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Pritchett, Wendell, "Where Shall We Live? Class and the Limitations of Fair Housing Law" (2003). *Faculty Scholarship at Penn Carey Law*. 1946.

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Where Shall We Live? Class and the Limitations of Fair Housing Law

Wendell E. Pritchett*

I. Introduction

IN 1952, JACKIE ROBINSON, STAR OF THE BROOKLYN DODGERS and the first African-American to play in baseball's major leagues, decided to move his family from Long Island to West Chester, New York, or Connecticut. For over a year, Robinson's wife, Rachel, searched for a suitable place for their growing family. During this process, according to Robinson, the family "became even more acutely aware that racial prejudice and discrimination in housing is vicious. It doesn't matter whether you are a day laborer or a celebrity, as long as you are black."¹ The Robinsons experienced many subtle attempts to prevent them from buying homes in white neighborhoods. In several circumstances, homes were taken off the market after they expressed interest. In other instances, the asking price was increased dramatically.²

In the fall of 1953, a reporter for the *Bridgeport Herald* wrote about the Robinsons' plight.³ The story had a major impact on community leaders in Stamford, many of whom mobilized to counter the accusations. Leading realtors denied the article's claims and alleged that the controversy was the "politically inspired" work of the Americans for Democratic Action and other "rabble rousers." In December, the community's leading ministers convened a meeting on the subject, where they heard from Rachel Robinson, who said that she and her husband were not "agitators," just people looking for a nice place to live.⁴

The ministers decided to circulate among their congregations a statement affirming their opposition to discrimination. While they did not

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1. JACKIE ROBINSON, *I NEVER HAD IT MADE* 117 (as told to Alfred Duckett) (1972).

2. *Id.*

3. *Id.*

4. *See Robinson Rouses Home Sale Dispute*, N.Y. TIMES, Dec. 12, 1953, at 22.

intend their actions as a “crusade,” the statement proclaimed that the “exclusion of any person solely for reasons of race, creed or national origin could lessen the spiritual, economic and social development of the community.”⁵ Some realtors criticized the ministers for “blowing up the issue,” and “jeopardizing investments,” but most of the leaders in North Stamford supported the statement.⁶ Later that same month, the Robinsons signed an agreement to purchase a house in the area.⁷

The Robinsons’ struggle was part of an increasing focus on racial discrimination in the post-World War II years. Social, political, and economic change in the 1940s resulted in an invigorated civil rights movement that could no longer be ignored by the country’s political elite. While progress was slow, legal and political victories, as well as personal successes like those of the Robinsons’, became increasingly common in the postwar years. The effort against housing discrimination is a crucial, yet neglected, aspect of the broader civil rights movement.⁸

This article brings fair housing activists back into the broader story of the civil rights struggle during the 1950s. While the legal and political battles over school segregation are well known, little has been written about the struggles against residential segregation in the 1950s.⁹ Urban historians and social scientists have documented the efforts of federal, state, and local officials, as well as white residents, to maintain segregated neighborhoods in the postwar years, but these works have given little attention to the political and legal efforts to ban housing discrimination.¹⁰ The story of the civil rights movement is incomplete without an understanding of the fair housing movement.

5. *Id.*

6. *Id.*

7. See *Robinsons to Buy Home*, N.Y. TIMES, Dec. 18, 1953, at 20.

8. But see MARTHA BIONDI, *TO STAND AND FIGHT: THE STRUGGLE FOR CIVIL RIGHTS IN POSTWAR NEW YORK CITY* (2003); STEPHEN GRANT MEYER, *AS LONG AS THEY DON’T MOVE NEXT DOOR: SEGREGATION AND RACIAL CONFLICT IN AMERICAN NEIGHBORHOODS* (2000). For examples of works on the Civil Rights Movement that ignore the fair housing movement, see TAYLOR BRANCH, *PARTING THE WATERS: AMERICAN IN THE KING YEARS 1954–63* (1988); STEVEN F. LAWSON, *RUNNING FOR FREEDOM: CIVIL RIGHTS AND BLACK POLITICS IN AMERICA SINCE 1941* (1991); SEAN DENNIS CASHMAN, *AFRICAN-AMERICANS AND THE QUEST FOR CIVIL RIGHTS, 1900–1990* (1991); HARVARD SITKOFF, *THE STRUGGLE FOR BLACK EQUALITY, 1954–1992* (rev. ed. 1993); MANNING MARABLE, *RACE, REFORM, AND REBELLION THE SECOND RECONSTRUCTION IN BLACK AMERICA, 1945–1990* (2d ed. 1991).

9. On the school segregation battles, see MARK V. TUSHNET, *THE NAACP’S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION 1925–1950* (1987); WHAT BROWN V. BOARD OF EDUCATION SHOULD HAVE SAID: THE NATION’S TOP LEGAL EXPERTS REWRITE AMERICA’S LANDMARK CIVIL RIGHTS DECISION (Jack M. Balkin ed., 2001); RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA’S STRUGGLE FOR EQUALITY* (Vintage Books 1977) (1976).

10. On the process of segregation in the 1950s, see ARNOLD R. HIRSCH, *MAKING THE SECOND GHETTO: RACE AND HOUSING IN CHICAGO, 1940–1960* (1986); THOMAS

The fair housing movement illuminates many of the contradictions that have and continue to vex civil rights efforts. In particular, the 1950s battles reveal the class-based limitations of the fair housing movement (with implications for other equal opportunity efforts).¹¹ In a society in which property ownership provided one of the primary means to achieving middle class status, the use of rights-based strategies was of limited assistance to persons who lacked the financial means to take advantage of newly won rights. Fair housing activists saw their struggle through the lens of upwardly mobile minority Americans and they sought to secure for this group the full benefits of citizenship. They succeeded in expanding governmental regulation over housing discrimination, but the institutions they established were incapable of enabling those without money to participate actively in the housing market.

Fair housing activists argued that they were only seeking to allow all citizens to enjoy the fruits of home ownership, but those who believed that such laws were an infringement of fundamental property rights met calls for greater government intervention in the housing market with vocal opposition. In the postwar years, concerns over “property values” vied with demands for equal treatment, a competition that continues to impede efforts to reverse decades of segregation. At the same time, the proposals of housing activists for “affirmative action” to create integrated communities raised, and failed to resolve, the competition for limited housing resources that resulted in a zero sum game in which the benefit to some came at the expense of others. All of these conflicts continue to shape our debates over civil rights laws today.¹² In the case of housing discrimination, as present day critics have noted, the structure of the laws passed provided benefits to the middle and upper classes, but denied them to the masses. Understanding how fair housing

J. SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT* (1996); DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993), WENDELL E. PRITCHETT, *BROWNSVILLE, BROOKLYN: BLACKS, JEWS AND THE CHANGING FACE OF THE GHETTO* (2002).

11. On black intellectuals and the conflict between race and class, see JONATHAN SCOTT HOLLOWAY, *CONFRONTING THE VEIL: ABRAM HARRIS, JR., E. FRANKLIN FRAZIER, AND RALPH BUNCHE 1919–1941* 95–103, 214–15 (2002). On the possibilities and limitations of equal employment law, see PAUL D. MORENO, *FROM DIRECT ACTION TO AFFIRMATIVE ACTION: FAIR EMPLOYMENT LAW AND POLICY IN AMERICA, 1933–1972* (1997).

12. On the class-based nature of affirmative action, see WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS AND PUBLIC POLICY* 112–18 (1987); STEPHEN L. CARTER, *REFLECTIONS OF AN AFFIRMATIVE ACTION BABY* (1991); *RACE VS. CLASS: THE NEW AFFIRMATIVE ACTION DEBATE* (Carol Swain ed., 1996); RICHARD D. KAHLENBERG, *THE REMEDY: CLASS, RACE AND AFFIRMATIVE ACTION* (1996)

activists struggled with, or failed to comprehend, these issues helps to frame several current policy debates, including the government's role in ameliorating residential segregation and the role of affirmative action in American society.

This article begins with the *Shelley* decision and ends with President John F. Kennedy's executive order banning discrimination in some government-funded housing—the formative years of the modern fair housing movement. Civil rights activists attacked segregation laws and agreements for decades, and the 1948 Supreme Court opinion, *Shelley v. Kraemer*,¹³ which declared that government enforcement of “restrictive covenants” was unconstitutional, elicited new attention on the issue of housing discrimination.¹⁴ The *Shelley* decision came at a time of increasing attention to the problems of blacks in Northern cities as well as a period of great debate over housing policy in the United States. With the passage of the Housing Act of 1949, civil rights activists were particularly concerned that the nation's housing effort provide shelter on an equal basis to all Americans, and they decided to organize an expanded effort to combat the problem of housing discrimination. The coalitions they created, including the New York State Committee on Discrimination in Housing and the National Committee Against Discrimination in Housing, were important institutions that provided models for the emerging civil rights movement.

Shelley was at best a mixed victory for civil rights. While the court declared it unconstitutional for states to enforce restrictive covenants, the case also specifically declared that nothing in the Constitution forbade individuals from entering into such agreements.¹⁵ Implicit in the holding was that private parties retained the right to deny housing to persons on the basis of race. *Shelley* reinforced other precedents declaring the Constitution a powerless document regarding housing discrimination. These precedents shaped the activists' strategy.¹⁶ The fair housing movement reveals the multi-faceted nature of civil rights activism in the 1950s. In contrast to the battle against school segregation, which mainly took place in courtrooms, the fair housing movement aimed at changing public opinion and lobbying legislatures to ban housing discrimination.

13. 334 U.S. 1 (1948).

14. *Id.*

15. On the history of the *Shelley* case, see CLEMENT E. VOSE, CAUCASIANS ONLY: THE SUPREME COURT, THE NAACP, AND THE RESTRICTIVE COVENANT CASES (1959).

16. Such would be the case until the 1968 Supreme Court opinion in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).

To build their case, fair housing advocates employed the rhetoric of property.¹⁷ Through conferences, pamphlets, and other efforts, activists worked to convince the country that denying property rights to minorities was un-American. Property ownership, they claimed, was so crucial to the political economy of the country that its denial amounted to a denial of full citizenship.¹⁸ Advocates argued that it was time that the country follow the principles established in the Civil Rights Act of 1866, which stated, “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, lease, sell, hold, and convey real and personal property.”¹⁹ Advocates further argued that segregation was wrong, that it had negative social and economic effects, and that America would be a truly democratic society when all races lived in one community. In the postwar era, when blacks, Jews, and other minorities constantly pointed to the sacrifices they had made for their country, the demand for equal access to property and the right to full participation was a powerful argument.

But these claims contradicted the widely accepted principle that property ownership included the full right of disposal. Implicit in this right was the “privilege to choose one’s neighbors.”²⁰ In the 1940s, restrictive covenants were an accepted aspect of housing policy. From the Federal Housing Administration (FHA) down to the local realtor, the real estate industry held as one of its central tenets that people of different races should not live together. The ethical code of the National Association of Real Estate Boards (NAREB) stated specifically that realtors should not introduce into a neighborhood “members of any race . . . whose presence would clearly be detrimental to property values. . . .”²¹ From its inception in 1934 until 1949, FHA regulations strongly approved of restrictive covenants in all federally financed housing. At the same time, in a period of heightened concern about communism, conservative political leaders opposed any attempts to expand the regulatory state. Led by the NAREB, the real estate industry continued to vigorously battle any proposals they believed would infringe upon the rights of property owners.

17. On the importance of property to American legal culture, see Joan Williams, *The Rhetoric of Property*, 83 IOWA L. REV. 277 (1998); JENNIFER NEDELSKY, *PRIVATE PROPERTY AND THE LIMITS OF AMERICAN CONSTITUTIONALISM* (1990).

18. 42 U.S.C. § 1981 (2000).

19. 42 U.S.C. § 1982 (2000).

20. See ROBINSON, *supra* note 1.

21. NAT’L ASS’N OF REAL ESTATE BDS., *CODE OF ETHICS* 3 (1924) (on file with author).

In this context, securing anti-discrimination legislation seemed a daunting task. Fair housing advocates responded that the government's "police powers" had been consistently expanded to address modern problems. Property rights, they argued, were not sacrosanct, but instead were subject to regulation for the good of society. Led by, among others, future HUD Secretary Robert Weaver, lawyer and housing activist Charles Abrams, and future New York Judge Hortense Gabel, the fair housing movement succeeded in creating new civil rights. In the face of constant opposition, advocates built fair housing law brick by brick in the postwar years, beginning with laws preventing discrimination in public housing and working to expand the scope of fair housing to the private market. These laws established the limited bureaucratic infrastructure for the regulation of housing discrimination that was the model for federal legislation in the 1960s.

By the early 1960s, fair housing advocates had made significant progress in winning the ideological debate and the fair housing movement had achieved numerous successes. During his 1960 campaign, candidate John F. Kennedy stated that he would erase federal housing discrimination "with the stroke of a pen" by signing an executive order if elected. While Kennedy did not immediately sign an order after his election, and issued only a limited directive, by the early 1960s those who maintained that housing discrimination was legally permissible were on the defensive. States and cities across the country witnessed grassroots movements against housing discrimination during the 1960s and these efforts culminated in the passage of the Fair Housing Act in 1968.

Despite the movement's achievements, housing segregation increased in the 1950s, and blacks and whites lived increasingly apart. Housing discrimination, while it decreased in some areas, continued to be the norm in most parts of the country. The failure of the fair housing movement to achieve the advocates' goal of an integrated society was the result of many factors including government intransigence, racism in the private market, as well as broader social and economic changes in American society.

In using the dominant discourse of property rights, advocates revealed the class-based nature of the fair housing movement. Fair housing advocates were certainly concerned about shelter for the poor; they were active in lobbying for increased public housing and other affordable housing programs. Their political arguments focused, however, on the impropriety of denying an individual the right to *buy a house* on the basis of race. Fair housing advocates hoped to open up opportunities

for middle-class blacks who would lead the way to an integrated society. Jackie Robinson, who broke baseball's color barrier, moving into a formerly segregated neighborhood, was a powerful image that was relied upon frequently by the movement. When whites saw that these pioneers made positive contributions to their neighborhoods, advocates claimed that support for anti-discrimination laws would increase and integration would follow.²² By shaping their strategy in this manner, advocates narrowed the scope of debate on the responsibility of government to provide meaningful access to housing for all Americans.²³ Jackie Robinson could afford to build his dream house. The overwhelming majority of minority Americans (and their white counterparts) could not.

As a practical strategy, the focus on the right to homeownership was logical. Activists understood the cultural power of homeownership, and they relied on this discourse in their lobbying efforts.²⁴ But the sanctity of homeownership to white Americans and to the real estate industry was extremely strong, as was opposition to government regulation in what were viewed as private matters. In addition, the creation of the post-World War II suburbs rested in large part on a racialized understanding of space. New suburban developments would provide safe, wholesome locations for nurturing white middle-class children. The dominant understanding of these communities conflicted directly with the integrationist aspirations of fair housing advocates.²⁵ Fair housing

22. This was, in essence, the "Contact Hypothesis" later explicated by Gordon Allport. GORDON W. ALLPORT, *THE NATURE OF PREJUDICE* (1954); see also John O. Calmore, *Race/ism Lost and Found: The Fair Housing Act at Thirty*, 52 U. MIAMI L. REV. 1067, 1121–22 (1998). For a critique of the "role model" framework, see Richard Delgado, *Affirmative Action as a Majoritarian Device: Or, Do You Really Want to Be a Role Model?*, 89 MICH. L. REV. 1222, 1226–31 (1991).

