws have been a potent educational force, that the real estate industry has cooperated in some

111. Thus, the Commission on Race and Housing in its Report says: "It is difficult to evaluate the effects of current anti-discrimination laws with any precision." It concludes, however: "On the whole, it is the consensus of observers that the laws have played a significant, if not measurable, role in the decline of racial discrimination during the past decade or two." COMMISSION ON RACE AND HOUSING REPORT, WHERE SHALL WE LIVE? 47 (1949).

112. U.S. COMM'N ON CIV. RIGHTS REP. 399-406 (1959). When the first of these laws was pending in New York City, the Real Estate Board of New York ran an advertisement that appeared in the *New York Times* and other metropolitan papers on July 29, 1957. It said, in part: "This proposed law, we genuinely believe, will do more harm to racial relationships than anything else conceivably could.

"The proposed law would cause many more families to leave the city. Would depress real estate values. Would affect the basis of the City's taxation and its credit. Would undo much of the success we've had in amicable living." N.Y. TIMES July 29, 1957, (advertisement). So far, at least, these predictions have not been validated.

113. See, for example, MASS. COMM'N AGAINST DISCRIMINATION 15TH ANN. REP. 9 (1960).

114. In a speech to the first anniversary luncheon of the New York City Commission on Intergroup Relations, April 1, 1959, its executive director, Dr. Frank S. Horne, said: "It has been encouraging to observe, through the complaints procedure, many evidences of voluntary compliance with the law. In a number of cases we have found that buildings controlled by the respondents were, in fact, integrated. Also, from various sources we have learned that several large scale ownership corporations which handle rental and management of their own properties took steps immediately after the enactment of the law to conform with it."

areas and its opposition generally has been less than expected, and that real estate values have not dropped nor has building construction declined. On the other hand, it found that the number of minority group families using the laws "has been disappointingly small," that the housing is often no longer available when the administrative process has been completed, and that the laws have been used predominantly by middle and upper middle class families.[115]

The laws against discrimination in housing will probably help to lower the formal barriers imposed by discriminatory practices on the part of those who control the housing market. There is no assurance, however, that the lowered barriers will be crossed in large numbers by the minority groups they were erected to exclude. Economic, social, and cultural handicaps as well as long-entrenched custom tend to direct minority group families looking for housing into areas where they know they will be accepted.[116] Moreover, it cannot be denied that a Negro family that moves into an all-white neighborhood at least takes a chance that it will receive an unfavorable reception. Even if the family is well-received, it is likely to be isolated. These factors have operated to inhibit development of a strong buyer market for the housing now at least theoretically available for open occupancy.

Adoption of an anti-discrimination law is often a necessary preliminary to any alteration in long-entrenched practices. Yet it should never be viewed as an end in itself. Fair housing legislation provides no more than the opportunity to change the pattern of segregation that still disfigures most of the residential areas in the nation. The change itself will come only when a strong drive develops within the minority communities to treat the promise of the laws as a reality.

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115. NAT'L COMM. AGAINST DISCRIMINATION IN HOUSING TRENDS IN HOUSING 1 (May-June 1961).

116. The factors producing this result are discussed in COMMISSION ON RACE AND HOUSING REPORT, WHERE SHALL WE LIVE? 10-13 (1958).