23. On the tensions over the role of government in providing decent housing, see GAIL RADFORD, *MODERN HOUSING FOR AMERICA: POLICY STRUGGLES IN THE NEW DEAL ERA* (1996).

24. On the importance of homeownership in American society, see Ronald Tobey et al., *Moving Out and Settling In: Residential Mobility, Home Ownership and the Public Enframing of Citizenship, 1921–1950*, 95 AM. HIST. REV. 1395–1421, 1415–17 (1990); Janet Hutchison, *Shaping Housing and Enhancing Consumption: Hoover's Interwar Housing Policy*, in *FROM TENEMENTS TO THE TAYLOR HOMES: IN SEARCH OF AN URBAN HOUSING POLICY IN TWENTIETH-CENTURY AMERICA* 81 (John Bauman et al. eds., 2000).

25. On the racialization of space, see KEVIN FOX GOTHAM, *RACE, REAL ESTATE, AND UNEVEN DEVELOPMENT: THE KANSAS CITY EXPERIENCE, 1900–2000* (2002); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1843 (1994); Cheryl Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993); Regina Austin, "Not Just for the Fun of It!": *Governmental Restraints on Black Leisure, Social Inequality, and the Privatization of Public Space*, 71 S. CAL. L. REV. 667 (1998); Keith Aoki, *Race, Space and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning and Gentrification*, 20 FORDHAM URB. L.J. 699 (1993); David Freund, *Making It Home: Race, De-*

advocates, fearing a political backlash, pushed their program in a piecemeal manner, hoping that they could create experiments in integrated living in newly developed areas that would break down such opposition by showing that integration worked. As a result of this strategy, while activists won the ideological battle, the laws they secured only regulated a small number of dwellings.

Even the successes of fair housing activists came at some cost. Their clearest victory, in prohibiting discrimination within public housing, was a hollow one, because it perversely contributed to the “ghettoization” of the projects. It was only in the late 1950s that fair housing activists began to argue that all citizens had a responsibility to participate in the housing market in a nondiscriminatory manner. By the time they succeeded in these efforts, the postwar pattern of inner cities with poor minorities and suburbs with middle class whites was well established.²⁶

Early fair housing laws became models for the expanded movement in the 1960s and led to the passage of federal Fair Housing Act. The legislation in New York and in other cities relied on the initiative of individuals to pursue claims of discrimination, and they established new institutions to oversee the system. However, these bureaucracies were limited in scope and struggled to secure adequate funding for the job. Critics of the Fair Housing Act have argued that the law provides limited protection because poor minorities do not have the means to secure legal assistance to bring a claim.²⁷ The class-based limitations of the fair housing strategy were present from its inception.

An analysis of the movement against housing discrimination highlights the contradictions of rights-based ideology as a means for furthering social improvement.²⁸ Fair housing advocates argued that race

velopment and the Politics of Place in Suburban Detroit, 1940–1967 (1999) (unpublished Ph.D. dissertation) (on file with author).

26. This article does not make a casual argument between the passage of fair housing laws and the entrenchment of racial segregation in the postwar years. As this article argues, the laws passed in the 1950s had only a minor impact.

27. See, e.g., James Kushner, *A Comparative Vision of the Convergence of Ecology, Empowerment and the Quest for a Just Society*, 52 U. MIAMI L. REV. 931, 933 (1998); John Charles Boger, *Toward Ending Residential Segregation: A Fair Share Proposal for the Next Reconstruction*, 71 N.C. L. REV. 1573, 1583 (1993); Alex Johnson, *Shaping American Communities: Segregation, Housing and the Urban Poor: How Race and Poverty Intersect to Prevent Integration: Destabilizing Race as a Vehicle to Integrate Neighborhoods*, 143 U. PA. L. REV. 1595, 1600 (1995); Calmore, *supra* note 22, at 1071.

28. The literature on the limitations of rights-based ideology is voluminous. See, e.g., Derek Bell, *Brown v. Board and the Interest Convergence Dilemma*, 83 HARV. L. REV. 518 (1980); Mark V. Tushnet, *The Critique of Rights*, 47 SMU L. REV. 23 (1993). But see Kimberle Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1368–69 (1988) (for a defense of the use of rights rhetoric).

should be removed from the consideration of housing opportunities: that all persons should have equal access. At the same time, activists sought to achieve an integrated society. Advocates thought that these goals were complementary, but even as discrimination seemed to subside, segregation remained the norm. A decade before the efficacy of “affirmative action” would enter the public debate, the fair housing effort raised these important questions. In the only area where government did take affirmative steps to promote integration, the class-based nature of the movement was exposed in particularly stark relief. In response to concerns that their once integrated public housing projects were becoming increasingly minority, some fair housing advocates argued for racial quotas in these developments. Because of the limited number of units available, New York City’s short-lived attempt to stem the ghettoization of its public housing resulted in a decrease in access to housing for poor minorities.

This study of the fair housing movement contributes to our understanding of the limitations of civil rights laws to affect social change. Critics of fair housing laws argue that they did not achieve the goal of an integrated society, but these analyses fail to understand the multitude of economic, social, and political forces that shaped the options of fair housing activists during the 1950s. As this history reveals, fair housing laws were, in principal, successful in securing the limited goals of opening up new resources for middle-class blacks that advocates hoped to achieve. Only a more nuanced understanding of the history of the fair housing movement can provide the appropriate context for assessing the successes and limitations of fair housing laws. The problem of housing segregation lies not primarily in the passage of specific laws, but in the broader structures of American society.²⁹

The question of the appropriate role of government in race relations continues to draw a great deal of attention in the early twenty-first century. Arguments over the efficacy, fairness, and legality of “affirmative action” programs are a central part of this unresolved debate.³⁰ The fair housing movement illuminates several conflicts in this struggle. While banning discrimination was a partial answer to the problems of residential segregation, the American system of private property and

29. Several fair housing scholars have reached the same conclusion in the last few years, see Kushner, *supra* note 27, at 933; Boger, *supra* note 27, at 1583.

30. See, e.g., CHRISTOPHER EDLEY, NOT ALL BLACK AND WHITE: AFFIRMATIVE ACTION, RACE AND AMERICAN VALUES (1996); JOHN SKRENTNY, THE IRONIES OF AFFIRMATIVE ACTION: POLITICS, CULTURE AND JUSTICE IN AMERICA (1996); RACE VS. CLASS, *supra* note 12; LANIE GUINIER & SUSAN STURM, WHO’S QUALIFIED? (2002).

local government privileged and continues to privilege the interests of current property owners over prospective ones. The law had limited ability to alter this imbalance of power.³¹ In a market of limited housing resources, minority home-seekers faced a daunting task in finding new housing. At the same time, the intensified government involvement in the housing market required to create integrated communities conflicted with the individual rights of citizens, including the minorities the programs sought to help.³² The class implications of affirmative action programs were present, and unresolved, in the formative years of the fair housing movement. They remain so today.

Section I of this article discusses the formation of the fair housing movement in the late 1940s and early 1950s, and examines the political and social philosophies of the movement's leaders. Section II assesses the interaction of fair housing advocates and government agencies in the brief window of opportunity following the *Shelley* decision and describes the obstacles they faced in creating a national program against discrimination. Section III analyzes the crusade to pass fair housing legislation in New York City and State, the first locales to consider such laws. These battles illuminate the differing conceptions of property rights and the role of government held by both sides of the debate and assesses the fundamental limitations of their proposals. Section IV then describes the emerging national effort for fair housing and discusses how the vision of fair housing advocates was replicated. Section V examines the debate over housing quotas in late 1950s New York, a conflict that revealed the inherent contradictions in the goals of equal opportunity and anti-discrimination. The Conclusion offers a brief analysis of the fair housing movement in the 1960s (a topic worthy of its own study), assesses the impact of fair housing laws in the last thirty years, and examines the implications of this study to modern civil rights efforts.

II. Creating a Fair Housing Movement

The *Shelley* decision remains one of the most important opinions in the field of housing discrimination and is an important victory in the struggle for civil rights. However, another opinion released less than a year later had as much influence on the fair housing movement. In April of 1949, in a case with far reaching implications for postwar urban

31. On the limited power of affirmative action, see Derrick Bell, *Bakke, Minority Admissions, and the Usual Price of Racial Remedies*, 67 CAL. L. REV. 3, 17 (1979).

32. On the conflicting principles of affirmative action, see LINCOLN CAPLAN, *UP AGAINST THE LAW: AFFIRMATIVE ACTION AND THE SUPREME COURT* 2 (1997).

housing, the New York Court of Appeals ruled that the state and federal constitutions were powerless to prevent housing corporations from discriminating on the basis of race.³³ The defeat for equal rights was a crucial part of a decade-long struggle to integrate the Stuyvesant Town Development, the nation's first urban renewal project.

The battle over equal rights at Stuyvesant Town brought together many advocates who would organize a broader movement for reform.³⁴ This effort was shaped by a group of activists who saw housing discrimination as the major obstacle to the incorporation of African-Americans and other minorities into American society. They believed the opening up of new opportunities to middle-class blacks would provide the stepping point for broader integration efforts. From the beginning, however, activists battled against deep-seated conceptions of private property rights.

Stuyvesant Town was the first project built under New York's Urban Redevelopment Corporation's Law. Spearheaded by master builder and "power broker" Robert Moses, and sponsored by the Metropolitan Life Insurance Company, the middle-income apartment complex covered a seventy-two acre tract of land on Manhattan's Lower East Side.³⁵ While most of the city's progressive leadership supported the idea of urban renewal, the city attacked Stuyvesant Town on many grounds. Critics complained that the project would uproot thousands without adequate provision for their shelter and would create an overly dense, "walled off community in the middle of the city."³⁶ But civil rights activists were most concerned about the remarks of Met Life Chair, Frederick Ecker, regarding Stuyvesant Town's racial composition. "Negroes and whites don't mix," Ecker stated, and he declared that the project would be for whites only.³⁷

This statement started a flurry of activity at the city and state level. Civil rights activists demanded that the city and state refuse to move forward on the project until Ecker agreed that it would admit tenants on a nondiscriminatory basis. Unable to achieve success in the legislature, activists brought suit against Metropolitan Life and the city. The lead counsel on the case was Charles Abrams. Born in Russia, Abrams

33. *Dorsey v. Stuyvesant Town Corp.*, 299 N.Y. 512 (1949).

34. The story of the battle over Stuyvesant Town is ably told in SCOTT HENDERSON, *HOUSING AND THE DEMOCRATIC IDEAL: THE LIFE AND THOUGHT OF CHARLES ABRAMS* 122–45 (2000); JOEL SCHWARTZ, *THE NEW YORK APPROACH: ROBERT MOSES, URBAN LIBERALS THE REDEVELOPMENT OF THE INNER CITY* 84–107 (1993).

35. HENDERSON, *supra* note 34, at 127–29; SCHWARTZ, *supra* note 34, at 84.

36. HENDERSON, *supra* note 34, at 127–28.

37. HENDERSON, *supra* note 34, at 122.

immigrated to New York as a child. Like many other working-class Brooklyn Jews, Abrams attended City College. He then became a successful real estate lawyer in Manhattan and an active supporter of housing reform.³⁸ Abrams played a crucial role in the creation of the New York City Housing Authority and served as its counsel for the first four years of its existence. He was a prolific writer and speaker on issues of housing and he was a vocal critic of what he termed the “Business Welfare State.” Abrams believed that urban redevelopment should be controlled by public agencies, but during the 1940s he saw the laws he had helped craft usurped by private corporations for their own gain.³⁹

Ecker’s announcement that Stuyvesant Town was to be segregated was further evidence of Abrams claim. “We are faced with the dilemma,” Abrams stated, “that the very social reforms in housing and city planning—zoning, slum clearance and so on—which are thought to advance social progress lend themselves most easily to devices for achieving discrimination.”⁴⁰ Abrams argued that instead of intensifying segregation, Stuyvesant Town could be a model for future integration efforts. Because it would be a new development, the residents would not have established views about what was acceptable for the neighborhood. Abrams pointed out that New York’s public housing had been successful in achieving integration, and that Stuyvesant Town could be a further “proving ground that different racial groups could live in harmony.”⁴¹

Despite his active role in the movement, Abrams remained skeptical about the power of the law to eliminate housing discrimination. Abrams argued that the intensity of prejudice was too high among most whites, and that efforts at legislative action would generally fail, unless they were focused specifically on housing produced with direct government involvement.⁴² Abrams frequently criticized activists who called for anti-discrimination laws in areas where they had not initiated grassroots organizing, and he worried that such efforts would impede the efforts

38. Abrams’s 1955 book, *FORBIDDEN NEIGHBORS*, became the bible of the fair housing movement. In the 1940s and 1950s, he wrote dozens of articles on the subject.

39. See HENDERSON, *supra* note 34, at 129–35; CHARLES ABRAMS, *FORBIDDEN NEIGHBORS* (1955) [hereinafter ABRAMS, *FORBIDDEN NEIGHBORS*].

40. HENDERSON, *supra* note 34, at 134 (quoting Charles Abrams, *The Segregation Threat in Housing*, COMMENTARY 123–31 (Feb. 1949)).

41. HENDERSON, *supra* note 34, at 132.

42. Algernon Black, Report on Conference with Charles Abrams (Apr. 6, 1949) (Black Papers, Box 9) (on file with author); Charles Abrams, “The Limits of Law in Housing and Social Action,” Speech Delivered at the 12th Annual Institute on Race Relations, June 29, 1955, NAACP Papers, Part 5, Roll 10 (on file with author).

to secure more affordable housing that would have an immediate impact on blacks and other minorities.⁴³

The *Dorsey* case was a joint effort of many groups, including the NAACP, the City-Wide Citizens Committee for Harlem, the American Civil Liberties Union, and the American Jewish Congress.⁴⁴ Among the leaders of the struggle was Algernon Black. Black was a graduate of Columbia College and the director of the New York Ethical Culture Society. Black took a humanistic approach to the question of discrimination and frequently spoke about the moral requirement that all persons be treated equally.⁴⁵ His office was a clearinghouse for many activist causes, and he was particularly crucial to the effort to secure financial resources for the fair housing movement.⁴⁶

The plaintiffs, led by Joseph R. Dorsey, Monroe Dowling, and Calvin Harper, three African-American veterans, applied for an injunction requiring that Stuyvesant Town consider their applications.⁴⁷ In court, Metropolitan Life argued that it was free to select its tenants like any private landlord. Abrams countered that Stuyvesant Town was not a “private” development, but rather a public/private effort. Because the government was crucial to the project—the city provided tax abatements and utilized its powers of eminent domain to assist the development—Stuyvesant Town was in essence a “public undertaking” and required under the state and federal constitutions to provide equal access.⁴⁸ The trial court denied the plaintiff’s request, and the appellate division affirmed the decision.⁴⁹ On appeal to the court of appeals, Thurgood Marshall, director of the NAACP Legal Defense Fund, joined Abrams on the brief. Fresh off the victory in the *Shelley* case, the NAACP viewed the Stuyvesant Town dispute as crucial to the cause of fair housing. Joseph Robison, Will Maslow, and Stephen Polier of the Committee for Law and Social Action of the American Jewish Congress, also participated in the appellant’s case.⁵⁰

In a four-to-three decision, the court of appeals denied the appellant’s

43. FORBIDDEN NEIGHBORS, *supra* note 39, at 385.

44. Amicus briefs were filed by numerous organizations, including the Citizens Housing and Planning Council, the National Lawyers Guild, and the Friendship House of Harlem. *Dorsey v. Stuyvesant Town Corp.*, 299 N.Y. 512 (1949).

45. Among Black’s many publications were *WHO’S MY NEIGHBOR?* (1958); *IF I MARRY OUTSIDE MY RELIGION* (1954); and *PEOPLE AND THE POLICE* (1968).

46. Columbia University has in its special collections a collection of Black’s papers, which reveal his involvement with numerous endeavors.

47. *Dorsey v. Stuyvesant Town Corp.*, 190 Misc. 187 (N.Y. 1947).

48. *Id.* at 191.

49. *Dorsey v. Stuyvesant Town Corp.*, 274 N.Y. App. Div. 992 (N.Y. App. Div. 1948).

50. *Id.*

petition. Writing for the majority, Justice Bromley cited the repeated attempts to amend the New York State Constitution with regard to housing discrimination, and concluded that the legislature had declined to require redevelopment corporations to provide housing on a nondiscriminatory basis.⁵¹ “No statute in New York recognizes the opportunity to acquire interests in property as a civil right,” the court stated.⁵² The court distinguished recent precedents, including *Shelley* and *Marsh v. Alabama*,⁵³ holding that those cases “disclose the exertion of governmental power directly to aid in discrimination.”⁵⁴ “Neither fact is present here,” the court concluded.⁵⁵ The participation of the government in the Stuyvesant Town development was not significant enough to constitute state action under the Constitution.

The *Dorsey* battle brought together several organizations to create a permanent organization to fight housing discrimination. In 1949, they formed the New York State Committee Against Discrimination in Housing (NYSCDH), with Algernon Black as chair.⁵⁶ The executive director of the organization was Hortense Gabel, who had formerly been assistant corporation counsel for the City of New York. Born in the Bronx, Gabel would have a long history of opening doors for women in the legal field. Among the first women to graduate from Columbia Law School, she would later become a judge on the New York Supreme Court. Journalist Robert Caro described Gabel as a “reformer with a healthy helping of the reformer’s penchant for idealism.”⁵⁷ Gabel was drawn to the fair housing effort through her friendship with Rabbi Stephen Wise, founder of the American Jewish Congress.⁵⁸ Gabel was active in many civil rights causes throughout the 1940s, and afterwards she served as the organization’s primary paid staff person.⁵⁹

The primary purpose of the NYSCDH was to secure local and state legislation banning discrimination in housing.⁶⁰ In a resolution adopted

51. See *Dorsey v. Stuyvesant Town Corp.*, 299 N.Y. 512, 528–29 (1949).

52. *Id.* at 531.

53. 326 U.S. 501 (1946) (holding that the Fourteenth Amendment covered a corporate town).

54. *Dorsey*, 299 N.Y. at 533.

55. *Id.* at 533–34.

56. See JULIET SALTMAN, *OPEN HOUSING: DYNAMICS OF A SOCIAL MOVEMENT* 44–45 (1978).

57. ROBERT CARO, *THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK* 961 (1974).

58. *Id.* at 961.

59. Paula Span, *The Bitter Limbo of Bess Myerson: The Commissioner and a Prominent N.Y. Judge Toppled by Scandal*, WASH. POST, July 23, 1987, at C1.

60. The Work of the National Committee Against Discrimination in Housing and the New York State Committee on Discrimination in Housing, Algernon Black Papers,

December 2, 1949, the delegates stated that “residential segregation is bad planning. It is inconsistent with the tenets of our democratic society.”⁶¹ They called on the New York State Legislature to “take effective action to prevent racial and religious discrimination and segregation in all housing constructed in this state with public assistance.”⁶²

The NYSCDH drew its strength from the coalition of groups that supported fair housing. Most active among its constituent members were the NAACP and the American Jewish Congress.⁶³ Both organizations provided staff resources and legal assistance to the organization. The board of directors of the group was filled with leaders of New York’s liberal elite, including Judge Justine Wise Polier, Stephen Polier, Dr. Bryn Hovde, president of the New School for Social Research, New York City Councilman Stanley Isaacs, Judge Hubert Delany, and Mrs. Marshall Field.⁶⁴

Among the organization’s many activities was the publication of several pamphlets advocating fair housing, research on housing discrimination in cities across New York State, and *organization* of conferences on the topic. The keynote speaker at the group’s first conference was Robert Clifton Weaver. Born in Washington D.C., Weaver was a member of that city’s black elite. His grandfather had been the first African-American to graduate from Harvard Dental School. Weaver followed family tradition and attended Harvard himself, receiving his Ph.D. in Economics from the University in 1934. A protégé of W.E.B. DuBois, Weaver held numerous positions in Roosevelt’s New Deal government. He served as advisor on Negro Affairs to In-

Columbia University Special Collections, Box 9 (on file with author) [hereinafter “Black Papers”].

61. *Id.*

62. Resolution on Publicly Assisted Housing (Dec. 2, 1949), Papers of the United Neighborhood Houses, Social Welfare Archives, University of Minnesota, Box 42, Folder 429 (on file with author) [hereinafter “UNH Papers”].

63. The group’s “Cooperating Organizations” were: American Association of University Women, The American Civil Liberties Union, the American Jewish Committee, the American Jewish Congress, the American Veterans Committee, the Anti-Defamation League of B’nai B’rith, the Board of Home Missions, Congregational Christian Churches, the Citizens Housing and Planning Council of New York, the Commission on Christian Social Relations of the Episcopal Diocese of New York, the Human Relations Commission of the Protestant Council of New York, the Intergroup Relations Committee-New York Ethical Society, the Jewish Labor Committee, the Jewish War Veterans, the National Association for the Advancement of Colored People, the National Conference of Christians and Jews, the United Neighborhood Houses of New York, and the Women’s City Club of New York.

64. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, FORBIDDEN NEIGHBORS (1949).

terior Secretary Harold Ickes, helped establish the Race Relations Service at the United States Housing Agency, and served as a staff member of the War Production Board. During these years, Weaver published dozens of articles and two books on housing and labor policy.⁶⁵

In 1948, Weaver published *The Negro Ghetto*, a study of racial change in Northern cities that quickly became required reading for students of urban policy. *The Negro Ghetto* was a history, sociology, and economic analysis of the black ghetto. It was also a vigorous critique of the system of restrictive covenants and of the government's role in supporting segregation.⁶⁶ NAACP lawyers relied heavily on Weaver's work in their brief in the *Shelley* case.⁶⁷ By the late 1940s, Weaver was widely acknowledged to be among the foremost authorities on housing discrimination, and he became the leading intellectual force behind the fair housing movement.

In *The Negro Ghetto*, Weaver declared that urban renewal could be an "[o]ppportunity or threat" depending upon how it was implemented.⁶⁸ Weaver argued that only "sound city planning," without segregation, would enable urban redevelopment to succeed.⁶⁹ He worried that urban renewal carried "a triple threat to minorities and good housing," because it might displace blacks from desirable areas, be used to break up integrated neighborhoods, and result in a decrease in housing.⁷⁰ Appropriately implemented, however, urban redevelopment could also be, Weaver argued, a chance to create new patterns of living for blacks.⁷¹ Like Abrams, Weaver felt that new communities presented the best opportunity for experimentation in integration.⁷²

Influenced by his concern about the impact of the program, housing advocates decided at the 1949 conference that it was necessary to establish an organization to focus on the national problem of housing

65. Robert Weaver, *Whither Northern Race Relations Committees?*, 5 PHYLON 205–18 (1944) [hereinafter Weaver, *Whither Northern Race Relations Committees*]; Robert Weaver, *Planning for a More Flexible Land Use*, 23 J. LAND & PUB. UTIL. ECON. 29–41 (1947); Robert Weaver, *Habitation with Segregation*, OPPORTUNITY (June 1952) (on file with author) [hereinafter Weaver, *Habitation with Segregation*]; Robert Weaver, *The Effect of Anti-Discrimination Legislation upon the FHA and VA-Insured Housing Market in New York State*, 31 LAND ECON. 303–13 (1955); Robert Weaver, *Non-White Population Movements and Urban Ghettos*, 20 PHYLON 235–41 (1959); ROBERT WEAVER, *NEGRO LABOR: THE PROBLEM OF TODAY* (1946); ROBERT WEAVER, *THE NEGRO GHETTO* (1948) [hereinafter WEAVER, *THE NEGRO GHETTO*].

66. WEAVER, *THE NEGRO GHETTO*, *supra* note 65.

67. CLEMENT E. VOSE, *CAUCASIANS ONLY* (Univ. of Cal. Press 1967) (1959).

68. WEAVER, *THE NEGRO GHETTO*, *supra* note 65, at 322.

69. WEAVER, *THE NEGRO GHETTO*, *supra* note 65, at 275.

70. WEAVER, *THE NEGRO GHETTO*, *supra* note 65, at 324.

71. WEAVER, *THE NEGRO GHETTO*, *supra* note 65, at 328.

72. WEAVER, *THE NEGRO GHETTO*, *supra* note 65, at 328.

discrimination.⁷³ The conferees voted to create the National Committee Against Discrimination in Housing (NCDH), and elected Weaver president. Algernon Black was elected chair of the Board of Directors.⁷⁴ Delegates decided that the organization would share offices and staff with the NYSCDH.⁷⁵

The stated purpose of the NCDH was to conduct research on the housing situation of minorities in cities across the country, and to work with grassroots groups interested in achieving equal access in housing. However, the NCDH quickly became involved in advocacy for fair housing efforts. During the group's first decade, NCDH leaders undertook numerous campaigns, particularly at the federal level, to secure equal access to housing for all individuals.⁷⁶ The committee's publications sought to influence public opinion to support legislation against discrimination. "One fact is starkly clear: Discrimination in housing is the keystone of all forms of discrimination," stated one such pamphlet.⁷⁷

While the NCDH was a coalition of many groups with strong ideas about civil rights, Weaver's perspective on these issues was very influential. Weaver had written frequently about the unfairness of the exclusion blacks, particularly higher-income blacks, experienced in the housing market. "No less ironic is the fact that when, at long last, an appreciable number of colored Americans have sufficient incomes to afford decent housing, those who want to better their home surroundings are forced to pay through the nose."⁷⁸ Throughout the late 1940s and 1950s, Weaver argued that there was a growing number of black families able to pay for suburban housing, and that builders and policymakers were wrongly preventing them from participating. "Under a

73. Black Papers, *supra* note 60.

74. Minutes of Meeting of the Temporary Committee to Form a National Committee Against Discrimination in Housing, Held at the Fieldston School (July 26, 1950) (NAACP Papers, Part V Housing, Roll 17) (on file with author).

75. See Black Papers, *supra* note 60, at Box 12; see also MEYER, *supra* note 8, at 139.

76. Gabel and Weaver had originally conceived of an organization they called "Housing Research Council, Inc." to conduct studies and provide information on the housing status of minorities. They applied for funding for this organization, but they were rebuffed by several foundations who felt that the research would not be "objective." The organizers of the committee then shifted the focus of the organization to encompass advocacy. Letter from Stanley Isaacs to Hortense Gabel, NCDH Papers, Amisted Research Center, New Orleans (Oct. 10, 1950) (on file with author) [hereinafter NCDH Papers]; Letter from Frank Horne to Robert Weaver (Oct. 23, 1950) (NCDH Papers); Letter from Hortense Gabel to Ruth Sand (Oct. 30, 1950) (NCDH Papers); Letter from Hortense Gabel to Will Maslow (Dec. 22, 1950) (NCDH Papers).

77. NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, *OPENING A NEW FRONTIER* (1954).

78. Weaver, *Habitation with Segregation*, *supra* note 65.

free economy,” he asserted, “the purchaser is supposed to have access to the total supply (within his price range) at the same time that the seller is supposed to have access to the total effective demand.”⁷⁹ In his economic analysis, the housing market failed to meet this standard. “Nowhere is the repudiation of the promise of a free, private enterprise economy better illustrated than in the development of postwar communities like Levittowns and Park Forest, where colored families regardless of income and cultural attainments, are systematically excluded.”⁸⁰

Weaver was a vocal advocate for public housing throughout his career, and the public housing program witnessed its largest expansion when he was Secretary of Housing and Urban Development. But when making the case for fair housing, Weaver consistently focused on higher income minorities.⁸¹ Class segregation, Weaver argued, was a natural occurrence.⁸² Immigrants historically had lived in segregated neighborhoods, but they had moved upon achieving economic success. This process “offered a natural, American escape from blighted areas for those who have gone ahead, and more important, it has thrown together persons of immigrant stock with older Americans of the same economic and cultural development. The result has been a new appreciation for the individual and less concern about national origin or background.”⁸³ Unfortunately, Weaver argued, blacks had been excluded from this process. “Those of his group who have cultural and economic ties with present residents in desirable areas seldom get a chance to move into these areas. The deterioration of sections where Negroes live becomes, in the popular mind, a reflection of racial characteristics rather than the result of low economic status of occupants.”⁸⁴

To overcome the fears of white homeowners that blacks would depress property values, Weaver championed residential restrictions based not on race but on occupancy and maintenance requirements.⁸⁵ Property owners would agree that their homes would be used only for single-

79. Robert C. Weaver, Address at the Luncheon Meeting of the Sixth Annual Conference on Discrimination in Housing (May 21, 1954) (available in the Robert Weaver Papers, Supplement, Schomburg Library) (on file with author) [hereinafter Weaver Papers Supplement].

80. *Id.*

81. WEAVER, THE NEGRO GHETTO, *supra* note 65, at 269.

82. WEAVER, THE NEGRO GHETTO, *supra* note 65, at 347.

83. Weaver, *Whither Northern Race Relations Committees*, *supra* note 65, at 209.

84. Weaver, *Whither Northern Race Relations Committees*, *supra* note 65, at 210.

85. See AMERICAN COUNCIL OF RACE RELATIONS, HEMMED IN (1945); Robert Weaver, *Housing in a Democracy*, ANNALS AM. ACAD. POL. & SOC. SCI. 95-105 (Mar. 1946) (on file with author); Robert Weaver, *A Tool For Democratic Housing*, CRISIS 47-48 (Feb. 1947) (on file with author).

family residence, and they would meet community standards for care.⁸⁶ Weaver argued that if residents entered into such agreements, they would protect themselves against a decline in property values.⁸⁷ “This would protect the integrity of the neighborhood and afford an opportunity for the member of a minority group who has the means and the urge to live in a desirable neighborhood,” and would “prevent, or at least lessen the exodus of all whites upon the entrance of a few Negroes, as this is what depresses property values,” Weaver claimed.⁸⁸ Such agreements would, Weaver argued, “offer more real protections to owners than undemocratic restrictions based on race,” while at the same time provide “a basis for real understanding and cooperation between white and colored residents.”⁸⁹

In advocating such standards, Weaver hoped to prove that race was not a factor in neighborhood success. The “talented tenth” would lead the way in opening doors for other blacks.⁹⁰ Weaver acknowledged that he was advocating distinctions based on class but, he argued, “neither occupancy standards nor any other device could *introduce* class in housing. It has been there for centuries.”⁹¹ Economically diverse communities, Weaver claimed, were almost always areas in transition from wealthy neighborhoods to poor ones.⁹² “Truly democratic neighborhoods—areas where many economic and all racial groups can find shelter,” he argued, “will be realized in our cities only when we plan and develop” them.⁹³

Weaver’s goal was to establish a structure to promote racial integration along with modern housing. In *The Negro Ghetto*, he supported several progressive programs to increase the production of affordable housing, including public housing, limited dividend housing, and the creation of new towns.⁹⁴ Weaver and other housing activists understood that the creation of racially and economically integrated communities required not only government regulation of housing discrimination, but greater support for the production of affordable housing and increased

86. WEAVER, *THE NEGRO GHETTO*, *supra* note 65, at 344–45.

87. WEAVER, *THE NEGRO GHETTO*, *supra* note 65, at 344–45.

88. AMERICAN COUNCIL OF RACE RELATIONS, *HEMMED IN* 11–12 (1945).

89. WEAVER, *THE NEGRO GHETTO*, *supra* note 65, at 345.

90. WEAVER, *THE NEGRO GHETTO*, *supra* note 65, at 366. The “talented tenth” was a term coined by W.E.B. DuBois, Weaver’s mentor, to describe the group of African-Americans who would lead the way to an integrated society. See DAVID LEVERING LEWIS, *W.E.B. DUBOIS: BIOGRAPHY OF A RACE, 1868–1919* 206 (1993).

91. WEAVER, *THE NEGRO GHETTO*, *supra* note 65, at 347.

92. WEAVER, *THE NEGRO GHETTO*, *supra* note 65, at 348.

93. WEAVER, *THE NEGRO GHETTO*, *supra* note 65, at 349.

94. WEAVER, *THE NEGRO GHETTO*, *supra* note 65, at 307–321.

government oversight of planning and development. As an analysis of the debates between housing activists and federal officials reveals, the social, political, and economic obstacles to these goals were immense. As a result, fair housing activists were forced to choose among their demands, and to limit their expectations to promoting experimental efforts at integration.

III. Closing the Window of Opportunity: Housing Policy After the *Shelley* Decision

President Truman created the Housing and Home Finance Agency (HHFA) in 1947 to oversee the overhaul of the federal housing program. While the HHFA was new in the postwar era, its approach to issues of housing discrimination was not. With a few exceptions, federal agencies had consistently promoted segregation in their policies. As several scholars have argued, the postwar suburban ideal was a racialized space in which the white middle-class would live out their dreams.⁹⁵ Housing officials had great difficulty imagining a different kind of community, and they were extremely concerned about federal intervention into what they viewed as local matters. In the aftermath of *Shelley*, fair housing advocates believed that a window of opportunity had opened to push federal housing administrators toward equal treatment. While small changes did occur in the years after *Shelley*, for the most part federal officials continued to sanction and support housing discrimination in suburban housing, public housing, and the urban renewal program. The decisions made by federal housing officials in these years exacerbated the racial segregation and placed additional obstacles to the fair housing laws later enacted.⁹⁶

The Supreme Court's rejection of government enforcement of restrictive covenants created intense concern for many American builders and their supporters at the HHFA. Administrator Raymond Foley immediately asked for a review of agency policies to see if they would have to be changed in light of the decision. The conclusion of his staff was that the HHFA could continue operating business as usual. FHA Commissioner Franklin Richards stated that the decisions would "in no way affect the programs of this agency."⁹⁷

95. GOTHAM, *supra* note 25, at 27; Harris, *supra* note 25, at 1718; Ford, *supra* note 25, at 1947.

96. This section relies in part on the work of Arnold Hirsch, *Choosing Segregation: Federal Housing Policy Between Shelley and Brown*, in FROM TENEMENTS TO THE TAYLOR HOMES: IN SEARCH OF AN URBAN HOUSING POLICY IN TWENTIETH-CENTURY AMERICA 211-14 (John Bauman et al. eds., 2000).

97. Memorandum from Franklin Richards, Commissioner, Federal Housing Admin-

Truman and his advisors, however, recognized the importance of the black vote to the Democratic Party and after more than a year of lobbying, the Truman Administration issued an opinion on the applicability of *Shelley* to federal housing policy.⁹⁸ In December of 1949, Solicitor General Philip Perlman announced that the FHA would not provide mortgage insurance for any properties that had recorded restrictive covenants subsequent to the promulgation of the rule. While real estate executives blasted the announcement, housing officials quickly calmed them by noting that the prohibition applied only to *recorded* restrictive covenants (not to “gentleman’s agreements”), and stated it would be “an exceptional case where a property cannot receive Federal mortgage help.”⁹⁹ Fair housing advocates were truly disappointed by the order. NCDH board member Stephen Polier noted, “the new rules will not affect existing restrictive covenants.¹⁰⁰ They will not reduce FHA hostility to mixed housing developments. . . . Most important, the new restrictions will not prevent FHA from insuring mortgages for builders who openly announce their intention to exclude minority groups, so long as their intention is not written into a recorded restrictive covenant.”¹⁰¹

Housing activists also failed to secure support from the legislative branch of the federal government. At the same time that the executive branch was debating anti-discrimination principles, Congress was considering the Housing Act of 1949, the most significant housing bill in history.¹⁰² While civil rights activists had constantly pressed for anti-discrimination provisions in important legislation, conservative opponents of the act tried to use the principle of equality to stop the passage of the housing act. In March 1949, Senators John Bricker of Ohio and Harry Cain of Washington introduced an amendment to the Taft-Ellender-Wagner bill forbidding racial discrimination in any public

istration, to Raymond Foley, Administrator, Housing Home Finance Administration (May 21, 1948); see also Hirsch, *supra* note 96, at 211.

98. On the importance of the black vote to Truman’s civil rights policy, see LAWSON, *supra* note 9, at 35–39; CASHMAN, *supra* note 8, at 103–04; DONALD MCCOY & RICHARD RUETTEN, *QUEST AND RESPONSE: MINORITY RIGHTS AND THE TRUMAN ADMINISTRATION* 214–15 (1973).

99. *Realty Men Fear Havoc in Building Over Curb on Bias*, N.Y. TIMES, Dec. 4, 1949, at 1; see also *No Change Viewed in Work of F.H.A.*, N.Y. TIMES, Dec. 4, 1949, at 84.

100. Shad Polier, *Letter to the Editor*, N.Y. TIMES, Dec. 12, 1949, at 32.

101. *Id.*

102. For an examination of the history of the Act, see RICHARD O. DAVIES, *HOUSING REFORM DURING THE TRUMAN ADMINISTRATION* (1966); MARK GELFAND, *A NATION OF CITIES: THE FEDERAL GOVERNMENT AND URBAN AMERICA, 1933–1965* (1975); GAIL RADFORD, *MODERN HOUSING FOR AMERICA: POLICY STRUGGLES IN THE NEW DEAL ERA* (1996); JON TEAFORD, *ROUGH ROAD TO RENAISSANCE: URBAN REVITALIZATION IN AMERICA, 1940–1985* (1990).

housing funded by the bill.¹⁰³ Bricker and Cain violently opposed most New Deal-Era reforms, and fought public housing, which Bricker called “communistic.”¹⁰⁴ By introducing race into the debate, they hoped to divide the coalition of Northern Liberal and Southern Progressives who supported the act.¹⁰⁵

The NAACP worked actively to secure passage of the amendment, but many other liberals were caught between competing causes. Senators Hubert Humphrey of Minnesota and Paul Douglas of Illinois, both vocal advocates for civil rights, announced their opposition to the fair housing rider. Douglas declared it would be the “death knell” of urban redevelopment.¹⁰⁶ The Senate liberals argued that the amendment would imperil the cause of decent housing, which they argued, was more important.¹⁰⁷ Charles Abrams also opposed the amendment. Public housing, Abrams argued, had “done more to point the way to real non-segregation than any other measure in our time.”¹⁰⁸ Abrams claimed that the program would never survive with the amendment, and that no public housing would be built in the South, the home of most African-Americans. He later stated that he worried that “such a rider” would “play directly into the hands of the real estate lobby and make the civil rights fight the tool of reaction instead of the bannerhead of liberalism.”¹⁰⁹ The newly established NYSCDH did not take a public position on the amendment. With limited resources to produce affordable housing, activists were forced to sacrifice the goal of integration. In view of the lack of support for equal treatment, the NAACP’s main lobbyist, Clarence Mitchell, concluded, “some liberals simply do not have the guts to make a good fight for this just principle.”¹¹⁰ The Bricker Amendment failed, and the Housing Act of 1949 passed.¹¹¹

There are many ironies to the debates over segregation within public housing. By the time of the Bricker Amendment, public housing had become identified as minority housing in many large urban areas.¹¹²

103. See DAVIES, *supra* note 102, at 107; HENDERSON, *supra* note 34, at 53–155.

104. See RICHARD O. DAVIES, *DEFENDER OF THE OLD GUARD: JOHN BRICKER AND AMERICAN POLITICS* (1997).

105. See DAVIES, *supra* note 102, at 107; Hirsch, *supra* note 96, at 215.

106. See DAVIES, *supra* note 102, at 108.

107. See *id.* at 108; HENDERSON, *supra* note 34, at 154; Hirsch, *supra* note 96, at 215.

108. HENDERSON, *supra* note 34, at 154.

109. Charles Abrams, Speech Delivered at the 12th Annual Institute of Race Relations, Fisk University (June 29, 1955) (transcript available NAACP Papers: Part 5, Housing, Roll 10) (on file with author).

110. HENDERSON, *supra* note 35, at 154 (quoting Letter to Charles Abrams from Clarence Mitchell, July 28, 1955, NAACP, Washington Bureau Papers, Box 91, available at the Library of Congress.)

111. *Democrats Reject Housing Anti-Bias*, N.Y. TIMES, Apr. 12, 1949, at 1.

112. See THOMAS J. SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POST WAR DETROIT* (1996).

While fair housing activists hoped to use public housing to promote integration, many communities opposed public housing development, and the program was restricted to minority or transitional areas in most big cities. In the 1950s, public projects became the first successes for the fair housing movement when several states passed laws prohibiting discrimination. By this time, however, public housing had become predominantly minority.¹¹³

While the inclusion of anti-discrimination language in the bill would have made the federal government's intent clear, the relationship of suburban development and urban revitalization to racial integration was undetermined at mid-century. Fair housing advocates believed that public awareness was key to the successful implementation of the housing act.¹¹⁴ To that end, they organized a public relations committee, which undertook a major campaign to convince the public that housing discrimination was bad policy.¹¹⁵ The centerpiece of the campaign was the pamphlet *Forbidden Neighbors*. Released in November of 1949, immediately after the passage of the Housing Act, the pamphlet argued that "[t]hese vast funds, which will be greatly enlarged by local expenditures, will have an enormous impact on interracial and group relations. Properly administered, the new law may serve as a major step in breaking down urban patterns of segregation."¹¹⁶

Forbidden Neighbors argued that "housing is the crux of the fight against group hatred," and that segregation was a moral and social problem requiring solution.¹¹⁷ Segregation was the cause of group hostilities, it resulted in social problems like crime and delinquency, and it was responsible for increased government expenditures.¹¹⁸ "More serious than the cash loss is the waste of human beings," the pamphlet continued.¹¹⁹ The authors pointed out that discrimination affected our relations with other countries.¹²⁰ "In foreign countries our system of

113. LEONARD FRIEDMAN, *PUBLIC HOUSING AND THE POLITICS OF POVERTY* 140 (1969).

114. Memorandum from Hortense Gabel, Report on Meeting of Advisory Committee on Urban Redevelopment Conference, Sept. 12, 1949, UNH Papers, Box 42, Folder 429.

115. Report on Meeting of Public Relations Committee (Apr. 22, 1949) (Black Papers, Box 9) (on file with author).

116. Press Release, New York State Committee on Discrimination in Housing (Nov. 1, 1949) (UNH Papers, Box 42, Folder 425) (on file with author).

117. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, *supra* note 64, at 1.

118. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, *supra* note 64, at 1.

119. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, *supra* note 64, at 6.

120. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, *supra* note 64, at 1.

segregation has been more thoroughly publicized than our preachments on democracy and the equality of man.”¹²¹ Discrimination was a blot on the country’s reputation. Pointing to examples in public housing, the pamphlet argued that “racial integration works.”¹²² The pamphlet was full of pictures of smiling children playing at these projects. If these efforts were continued, *Forbidden Neighbors* argued, integration could become the norm, not the exception.¹²³ Towards that end, the pamphlet called upon citizens to take it upon themselves to make integration a reality.¹²⁴ *Forbidden Neighbors* argued that equality “begins at home,” but that active organization was necessary to see that integration became a reality.¹²⁵ By 1950, the group reported that it had distributed more than 300,000 copies.¹²⁶

Since the federal anti-discrimination rider had failed, fair housing activists focused on the states, and once again, the anti-discrimination cause was supported by the political competition for the black vote.¹²⁷ In New York, both Republicans and Democrats vied to gain the mantle of champion of civil rights.¹²⁸ In 1951, two years after they had first proposed the bill, the New York State Legislature passed by unanimous vote the “Wicks-Austin” bill, prohibiting discrimination in housing built under the state’s redevelopment act.¹²⁹ The measure did not cover VA or FHA housing, and had weak enforcement provisions. It allowed aggrieved persons to sue, which Algernon Black acknowledged was unlikely to happen frequently, because plaintiffs would be unable to afford a lawyer. All the same, activists celebrated the bill as “An Example for the Nation,” and noted that New Jersey had passed a similar law just a month later.¹³⁰ That same year the New York City Council

121. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, *supra* note 64, at 7.

122. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, *supra* note 64, at 7.

123. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, *supra* note 64, at 12.

124. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, *supra* note 64, at 12.

125. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, *supra* note 64, at 12.

126. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, *supra* note 64, at 12.

127. On the role of race in New York politics, see BIONDI, *supra* note 8.

128. Joseph Robison, *Fair Housing Legislation in the City and State of New York*, in *THE POLITICS OF FAIR-HOUSING LEGISLATION: STATE AND LOCAL CASE STUDIES* 41–43 (Lynn W. Eley & Thomas W. Casstevens eds., 1968); BIONDI, *supra* note 8, at 194.

129. *Housing Bias Bill Passed at Albany*, N.Y. TIMES, Mar. 9, 1959, at 11; Black Papers, *supra* note 60, at Box 9; Robison, *supra* note 128, at 47.

130. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, AN EXAMPLE FOR THE NATION (1951) (on file with author); Black Papers, *supra* note 60,

amended its discrimination law to make it a misdemeanor for housing projects receiving government aid to discriminate. The specific purpose of the bill was to apply fair housing rules to the previously exempted Stuyvesant Town development.¹³¹

Housing activists were very successful in raising attention to the problems of housing discrimination in the early 1950s, and the bills they passed were models for future legislation. But two years after the passage of the New York City law in 1951, no more than sixty Negro families occupied the more than 23,000 units covered by the ordinance.¹³² Not one suit had been brought under the Wicks-Austin Act.¹³³ The limitations of these laws would become increasingly obvious as New York's redevelopment program was implemented. During the early 1950s, the role of urban renewal in entrenching segregation in cities across the country would take on increasing prominence, and bring activists once again to Washington, D.C., in search of solutions.

In his 1952 Address to the National Conference on Discrimination in Housing, Robert Weaver gave an interim report on the impact of urban renewal, and he concluded that the program was in some ways worse than expected. "What was not anticipated," Weaver argued, "was that slum clearance under Title I, in combination with continuation of FHA neglect of the Negro market would engender a new and extremely costly racial discrimination in urban shelter."¹³⁴ While the program was still relatively new, African-American neighborhoods across the country were targeted for redevelopment. The demolition of their homes exacerbated an already tight housing market, and discrimination made it even more difficult for blacks to find adequate housing.

New York and Chicago were the furthest advanced in the implementation of the urban renewal program. In New York, Robert Moses' "redevelopment machine" had under construction or in the planning stages dozens of public and private housing developments. While the

at Box 9. During the 1950s, several other states and cities passed laws banning discrimination in urban renewal. See Harold Saks & Sol Rabkin, *Racial and Religious Discrimination in Housing: A Report of Legal Progress*, 45 IOWA L. REV. 488, 508 (1960).

131. See *Council Passes Bill Barring Bias in All City-Aided Private Housing*, N.Y. TIMES, Feb. 17, 1951, at 1; Black Papers, *supra* note 60, at Box 9; BIONDI, *supra* note 8, at 197.

132. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, ENFORCEMENT OF LAWS FORBIDDING DISCRIMINATION AND SEGREGATION IN PUBLICLY ASSISTED HOUSING (UNH Papers, Box 42, Folder 430) (on file with author).

133. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, EXECUTIVE DIRECTOR'S ACTION REPORT (June 24, 1952) (Black Papers, Box 9) (on file with author).

134. Robert C. Weaver, Address at the National Conference on Discrimination in Housing (May 20, 1952) (Weaver Papers, Supplement, Box 6) (on file with author).

renewal of the city was celebrated by most, liberals became increasingly concerned about the impact of demolition on working-class New Yorkers. A 1953 City Planning Commission Study estimated that between 1946 and 1953, 170,000 people had been uprooted for New York's rebirth. The same report estimated that an additional 150,000 people would be uprooted between 1954 and 1957.¹³⁵ A disproportionate number of these dislocatees were black. In their search for housing, they increased densities in the few neighborhoods where they could secure housing, creating new "blighted" areas.¹³⁶

Chicago, like New York, had begun urban renewal before the passage of the federal act. The city's first major project, Lake Meadows, also revealed the racial impact of urban redevelopment. While many agreed that parts of the renewal area were "blighted," developer New York Life Insurance created a controversy when it selected for development a stable middle-class black section. In order to guarantee success for the middle-class high-rise development, New York Life wanted an unobstructed view of Lake Michigan. Even renewal advocates acknowledged that it was a "well-kept Negro area where the bulk of the property is resident owned, its taxes paid and its maintenance above par."¹³⁷ The residents opposed the condemnation of their homes, and argued that "if it's a slum clearance program, then let's make it that and start where the slums are."¹³⁸

Once again, housing programs presented conflicts to anti-discrimination activists. Unlike many other builders, New York Life had agreed to make the project a "mixed-race" development. As a result, it received the support of much of the city's black leadership. Weaver and other housing activists also backed the southside development, which they believed would provide a model for interracial living.¹³⁹ They did this at the expense of middle-class and poor blacks who would be uprooted. Fair housing activists realized the complications this created. "We need also to understand and prepare for certain inevitable pressures in the Negro community itself against the diffusion of the Negro community, which is, of course, the ultimate object of our program,"¹⁴⁰ stated NAACP attorney Marian Wynn Perry. "This is typ-

135. CARO, *supra* note 57, at 967-69.

136. See CARO, *supra* note 57, at 969; PRITCHETT, *supra* note 10, at 120-21.

137. HIRSCH, *supra* note 8, at 102-05.

138. *Citizens Hold Huge Rally to Block Land Grab*, PITTSBURGH COURIER, June 25, 1949.

139. See WEAVER, THE NEGRO GHETTO, *supra* note 65, at 339-340.

140. Letter from Marian Wynn Perry, Assistant Special Counsel, NAACP, to Hortense Gabel (July 13, 1949) (NAACP Papers, Part 5: Housing, Roll 17) (on file with author).

ified by the reaction of the Negro community to the proposals for redevelopment of the South Side in Chicago.”¹⁴¹ While acknowledging that this opposition was the result of real housing pressures caused by discrimination, for at least some housing activists, sacrifices had to be made in the name of interracial progress.

The Lake Meadows project forced a tough choice for fair housing activists, but most renewal projects did not. They clearly did not advance the cause of housing integration. Instead, what Weaver saw in urban renewal in 1952 was what he had called the “triple threat.” Blacks were “caught between slum clearance, residential segregation and lack of new construction.” Blacks, willing to pay high prices to secure decent housing, were moving into new neighborhoods, creating “pressure turnover, a process in which present occupants reluctantly leave their abodes under the impetus of high selling prices or the fear of heralded neighborhood deterioration.”¹⁴² As a result, Weaver argued, unlike prior policies, which allowed private parties to create segregated living patterns, “today a local agency, operating with federal funds and blessed with approval of a federal agency, can and does affect the whole job of racial displacement.”¹⁴³

Fair housing advocates did make progress in one federally funded program—public housing. Early public housing was strictly segregated at its inception. Bowing to pressure from southern legislators, the Interior Department adopted the “neighborhood composition rule,” requiring that any project have the same tenant body as the surrounding neighborhood. NAACP lawyers had fought public housing segregation since the inception of the program, and they made sporadic progress during the 1940s. In 1939, New York state passed a law banning discrimination in public housing.¹⁴⁴ In the 1940s, however, courts remained reluctant to contradict *Plessy*’s¹⁴⁵ “separate but equal” understanding of the Fourteenth Amendment, and they rejected several claims that housing authorities operated in a manner that violated the constitution.¹⁴⁶ The HHFA ignored pleas to bar segregation, claiming that the rejection of the Bricker-Cain Amendment made it powerless to act.¹⁴⁷

141. *Id.*

142. Robert C. Weaver, Address at the National Conference on Discrimination in Housing (May 20, 1952) (Weaver Papers, Supplement, Box 6) (on file with author).

143. *Id.*

144. See Saks & Rabkin, *supra* note 130, at 508.

145. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

146. See, e.g., *Favors v. Randall*, 40 F. Supp. 743 (1941) (holding that because blacks would receive housing in excess of proportion of population, segregation did not violate constitution).

147. See Letter from Robert C. Weaver, President, NCDH, to Raymond Foley, Administrator, HHFA (Nov. 20, 1951) (available in the Papers of Gerald Horne, Amistad

In the early 1950s, fair housing advocates achieved numerous successes in this area as many cities and states passed laws prohibiting segregation in public housing.¹⁴⁸ The NAACP Legal Defense Fund also initiated a program of attacking public housing segregation, winning cases in, among other cities, Detroit, San Francisco, and Newark¹⁴⁹ In many cities, housing authorities discovered that maintenance of segregated projects was too inefficient and prevented them from achieving other goals. The New York City Housing Authority, under the control of Robert Moses, long an opponent of “mixing housing and social problems,” actively began to support integration efforts during these years.¹⁵⁰ Open access in public housing was made necessary by the immense problems of relocation brought on by urban redevelopment. In order to quickly clear sites, public housing had to be more flexible in its tenant selection. As a result, public housing became the first true experiment in integrated living.

Throughout the remainder of Truman’s term, HHFA officials fought vigorously against any changes in their standard practices. In the most obvious example of continued federal support for housing discrimination, the agency approved a massive loan to the Levitt Brothers Corporation to build a Levittown in Morrisville, Pennsylvania. In discussing the project that would be located adjacent to a gigantic United States Steel plant, William Levitt frequently stated that the development would be for whites only.¹⁵¹ While advocates asked the federal government to apply the President’s executive order, HHFA officials stated, “it was not the purpose of these Rules to forbid segregation or to deny the benefits of the National Housing Act to persons who might be unwilling to disregard race, color or creed in the selection of their purchasers or tenants.”¹⁵² Administrator Foley asked for

Research Center, Tulane University) (on file with author) [hereinafter Horne Papers]; Statement from B.T. McGraw, Deputy Assistant to the Administrator, HHFA, The Aftermath of *Shelley v. Kraemer* on Residential Restriction by Race (Aug. 29, 1952) (NAACP Papers, Roll 8) (on file with author).

148. See Saks & Rabkin, *supra* note 130, at 513–14; McGraw, *supra* note 147.

149. See *Detroit Housing Comm’n v. Lewis*, 226 F.2d 180 (1955); *Banks v. Housing Authority of San Francisco*, 260 P.2d 668 (Cal. Ct. App. 1953); *Seawell v. MacWithey*, 63 A.2d 542 (N.J. Super Ct. 1949); see also MEYER, *supra* note 8, at 142. *But see* *West v. Housing Authority of Atlanta*, 84 S.E.2d 30 (Ga. 1954), for an opposite result.

150. See PRITCHETT, *supra* note 10, at 98–99.

151. Letter from Robert Weaver, Chairman NCDH, to Raymond Foley (Nov. 20, 1951) (available in the Horne Papers, Amistad Research Center) (on file with author); NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, EXECUTIVE DIRECTOR’S ACTION REPORT (UNH Papers, Box 42, Folder 431) (on file with author); HIRSCH, *supra* note 96, at 213–14.

152. HIRSCH, *supra* note 96, at 213.

patience and acknowledgement of the “many things he has done” for minorities.¹⁵³

Policymakers in the Truman Administration disappointed fair housing advocates, but at least that regime had provided some moral support for the cause. When the Eisenhower Administration took office, such affinity almost disappeared.¹⁵⁴ Eisenhower’s choice for HHFA Administrator, Albert M. Cole, was a former congressman who had been a vocal opponent of public housing, rent control, and many other federal housing policies. Most housing groups, including the NYSCDH and the NAACP vigorously opposed his nomination. “It is no exaggeration to say that his appointment would be disastrous to the National Housing Program,” declared Hortense Gabel.¹⁵⁵

Fair housing advocates would be frequently disappointed in Cole’s approach to housing discrimination. In his public statements, Cole professed that his job was to serve his clients (real estate developers and housing consumers) and that he was not primarily concerned with “social issues.”¹⁵⁶ Cole acknowledged that “too often, the workings of our free economy do not provide solutions that benefit minorities,” and concluded that housing discrimination could be overcome by education of homebuilders and neighborhood residents. His main proposal to solve housing discrimination was the creation of a special financing tool to promote home building for the “Negro market.”¹⁵⁷ In Gabel’s assessment, special financing “utterly failed to come to grips with minority housing problems.”¹⁵⁸ Fair housing activists expressed further concern that Cole sought to create a separate housing market just for blacks in reliance on the *Plessy* doctrine that would be repudiated just a few months later.¹⁵⁹ While acknowledging the problem of housing

153. See Letter from Frank Horne to Robert Weaver (May 29, 1952) (Horne Papers, Box 3) (on file with author); *Anti-Bias Progress in Housing Hailed*, N.Y. TIMES, May 21, 1952, at 18.

154. On Eisenhower and Civil Rights, see ROBERT BURK, *THE EISENHOWER ADMINISTRATION AND BLACK CIVIL RIGHTS* (Dewey Grantham ed., 1988); STEPHEN AMBROSE, *EISENHOWER THE PRESIDENT 9–10* (1984); MEYER, *supra* note 8, at 154.

155. Memorandum from Hortense Gabel to Members and Friends of the Committee on Discrimination in Housing (Feb. 20, 1953) (UNH Papers, Box 42, Folder 430) (on file with author); see also HIRSCH, *supra* note 96, at 219.

156. Albert Cole, What is the Federal Government’s Role in Housing? (Feb. 8, 1954) (UNH Papers, Box 58, Folder 13) (on file with author).

157. *Id.*

158. Letter from Robert Weaver and Hortense Gabel to Albert Cole (Jan. 13, 1954) (UNH Papers, Box 58, Folder 13) (on file with author); Memo from Hortense Gabel to Members of the Executive Board and Key People (Jan. 15, 1954) (UNH Papers, Box 58, Folder 13) (on file with author).

159. Letter from Robert Weaver and Hortense Gabel, to Albert Cole (Jan. 13, 1954) (on file with author).

discrimination, Cole believed that “this is not primarily a federal problem.”¹⁶⁰ Development policies, Cole argued, were made at the local level. The federal government “can only assist the communities to do their job. . . .”¹⁶¹

The localist philosophy of the Eisenhower Administration was put to a crucial test by the U.S. Supreme Court’s decision in *Brown v. Board of Education*.¹⁶² To civil rights advocates, this decision repudiated the principle of “state’s rights” and made the federal government responsible for upholding the constitutional principle of equality.¹⁶³ While *Brown* did not address neighborhood segregation, the case had a major effect on the fair housing movement by providing a moral basis for the argument that housing discrimination was wrong. Writing soon after the decision, Hortense Gabel reported to fair housing advocates that the decision brings “into sharp focus the underlying basis of all American institutional segregation. The great principles enunciated in the school cases will democratize American living only to the extent that housing and neighborhood segregation are eliminated.”¹⁶⁴

Brown forced federal housing administrators to once again acknowledge the failure of the housing sector to meet the needs of minorities. FHA Administrator Norman Mason, in a speech to the NCDH annual conference just days after the decision, stated that he would commit to making “the benefits of the entire mortgage systems . . . available to all families on an equal basis, irrespective of race, color, creed or national origin.” He also promised to “institute a concrete program of training and orientation of all staff personnel” to make them more sensitive to the needs of minority citizens.¹⁶⁵

NAACP leaders also committed to bring legal action to force the HHFA to require builders of suburban developments to accept applications from minorities. “We believe we have evolved a sound theory for legal action concerning FHA insurance programs,” NAACP counsel Constance Baker Motley stated.¹⁶⁶ But court cases failed to bring much

160. Cole, *supra* note 156.

161. Albert Cole, Address at the Economic Club of Detroit (Feb. 8, 1954) (UNH Papers, Box 58) (on file with author); *see also* MEYER, *supra* note 8, at 158; BURK, *supra* note 154, at 115.

162. 347 U.S. 483 (1954).

163. For further discussion on *Brown*, see KLUGER, *supra* note 9; DUDZIAK, COLD WAR CIVIL RIGHTS, *infra* note 280; WHAT BROWN V. BOARD OF EDUCATION SHOULD HAVE SAID: THE NATION’S TOP LEGAL EXPERTS REWRITE AMERICA’S LANDMARK CIVIL RIGHTS DECISION (Jack M. Balkin ed., 2001).

164. Memo from Hortense Gabel (June 16, 1954) (UNH Papers, Box 58, Folder 13) (on file with author).

165. Norman P. Mason, Address to Sixth Annual NCDH Conference (May 21, 1954); *see also* *FHA to Support Minority Housing*, N.Y. TIMES, May 22, 1954, at 18.

166. *No-Bias Goal Set for U.S. Housing*, N.Y. TIMES, July 3, 1954, at 11.

relief to blacks excluded from housing. In 1955, Motley and Thurgood Marshall filed suit against the Levitt Corporation and the FHA to require them to accept applications from blacks at its Pennsylvania development. The suit alleged that the relationship between Levitt and the government was so intimate and the government's role so crucial that the Levitt Corporation could be deemed an agent of the federal government.¹⁶⁷ The plaintiffs further argued that in constructing streets, schools, sewage, and other infrastructure, the Levitt Corporation was "in effect a municipality and a branch of the government of Pennsylvania."¹⁶⁸

The district court, however, did not buy these arguments, and it summarily dismissed the suit for lack of jurisdiction. It might be true that the FHA should bar recipients of mortgage guarantees from discriminating, the court concluded, "but that is something which can be done only by Congress and which cannot be forced upon the agencies in question by the courts through the medium of the injunctive process."¹⁶⁹ The court declined to interpret broadly the theory of state action enunciated in *Shelley*.¹⁷⁰

NAACP lawyers did convince the Superior Court of California that federally insured developers had an obligation to provide housing on an equal basis. In *Ming v. Horgan*,¹⁷¹ they made similar arguments with greater success. Relying on *Brown*, the court found for the plaintiffs, stating that if it did not do so, "gone would be the principle of integration which seems to have become the law of the land as a necessary component of that equality of right required by the Constitution."¹⁷²

But these were small victories. A year after the *Brown* decision, fair housing advocates still were waiting to see the principles of equal treatment applied to federal housing programs. In March of 1955, Algernon Black, NCDH chair, wrote President Eisenhower complaining that despite the President's promises that the federal government would not contribute to racial segregation, "the federal government continues to grant funds to local housing authorities for the construction of segregated public housing and FHA and VA continue to underwrite racially

167. See *Johnson v. Levitt and Sons, Inc.*, 131 F. Supp. 114, 116 (E.D. Pa. 1955); see also Statement from Constance Baker Motley (Mar. 14, 1955) (NCDH Papers, Box 1, Folder 2, Amistad Research Center, Tulane University) (on file with author); *Levitts, Builders, Sued on Bias Issue*, N.Y. TIMES, Jan. 14, 1955, at 23.

168. *Johnson*, 131 F. Supp. at 117.

169. *Id.* at 116.

170. See *Hackley v. Art Builders, Inc.*, 179 F. Supp. 851 (D. Md. 1960).

171. 3 Race Relations L. Rep. 693 (Cal. App. Dep't Super Ct. 1958).

172. *Id.* at 698; see also Saks & Rabkin, *supra* note 130, at 513; Note, *Racial Discrimination in Housing*, 107 U. PA. L. REV. 515, 521 (1959).

exclusive developments.”¹⁷³ Black asked for an explicit federal order barring segregation. “We respectfully submit that the time for action to bar segregation in all federally assisted housing programs is now.”¹⁷⁴

In response to consistent complaints about the failure of his agency, Cole argued that its efforts had been “vigorous, continuing and I believe, productive.”¹⁷⁵ Cole noted that he had spoken frequently to builders, exhorting them to provide for the “Negro market,” and that he had created a special program, the Voluntary Home Mortgage Credit Program, to assist minority families.¹⁷⁶ In a letter to Senator Prescott Bush, Cole complained that fair housing advocates wanted “a rigid agreement that the recipients [of federal aid] agree to eliminate racial segregation and require integration.”¹⁷⁷ However, Cole did not believe “that so drastic a step is possible or desirable at this time.”¹⁷⁸ Cole argued that a requirement of nondiscrimination would result in “a sharp cutback in the rate of housing production, and of our capacity to meet the housing needs of all the people.”¹⁷⁹ Echoing the recent statements of the President in response to the escalating school crisis, Cole stated, “undue Federal intervention is incompatible with our ideas of political and economic freedom.”¹⁸⁰ He further argued that “the problems of racial discrimination are peculiarly local,” and that “we should rely heavily on local responsibility and local wisdom to work out solutions. . . .”¹⁸¹

NCDH leaders responded that Cole’s position represented “a clear abdication of federal responsibility” that “Mr. Cole’s homily upon local rights and privileges to exercise racial discrimination in varying degrees smacks of the argument completely rejected by the United States Supreme Court.”¹⁸² In response to Cole’s argument that builders would reject federal assistance, NCDH director Frances Levenson stated that “this would be their privilege,” but she noted that developers had not

173. Letter from Algernon Black, Chair, National Committee Against Discrimination in Housing, to President Dwight Eisenhower (Mar. 2, 1955) (available in NAACP Papers, Roll 12) (on file with author).

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. Letter from Algernon Black, Chair, National Committee Against Discrimination in Housing, to President Dwight Eisenhower (Mar. 2, 1955) (available in NAACP Papers, Roll 12) (on file with author).

179. *Id.*

180. *Id.*

181. *Id.*

182. Letter from Frances Levenson, Executive Director, National Committee Against Discrimination in Housing, to Senator Prescott Bush (July 23, 1956) (Black Papers, Box 9) (on file with author). For a critique of the Voluntary Mortgage Credit Program, see MEYER, *supra* note 8, at 157; BURK, *supra* note 154, at 118.

turned down federal subsidies in New York when required to provide open housing.¹⁸³

By mid-decade, fair housing advocates viewed federal lobbying efforts as hopeless and declared, “the period of negotiation with HHFA had been exhausted.”¹⁸⁴ “The record of the FHA with regard to the production of homes for minority groups has indeed been a sorry one.”¹⁸⁵ Federal housing officials rejected calls for greater intervention into housing markets because they believed such activities exceeded their purview. Local communities, in their view, were best equipped to determine the most appropriate allocation of housing, which, of course meant that private developers controlled access to the market. At the same time federal officials relied on this localist philosophy, they argued that housing production would “lift all boats” and benefit all home-seekers. The increasing segregation within American cities and between suburbs and inner cities belied the claims that the private market could solve such problems, but fair housing activists were powerless to secure greater federal involvement. In response, activists decided that the battle for open housing “had to be waged in relation to specific programs in specific localities.”¹⁸⁶ Their primary locations were the City and State of New York.¹⁸⁷

IV. The Politics of Fair Housing in New York

Unlike FHA officials or others in the federal government, whose deep-seated opposition to expansion of federal authority infused the debates over not only housing, but also schools and other issues, New York politicians presented a much more favorable audience to fair housing activists. Claims to local deference had less power in the state and made little sense in individual cities, so the debates focused on the efficacy of fair housing laws. Even in this liberal city and state, however, deeply held views about the appropriate role of government in regulating private property presented serious obstacles to efforts to pass fair housing legislation. During the decade, as black political power increased at the

183. Letter from Frances Levenson, Executive Director, National Committee Against Discrimination in Housing, to Senator Prescott Bush (July 23, 1956) (Black Papers, Box 9) (on file with author).

184. *Id.*

185. Frances Levenson, Testimony Before the House Committee on Banking and Currency (May 21, 1956) (available in Black Papers, Box 9) (on file with author).

186. NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, EXECUTIVE DIRECTOR'S REPORT (May 1956) (NAACP Papers, Part 5, Supplement, Roll 8) (on file with author).

187. *Id.*

same time that attention to civil rights causes grew, the fair housing movement succeeded in passing several laws that became national models. But these successes were limited in their actual impact and did little to stem the tide of segregation.

During the early 1950s, while continuing to press for changes in federal rules, activists worked consistently to increase the coverage of fair housing laws in New York. Their efforts were stymied at both the state and city levels until 1954, when the New York City Council agreed to do what the HHFA would not, regulate housing produced with federal mortgage insurance. Citing the almost complete exclusion of blacks from federally insured housing, activists argued, "the time for effective enforcement is now."¹⁸⁸ With several projects under construction and others to follow, activists argued that the implementation of open housing would be much easier if done from the beginning. To the surprise of many, the Sharkey-Brown-Isaacs bill, which prohibited discrimination in developments of more than three units, passed the Council unanimously without much debate.¹⁸⁹

While important, this law covered only a few buildings, and was limited to rental apartments.¹⁹⁰ New York built more federally insured housing than most American cities, but the lion's share of single family housing development occurred in the suburbs.¹⁹¹ In order to achieve their primary goal of opening access to minorities in these areas, fair housing advocates focused on state legislation. In 1955, they pushed the Metcalf-Baker bill to expand state coverage to federally insured apartments and single-family houses in developments of more than ten.¹⁹² Buoyed by the *Brown* decision, which they argued, "established the legal and constitutional ethic that a democratic government may not tolerate . . . segregation," the NYSCDH argued "affirmative action is still required in New York State to give full meaning to these basic concepts."¹⁹³ In response to critics of the law who said it was an un-

188. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, ENFORCEMENT OF LAWS FORBIDDING DISCRIMINATION AND SEGREGATION IN PUBLICLY ASSISTED HOUSING (Jan. 14, 1954) (UNH Papers, Box 42, Folder 430) (on file with author).

189. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, SHARKEY-BROWN-ISAACS LAW FORBIDDING DISCRIMINATION IN FHA INSURED HOUSING ENACTED (July 14, 1954) (UNH Papers, Box 42, Folder 430) (on file with author); Robison, *supra* note 128, at 51–52.

190. SHARKEY-BROWN-ISAACS LAW, *supra* note 189.

191. SHARKEY-BROWN-ISAACS LAW, *supra* note 189.

192. SHARKEY-BROWN-ISAACS LAW, *supra* note 189.

193. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, NEW YORK STATE NEEDS A FAIR HOUSING PRACTICES LAW (Dec. 1956) (UNH Papers, Box 58, Folder 13) (on file with author).

constitutional restriction on property rights, advocates argued, “it would be a limitation on the use of property in the interest of human needs and rights,” a “concept that has long been accepted in Anglo-American law.”¹⁹⁴ It would not “compel integration,” but was “designed to provide the opportunity to all to bargain on an equal basis in a free market.”¹⁹⁵ Like the New York City law, the Metcalf-Baker bill passed without much debate because it applied only to future construction.¹⁹⁶

Meant to regulate major subdivisions like Levittown on Long Island, the Metcalf-Baker law did increase the possibilities for black home-seekers, but few families were interested in being pioneers in hostile communities. Few blacks, or other minorities, had the financial means to pursue these opportunities, and many who did focused on New York City neighborhoods in Brooklyn and Queens that were already undergoing racial transition.¹⁹⁷ Discrimination continued in suburban developments, and not many minorities were willing to invest the time it took to bring a claim of discrimination under the act. An NCDH study found that only seventy-one complaints had been filed in the nine months of 1958.¹⁹⁸

Another important aspect of the fair housing campaign in Albany sought to change the enforcement of housing laws by giving the State Commission Against Discrimination (SCAD) the authority to investigate and mediate claims of discrimination. Advocates believed this procedure would be more effective, because it would not rely on the ability of individual claimants to secure legal assistance.¹⁹⁹ Activists hoped to secure greater government involvement in the regulation of housing discrimination. “Experience shows,” they argued, “that administrative enforcement of anti-discrimination laws is more effective and more equitable than enforcement by individual court suits.”²⁰⁰ SCAD, they asserted, would be able to “establish a long-range program and then proceed to carry it out.”²⁰¹

194. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, QUESTIONS AND ANSWERS ON THE PROPOSED FAIR HOUSING PRACTICES BILL (Dec. 1956) (UNH Papers, Box 58, Folder 13) (on file with author).

195. *Id.*

196. See *Harriman Widens Housing Bias Ban*, N.Y. TIMES, Apr. 16, 1955, at 21; BIONDI, *supra* note 8, at 352.

197. See STEVEN GREGORY, *BLACK CORONA: RACE AND THE POLITICS OF PLACE IN AN URBAN COMMUNITY* (1998); PRITCHETT, *supra* note 10.

198. 1959 Metcalf-Baker Bill (Feb. 1959) (UNH Papers, Box 58) (on file with author); *Private Housing Eludes Negroes*, N. Y. TIMES, Feb. 13, 1957, at 1.

199. See Robison, *supra* note 128, at 52–53; Black Papers, *supra* note 60, at Box 9.

200. Black Papers, *supra* note 60, at Box 9.

201. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, MEMORANDUM IN SUPPORT OF A BILL TO AMEND THE EXECUTIVE LAW (Feb. 1956) (NAACP Papers, Part 5, Supplement, Roll 1) (on file with author).

Real estate interests and conservatives opposed to the expansion of state government fought these provisions.²⁰² One of the primary reasons that many politicians were opposed to the expansion of SCAD authority was that in the newly elected Democratic administration of Averell Harriman, they would have less control over the regulators. Real estate officials were particularly concerned about the expansion of housing regulation because Governor Harriman appointed Abrams and Weaver to oversee the enforcement of housing laws. In January 1955, Weaver became deputy commissioner of Housing and appointed Abrams administrator of the Temporary State Rent Commission.²⁰³ In 1956, Abrams became SCAD chair and Weaver took his place as Rent commissioner. Harriman stated that there were no two people in the state more qualified.²⁰⁴

Abrams, not surprisingly, took a very active role in the enforcement of the fair housing laws. By 1957, Abrams was reporting progress in the sale of housing to blacks. "In developments with houses priced up to \$14,000, sales of homes by whites to Negroes and Negroes to whites were occurring in ordinary course."²⁰⁵ Abrams convinced the HHFA to refuse insurance to New York developers found in violation of the state laws, and he continued to push for investigations of discriminatory practices even after the Metcalf-Baker law was contested in court.²⁰⁶

While most builders accepted the new regulations, some developers argued that the laws illegally restricted the "fundamental right" of a property owner to "choose whether or not he will sell or rent."²⁰⁷ Developers further claimed that the law was "a step toward the State control of private property and is contrary to our accepted political beliefs."²⁰⁸ In a 1958 opinion, however, Supreme Court Judge Samuel W. Eager declared the act valid.²⁰⁹ "Involved here, it is said, is an apparent collision of rights, namely a clash between the right on the one hand

202. See Black Papers, *supra* note 60, at Box 9.

203. Memorandum from Frances Levenson, Executive Director, National Committee Against Discrimination in Housing, to the National Committee Against Discrimination in Housing Board and Cooperating Organizations (Jan. 24, 1955) (on file with author).

204. *Harriman Defers Decision on Asking Rise in Income Tax*, N.Y. TIMES, Dec. 31, 1951, at 1; HENDERSON, *supra* note 34, at 158.

205. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, EXCERPTS FROM THE REMARKS OF COMMISSIONER CHARLES ABRAMS (NAACP Papers, Part 5, Supplement, Roll 11) (on file with author).

206. See Black Papers, *supra* note 60, at Box 9; *U.S. Backs State on Housing Bias*, N.Y. TIMES, Feb. 19, 1957, at 1.

207. *In re New York State Comm'n Against Discrimination v. Pelham Hall Apartments, Inc.*, 170 N.Y.S.2d 750, 757 (N.Y. Sup. Ct. 1958).

208. *Id.*

209. *Id.* at 761.

of the private owner of property to enjoy and use it” against the right of “all individuals here to be treated equally and free of all discrimination. . . .”²¹⁰ In the end, Eager stated, the question was between the “rights of the private property owner and the inherent power of the State to regulate the use and enjoyment of private property in the interest of public welfare.”²¹¹ That power, Eager concluded, was within the state’s constitutional limits and was valid if reasonably exercised.²¹² Just nine years before, the New York Court of Appeals had stated that if civil rights activists wanted the government to regulate housing discrimination, they would have to secure legislation to that effect. Fair housing advocates succeeded in doing this, and the courts granted deference to the legislature.

By 1957, the civil rights movement was a major part of the national consciousness, and Congress vigorously debated the first major bill in ninety years.²¹³ Fair housing activists were emboldened by the increasing sympathy for their cause, and they pushed for further expansion of anti-discrimination laws by introducing the first bill that would cover private housing entirely. “It is no secret to the Southlands that New York State, whose Senators have so earnestly battled the filibuster against civil rights in Washington, D.C., has not begun to tackle the real job of eliminating the ghetto living within its own borders,” Algernon Black claimed in January of 1957.²¹⁴ “In fact, there are many Southern communities where housing is more truly integrated than, for instance, in our own New York City.”²¹⁵ Advocates argued that prior laws covered only a small portion of the housing sector, and that attempts to persuade developers “that it was their moral obligation to observe a policy of non-discrimination in the rental and sales of housing . . . have proven to be in vain.”²¹⁶ Claiming that of the 100,000 houses built in New York since World War II, only 900 had been sold to minorities, they argued, “nothing would serve as a basis to eliminate

210. *Id.*

211. *Id.* at 757.

212. *Pelham*, 170 N.Y.S. 2d. at 759. A similar statute did not fare as well in Washington State. There, a court held the anti-discrimination law unconstitutional on the grounds that it impermissibly distinguished between FHA-funded housing and other housing. *See O’Meara v. Washington State Board. Against Discrimination*, 365 P.2d 1, 5 (Wash. 1960).

213. On the Civil Rights Act, *see* ROBERT CARO, *LYNDON JOHNSON: MASTER OF THE SENATE* (2002); BURK, *supra* note 154, at 208–26; LAWSON, *supra* note 8, at 55–56; CASHMAN, *supra* note 8, at 134–137; SITKOFF, *supra* note 8, at 32–34.

214. Press Release, New York State Committee Against Discrimination in Housing (Jan. 21, 1957) (Black Papers, Box 10) (on file with author).

215. *Id.*

216. *Id.*

New York's ghetto living practices other than a far-reaching fair housing practices law."²¹⁷ Algernon Black claimed earlier laws had done "just about nothing at all for the Jewish and Catholic and other minority families who are prevented from buying homes or renting apartments in many accurately-described exclusive communities in our state."²¹⁸ The new Metcalf-Baker bill would ban discrimination in all buildings of more than three units and in the sale of single-family homes built in groups of ten or more.

Weaver claimed that opening the suburbs to blacks was crucial to the future efficiency of the real estate market. By siphoning off middle-income nonwhites, open occupancy would decrease housing pressures in urban areas. "More important," Weaver argued, allowing blacks in the suburbs "would do much to take the prestige out of racial exclusiveness, contributing greatly to the establishment of receptivity of non-white neighbors in all parts of metropolitan areas."²¹⁹

The bill received the support of a large sector of New York's liberal community. Reverend James Pike, dean of the Cathedral of St. John the Divine, argued, "As long as our neighborhoods remain segregated, so will most of our churches continue to serve ethnically homogeneous communities. How can a minister of the gospel effectively preach brotherhood and fellowship to a congregation who know intimately no brother, no fellow other than those of their own race?"²²⁰ Governor Harriman supported the bill, and the NYSCDH organized a series of events to promote it, including a fundraiser at which Lena Horne and other celebrities appeared.²²¹ Jackie Robinson also spoke out in favor of the bill stating "[t]he legislature should set the rules of the game by passing a law protecting everybody's right to freedom of choice in finding a place to live."²²²

Real estate groups, however, were vocal opponents of the legislation. Harold Treanor, counsel to the Real Estate Board of New York, called the bill a "startling and dangerous piece of legislation posing a serious menace to the integrity of our developed, high-class residential areas."²²³ Arguing it was not a violation of the Constitution to refuse

217. *Id.* See also *Private Housing Eludes Negroes*, N.Y. TIMES, Feb. 3, 1957, at 227.

218. Black Papers, *supra* note 60, at Box 10.

219. Robert Weaver, *Non-White Population Movements and Urban Ghettos*, 20 PHYLON 235, 240 (1959) (on file with author).

220. Reverend James A. Pike, Address at the Urban League of Greater New York (Black Papers, Box 10) (on file with author).

221. See *Harriman Urges Housing Bias End*, N.Y. TIMES, Feb. 8, 1957, at 47.

222. Press Release, Society for Ethical Culture (Black Papers, Box 10) (on file with author).

223. Harold Treanor, Address to the Real Estate Board of New York (Apr. 16, 1957) (Black Papers, Box 10) (on file with author). See also *Bill to Bar Bias in Housing Urged*, N.Y. TIMES, Feb. 21, 1957, at 20.

accommodations on the grounds of race, Treanor claimed “this attempt to scuttle private property rights and invade the domain of private property ownership for the purpose of compelling an owner to accept any tenant is an alien philosophy which would ruin Manhattan’s fine residential areas. . . .”²²⁴ In response, Black argued that it was implicit “in the protection of property rights that these rights will not be used to harm the community.”²²⁵ Will Maslow and his associates at the American Jewish Congress filed a twenty-four page brief in support of the law which claimed that the “infringement of property rights involved in the proposed legislation is less severe than that sustained by owners of housing under rent control cases,” and that it did not interfere with the core rights of property.²²⁶ However, the political strength of the real estate lobby coupled with concerns from upstate conservatives over government regulation of private property prevented the bill from emerging out of committee.

Stonewalled in Albany, fair housing advocates took their case to the New York City Council. In the spring of 1957, Councilmen Sharkey, Brown, and Isaacs introduced a bill to prohibit discrimination in the sale or rental of homes. The only exceptions were rentals in one and two family houses and the sale of homes in developments of less than ten units.²²⁷ Violators could be subject to a fine of \$500 or jail for repeated violations.²²⁸ The bill also allowed private parties to sue in court for injunctions against discrimination.²²⁹

“Fair housing,” argued Black in support of the bill, means “the right to purchase, rent, lease, or occupy living quarters . . . without any restrictions. . . . Every individual should have the right to enter the housing market and to purchase and enjoy what he has the ability to pay for.”²³⁰ Citing numerous studies that revealed the prevalence of housing discrimination in the city, Black stated that exclusionary real estate practices have institutionalized residential segregation. At the same time, many Americans had shown that open housing works. There

224. Treanor, *supra* note 223.

225. Press Release, New York State Committee Against Discrimination in Housing (Jan. 21, 1957) (Black Papers, Box 10) (on file with author).

226. Memorandum on Constitutionality of Metcalf-Baker Fair Housing Practices Bill (NAACP Papers, Part 5, Supplement, Roll 1) (on file with author).

227. See *City May Ban Bias in Private Rental*, N.Y. TIMES, May 21, 1957, at 1; *City May Become First in Nation to Bar Bias in Private Housing*, N.Y. TIMES, May 26, 1957, at R1.

228. *City May Ban Bias in Private Rental*, N.Y. TIMES, May 21, 1957, at 1.

229. *Id.*

230. Hearing Before the Committee on General Welfare, New York City Council (June 7, 1957) (testimony of Algernon D. Black, New York State Committee Against Discrimination in Housing) (Black Papers, Box 10) (on file with author).

were, Black claimed, “scores of apartment houses, cooperatives and neighborhoods where persons of all races, religions and nationalities live side by side in peace, harmony and neighborliness. Not only have property values been maintained, but the higher human values of all have been preserved.”²³¹

A wide variety of liberal organizations supported the bill. NAACP President Roy Wilkins argued, “the restriction on freedom of residence measurably nullifies the Supreme Court Decision of May 17, 1954 banning racial segregation in public education.”²³² Wilkins asserted that the denial of homeownership was a particular affront to blacks. Home, he stated, is associated “with the warm aura of family life, with children, and with progress in business or a profession. It does have this meaning for most Americans, except Negro citizens. Even though they secure an education, including technical skills and professions that place them in middle and upper-income brackets, they meet only frustration and heartache when they seek to purchase a home.”²³³ Several of the city’s largest real estate developers also supported the legislation. One of the most vocal was James Scheuer, who argued, “over a period of years, the measure will stimulate constructive changes in our patterns of living, and that this will take place smoothly for the greater good of our community and with no adverse effects on the real estate industry.”²³⁴ Scheuer cited his experience with several developments in the city and claimed that these buildings had flourished with nondiscriminatory policies.

Most of the city’s real estate sector, however, opposed the bill. Their campaign against it was vigorous and organized. They distributed flyers to tenants throughout the city and took out advertisements in the city’s newspapers. Opponents argued that the bill represented government intervention into completely private matters. “To compel owners and managers to take tenants who may not be agreeable to their present tenants we believe is an unwarranted invasion of private rights,” one pamphlet argued.²³⁵ The legislation would, they argued, “destroy the owner’s right to use his property as he sees fit.” Other real estate men

231. *Id.*

232. Hearing Before the Committee on General Welfare, New York City Council (June 7, 1957) (testimony of Roy Wilkins) (NAACP Papers, Part 5, Supplement, Roll 2) (on file with author).

233. *Id.*

234. Hearing Before the Committee on General Welfare, New York City Council (June 7, 1957) (testimony of James H. Scheuer) (on file with author).

235. REAL ESTATE BOARD OF NEW YORK, TENANTS CAN HELP PROTECT THEIR OWN INTEREST (July 26, 1957) (on file with author). *See also Real Estate Men Combat Bias Bill*, N.Y. TIMES, June 15, 1957, at 19.

called the bill an attempt to “sovietize private building.”²³⁶ In an unexpected twist, the *New York Times* also opposed the bill, calling it “the wrong way to a right end.”²³⁷ While supportive of the objectives of the bill, the editorial argued, “the method of compulsion is a dubious substitution for education and the admittedly gradual spread of understanding that can be the only sound foundation of complete neighborliness.”²³⁸ Calling the regulation of publicly funded housing essentially different, the *Times* argued that change in private housing “must be a matter of education and spiritual growth rather than a consequence of legislation.” The editorial complained, “the people have not been adequately prepared for the passage of this bill,” and worried that “intolerance might be aggravated rather than diminished.”²³⁹ Unlike the debate over school segregation, which recognized that schools played a crucial public function, even many liberals were concerned about the expansion of government power into “private” housing.

Algernon Black replied that education is crucial, but “it is unjust and impractical to think that those who are deprived will accept their deprivation until all men are educated out of their prejudice. Law can also play an important part in education.”²⁴⁰ Black further asserted that “the argument that this bill violates property rights is specious. . . . Those who enter the housing market to make profit enjoy rights but they must also face their responsibilities.”²⁴¹ Sponsor Stanley Isaacs took issue with the idea that there was an “inalienable right to select tenants” and responded that “any such conflict of so-called rights, even if they existed, should be resolved, I believe, in favor of the minority which suffers from discrimination.”²⁴²

As a result of vocal opposition, the Council decided to table the bill until after the fall elections for mayor and city council, but fair housing advocates continued to fight for its passage.²⁴³ After the fall elections, the pressure from liberal activists resulted in the bill’s resuscitation. Council passed an altered fair housing bill, which eliminated the monetary penalties and the provision for private suits. The new legislation gave enforcement authority to the New York Commission on Intergroup

236. Black Papers, *supra* note 60, at Box 10.

237. *Bias in Private Housing*, N.Y. TIMES, June 15, 1957, at 16.

238. *Id.*

239. *Id.*

240. Algernon Black, *Letter to the Editor*, N.Y. TIMES, June 17, 1957, at 25.

241. *Id.*

242. Stanley Isaacs, *Letter to the Editor*, N.Y. TIMES, June 18, 1957, at 32.

243. See *Realtors New Attack May Stall Vote on Bill to Ban Private Housing Bias*, N.Y. POST, June 17, 1957, at 4; *Council Shelves Housing Bias Bill*, N.Y. TIMES, June 19, 1957, at 1.

Relations (COIR).²⁴⁴ This organization, started in 1955, and headed by former FHA race advisor Frank Horne, was responsible for working to eliminate discrimination in public agencies and private corporations and for mediation of neighborhood conflicts.²⁴⁵ Fair housing advocates believed that the compromise was to their advantage: that Horne would use the law to bring about change in the city's racial segregation.²⁴⁶

The New York City law was the first in the nation to apply to private housing, and it provided a model for future laws. Under the statute, COIR took complaints, investigated them, and attempted to mediate the conflict. If such intervention failed, the staff then referred the case to a committee to determine if legal action should be taken.²⁴⁷ As expected by fair housing advocates, the immediate impact of the law was small. In the first fourteen months, COIR received 325 complaints. Three-quarters of the cases were dropped because the claimant failed to provide additional information or because staff determined it had no jurisdiction.²⁴⁸ Seeking to mitigate opposition, administrators assiduously avoided filing claims in court against recalcitrant owners. Not one landlord or seller was sued in the first two years of the act.²⁴⁹

COIR finally initiated a lawsuit against a landlord who stated "openly and unequivocally that he will not rent to Negroes."²⁵⁰ In a three page opinion, the New York Supreme Court upheld the statute. The court declared it would not question the wisdom of government regulation in the housing market because solving the problem of discrimination was too important. "It is now believed that many of our problems arising from the diverse nature of our population will be brought nearer solution by integration."²⁵¹ The court further concluded that the "interference with private business" was no greater under the housing law than under other anti-discrimination statutes that had been upheld.²⁵²

244. See *Housing Bias Bill Set for Passage*, N.Y. TIMES, Dec. 3, 1957, at 1; *Long-Term Impact of Bias Law Seen*, N.Y. TIMES, Dec. 8, 1957, at R1; see GERALD BENJAMIN, RACE RELATIONS AND THE NEW YORK CITY COMMISSION ON HUMAN RIGHTS 71-121 (1974) (discussing COIR).

245. See Michael H. Schill, *Local Enforcement of Laws Prohibiting Discrimination in Housing: The New York City Human Rights Commission*, 23 FORDHAM URB. L.J. 991, 1006 (1996).

246. See SHARKEY-BROWN-ISAACS LAW, *supra* note 189; Robison, *supra* note 128, at 55-56; *Jail Threatened for Rental Bias*, N.Y. TIMES, Mar. 31, 1958, at 29.

247. See Robison, *supra* note 128, at 54-56; *Housing Bias Ban Goes Into Effect*, N.Y. TIMES, Apr. 2, 1958, at 33.

248. See *How City Curbs Bias in Housing*, N.Y. TIMES, July 19, 1959, at 7.

249. See *Housing Bias Difficult to Cure*, N.Y. TIMES, Feb. 8, 1959, at R1.

250. *Martin v. City of New York*, 201 N.Y.S.2d 111 (N.Y. Sup. Ct. 1960).

251. *Id.* at 112.

252. *Id.*; see also *Fair Housing Act Upheld by Court*, N.Y. TIMES, Apr. 2, 1960, at 1; Memorandum from Sol Rabkin and Theodore Leskes to Staff Regarding New York's

Just eleven years before, New York's Court of Appeals had rejected claims that housing discrimination was a matter of public concern. While other cities and states continued to debate the appropriate role of government in regulating race relations, New York's legal system accepted this regime change without significant comment.

The 1950s witnessed significant successes for the fair housing movement in New York. By 1957, fair housing laws covered a majority of the dwellings in New York City. However, the enforcement of these laws continued to rely on the individual initiative of complainants, and on the diligence of understaffed agencies. In addition, they had limited impact in areas where the high cost of housing prohibited access to new markets. As suburban development continued and white flight increased, segregation intensified. Fair housing was winning the ideological battle while losing the integration war.

V. A National Movement

In 1955, Charles Abrams published his third book entitled, *Forbidden Neighbors: A Study of Prejudice in Housing*. The book was a compilation of much of Abrams writing on housing discrimination, as well as the work of his colleagues, and it quickly became required reading for civil rights activists.²⁵³ *Forbidden Neighbors* placed the post-World War II housing crisis in the long history of urban change, tracing the arrival of European immigrants at the turn of the century. Abrams then discussed the numerous ways that the process of incorporating new black and Puerto Rican immigrants to American cities was different, resulting in the creation of entrenched ghettos. Abrams spared no aspect of society from criticism in this process, damning "homeowners associations" that organized against blacks as well as the real estate agents that promoted segregation. But he reserved particular disdain for federal housing agencies, which he argued, institutionalized racism by establishing standards that concluded that any interaction of races was bad for property values.²⁵⁴ FHA policies, he argued, "gathered together all the humbug of half-informed pseudo experts . . . and codified them into official dogma."²⁵⁵ Relying on numerous studies of real estate markets, Abrams vigorously critiqued the argument that the en-

Fair Housing Ordinance Upheld (Apr. 20, 1960) (NAACP Papers, Part 5, Supplement, Roll 1) (on file with author).

253. See HENDERSON, *supra* note 34, at 155–57.

254. See ABRAMS, *FORBIDDEN NEIGHBORS*, *supra* note 39, at 234–38.

255. *Id.* at 234.

trance of minorities caused a decline in property values and argued that numerous factors played a role in neighborhood change.

After reviewing the numerous ways that government agencies inhibited the movement of racial minorities, and debunking the “fallacies” that denigrated mixed neighborhoods, Abrams proposed a “Program for Action” to promote equal access to housing. Included in his proposals were a long-range housing program that provided support for low and middle-income housing, federal prohibition of discrimination in government-supported housing, curtailment of slum clearance programs until adequate replacement housing was produced, and the creation of institutions at the local, state, and federal levels to improve race relations.²⁵⁶

Catherine Bauer called *Forbidden Neighbors* “as timely in 1955 as *Uncle Tom’s Cabin* was in 1852,” and many other policymakers praised the book.²⁵⁷ Abrams’ publication was especially appropriate at that moment because it came at a time of increased national attention on the issue. Throughout most of the 1950s, New York was the center of the fair housing movement, but by 1957 it was only one location of many where activists were working to eliminate housing discrimination. As they had in New York, fair housing efforts focused on large apartment buildings and new housing developments. During the second half of the decade, the fair housing movement gained increasing support from urban elites, particularly business and institutional leaders concerned about the impact of increasing segregation on the future of the city. However, as discrimination in both cities and suburbs persisted, fair housing advocates began to adjust their demands. By the end of the 1950s, activists argued that experimental efforts to move a small number of middle class blacks into newly built suburbs were no longer sufficient to bring about residential segregation. Combating segregation, they argued, required government regulation of the total housing market. Their moral victories in securing national support for anti-discrimination laws were major achievements, but fair housing activists were unable to win the battle for expanded government intervention into the housing market.

Fair housing efforts were grassroots-based and diverse, but most relied on the NCDH for support. Throughout the decade, the organization was the primary advocacy group for open housing. The NCDH focused on lobbying federal officials in the early 1950s, but it also served as a clear-

256. *See id.* at 346–89.

257. Catherine Bauer, *The Issue that Cannot Wait*, NATION, Sept. 3, 1955 (on file with author); *see also* HENDERSON, *supra* note 34, at 157.

inghouse for efforts around the nation. In 1954, Algernon Black reported that the group had cooperated with dozens of organizations, including the New Haven Human Relations Council, the Rochester Women's Council on Civil Rights, the Minneapolis Human Relations Council, and the Norfolk Women's Council for Interracial Cooperation.²⁵⁸

The *Brown* decision was an important impetus for an expanded national fair housing movement. In its 1954 pamphlet, "Ghettos: The Last Barrier to Civil Rights," the NCDH argued that the decision "poses America's ultimate civil rights challenge. The challenge is not in education but in housing."²⁵⁹ The *Brown* decision, the pamphlet asserted, foreshadowed "an eventual ruling against segregation in publicly-aided housing—including every FHA-insured and VA-guaranteed house or apartment development."²⁶⁰ To push this process along, the group committed to an expanded program of research, technical advice, and leadership training.²⁶¹

Fair housing activists were heartened by the increased attention brought to their cause by the involvement of one of the nation's largest foundations. In 1955, The Fund for the New Republic, an organization funded by the Ford Corporation, announced that it planned to conduct a major study on housing discrimination in America. The Fund appropriated \$100,000 to a commission led by Earl Schwulst, president of the Bowery Bank, to support the effort. While the commission promised an objective study of the housing market for minorities, it was clear from the beginning that the organization's leaders thought discrimination a serious problem. "Those who cannot find a place to live or who are crowded into inadequate quarters and forced to pay an exorbitant price for them can hardly feel that they are enjoying the blessings of liberty," Schwulst stated in announcing the program.²⁶² At the completion of the study, the group hoped to present "some concrete and workable suggestions as to how government, private builders, realtors, financial institutions, and civic groups can cooperate in bringing about better living."²⁶³ Weaver, Abrams, and NAACP Housing advisor Madison Jones played important roles in shaping the study.²⁶⁴

258. See Black Papers, The Work of the NCDH and the NYSCDH *supra* note 61, at Box 9; SALTMAN, *supra* note 56, at 45–47.

259. NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, GHETTOS: THE LAST BARRIER TO CIVIL RIGHTS (1954) (on file with author).

260. *Id.*

261. See *id.*

262. *Study of Housing of Minorities Set*, N.Y. TIMES, May 21, 1955, at 19.

263. *Id.*

264. See DAVIS MCENTIRE, RESIDENCE AND RACE: FINAL & COMPREHENSIVE RE-

By 1957, twelve states were considering fair housing bills.²⁶⁵ While only one (Washington) was enacted,²⁶⁶ activists appeared to be winning the public relations battle over the issue of housing discrimination. National journals such as *Time* and *House and Home* published favorable reports on the movement. The *New York Times* reported a survey conducted by the University of Pennsylvania, which concluded, “general public acceptance of racially unsegregated housing may come sooner than many experts have predicted.”²⁶⁷ Several national church groups also declared their support for fair housing. At its annual conference, the General Assembly of the Presbyterian Church called on its local churches to “weld their parishioners in covenants of open occupancy.”²⁶⁸ The Churches of the Disciples of Christ urged their members to “encourage the development of neighborhoods where persons might live without racial barriers.”²⁶⁹

While public sentiment may have been changing, fair housing advocates saw much to despair in the housing situation. In a 1957 statement, NAACP Chief Walter White argued that “strides toward full democratic equality have taken place in all fields save one . . . housing,” and he cited statistics showing that segregation had increased in most urban and suburban areas during the decade.²⁷⁰ Violent responses to the arrival of black residents were still too frequent, as a particularly bad incident in Levittown, Pennsylvania revealed. In August of 1957, the Myers family purchased a home in the community, setting off nine days of violence. More than 200 people greeted them on move-in day, shouting racial epithets and throwing stones that shattered the family’s front windows.²⁷¹ The next day, more than 500 protestors appeared. After several months, tensions subsided and the Myers remained.²⁷²

PORT TO THE COMMISSION ON RACE & HOUSING, at vii (1960); MEYER, *supra* note 8, at 141.

265. See 1 TRENDS IN HOUSING 1 (Feb.-Mar. 1957) (Black Papers, Box 9) (on file with author). The states were New York, New Jersey, Connecticut, Massachusetts, Pennsylvania, Minnesota, California, Oregon, Ohio, Illinois and New Mexico.

266. 1 TRENDS IN HOUSING, *supra* note 265, at 1.

267. 1 TRENDS IN HOUSING, *supra* note 265, at 1; see *Housing Shift Seen*, N.Y. TIMES, Feb. 24, 1957, at 77.

268. *Presbyterians Ask Churchgoers to Aid Housing Bias Fight*, N.Y. TIMES, May 31, 1957, at 1.

269. *Church Attacks Racial Barriers*, N.Y. TIMES, Oct. 3, 1956, at 15.

270. NEW YORK COMMITTEE AGAINST DISCRIMINATION IN HOUSING, THE 1957 HOUSING CHALLENGE (NAACP Papers, Part 5, Supplement, Roll 8) (on file with author).

271. *Levittown Incident Tests Bias of North*, 2 TRENDS IN HOUSING 1 (Sept.-Oct. 1957) (on file with author).

272. See *Peace is Restored to Levittown, Pa.*, 2 TRENDS IN HOUSING 1 (Dec. 1957-Jan. 1958) (on file with author); MEYER, *supra* note 8, at 148.

Just across the river in New Jersey, fair housing advocates continued to fight segregated suburban developments. In 1957, the Levitt Corporation announced plans for a third Levittown, in Willingboro, New Jersey. Once again, Levitt promised that the development, which would have between 12,000 and 15,000 houses, would be for whites only.²⁷³ Such a project would violate New Jersey's fair housing laws, which prohibited discrimination in FHA funded housing. Calling Levittown "a national—indeed an international—symbol of racial discrimination," NCDH officials urged the FHA commissioner to deny funding. They later asked the governor of New Jersey to request the state Division Against Discrimination to investigate all complaints against the company and revoke Levitt's certificate of incorporation.²⁷⁴ While Levitt's representatives met with NAACP leaders Roy Wilkins and Thurgood Marshall, informing them that the developer was "seeking to work something out," his sales agents continued to turn away black applicants.²⁷⁵

While they continued to struggle against big developers, fair housing advocates gained increasing support from political and business leaders. In June 1958, the newly established Federal Commission on Civil Rights announced that its first project would be to study discrimination in voting, education, and housing.²⁷⁶ Later that year, the Fund for the Republic released its two-year study of housing discrimination, and called on the federal government to end support for segregated housing. "[T]he policies of Federal housing agencies which encourage or permit racial distinctions in the distribution of Federal housing benefits are inconsistent with the Constitution of the United States," the commission argued.²⁷⁷

273. See Black Papers, *supra* note 60, at Box 12; Memorandum from Frances Levenson, Executive Director, National Committee Against Discrimination in Housing, to Delegation Meeting with Governor Meyer Regarding Levittown, New Jersey (July 2, 1958) (Black Papers, Box 12) (on file with author); *N.J. Levittown Started: Negro Exclusion Stands*, N.Y. HERALD TRIB., June 8, 1958, at 1.

274. See Letter from Algernon Black to Governor Robert Meyner (June 12, 1958) (Black Papers, Box 12) (on file with author); Black Papers, The Work of the NCDH and the NYSCDH *supra* note 60, at Box 9.

275. See Letter from Roy Wilkins to Samuel Williams, President, New Jersey NAACP (June 19, 1958) (NAACP Papers, Part 5, Supplement, Roll 9) (on file with author). The New Jersey Division Against Discrimination did file a complaint against Levitt, which the corporation appealed all the way to the state Supreme Court. In a unanimous opinion, the court upheld the statute. *Levitt and Sons, Inc. v. Division Against Discrimination*, 158 A. 2d 177 (N.J. 1960); see also Press Release, NAACP (June 16, 1960) (NAACP Papers, Part 5 Supplement, Roll 9) (on file with author).

276. See *Civil Rights Unit to Open Studies*, N.Y. TIMES, June 11, 1958, at 18.

277. WHERE SHALL WE LIVE? REPORT OF THE COMMISSION ON RACE AND HOUSING 63–64 (1958).

The study, which ultimately cost more than \$400,000, examined the housing situation in sixteen different cities.²⁷⁸ Entitled “Where Shall We Live?,” the report chronicled consistent discriminatory practices across the country that prevented minorities from finding a decent place to live.²⁷⁹ Noting that segregation “seriously handicapped” the United States in its attempts to gain the allegiance of the “uncommitted peoples of Asia and Africa,” the report recommended a comprehensive fair housing effort, including legislation at state and local levels, community action to educate Americans about the problem, and the engagement of developers and realtors in the effort.²⁸⁰ The report also advised President Eisenhower to create a federal commission to study the problem and develop proposals to eliminate segregation. The report adopted many of the suggestions of fair housing activists, including their long-standing proposal that urban renewal projects and public housing be built on vacant land, and it suggested that New York’s state laws serve as a model for other state governments.²⁸¹ “Where Shall We Live?” gave particular attention to the indignities facing middle-class black families. “There are now many Negroes—and their number is increasing—who have achieved middle-class status economically and culturally and are ready to move out of the segregated Negro community into the mainstream of American life,” it stated.²⁸²

Assessing the committee’s work, the editors of the *New York Times* argued, “perhaps the most notable fact about the commissions findings is that they came from a group usually regarded as highly conservative.”²⁸³ None of the members actively supported integration, and one was a “highly respected realty man.”²⁸⁴ But, despite the mainstream imprimatur provided by the Fund for the Republic, the Eisenhower Administration continued to oppose federal involvement in the “local” problem of discrimination. Federal housing officials rejected the proposal for a federal commission to study housing, arguing that it would compete with other efforts. In a speech to the National Association of Real Estate Boards just days after the release of the report HHFA Administrator Cole argued that because the government had not caused

278. See *Major Study Set on Housing Bias*, N.Y. TIMES, June 15, 1956, at 32; Black Papers, *supra* note 60, at Box 10.

279. Black Papers, *supra* note 60, at Box 10.

280. See WHERE SHALL WE LIVE?, *supra* note 277, at 42, 66–67. On the role of the Cold War in the debates over civil rights, see MARY DUDZIAK, COLD WAR CIVIL RIGHTS (2001).

281. See WHERE SHALL WE LIVE?, *supra* note 277, at 65–66.

282. *Id.* at 9.

283. *Views on Housing Clarified by U.S.*, N.Y. TIMES, Nov. 16, 1958, at R1.

284. *Id.*

segregation, it had no responsibility to promote integration.²⁸⁵ In response to a proposed federal ban on housing discrimination introduced in 1959 by Representative John Dingell, FHA Commissioner Norman Mason stated that “the time had not come” for such a measure.²⁸⁶

During this same time period, HHFA officials found themselves consistently under attack, not just from fair housing advocates, but also from mainstream political leaders. In the annual meeting of the Conference of Governors (a coalition of governors from northeast and mid-western states), the participants unanimously called on the President to adopt expanded civil rights legislation.²⁸⁷ The governors acknowledged that discrimination in housing was the area of greatest problem and noted that many of their states were considering legislation to ban discrimination.²⁸⁸

The day after the Governors’ announcement, the U.S. Civil Rights Commission began a two-day hearing on housing discrimination in New York City.²⁸⁹ Several fair housing activists, including Algernon Black and Charles Abrams testified at the hearings, and all called on the commission to recommend that federal government prohibit discrimination in publicly assisted housing. Abrams accused the federal government of “evading its responsibility under civil rights statutes to give all citizens equal access to the housing market.”²⁹⁰ Earl Schwulst criticized federal agencies, noting that “formal neutrality has the practical effect of supporting existing practices. It also represents moral sanction, for if the Government, expressing a public policy, sees nothing wrong in racial discrimination, how can private persons be censured for practicing it?”²⁹¹ Jackie Robinson testified that he had been obstructed in his efforts to start an open housing development in the city. “I guarantee,” he said, “that bean balls are still being thrown in the housing field as well as on the ball field.”²⁹² Critiquing the city’s discrimination laws, James Andrews of the Real Estate Board of New York argued that “the property owner of New York is primarily a business man, not a social reformer.”²⁹³ Andrews suggested that those who sup-

285. *Cole Bars Part in Segregation*, N.Y. TIMES, Nov. 14, 1958, at 46.

286. *U.S. Opposes Ban on Housing Bias*, N.Y. TIMES, Mar. 14, 1959, at 9.

287. *President Urged to Lead on Rights*, N.Y. TIMES, Feb. 1, 1959, at 44.

288. *Id.*

289. *Hearings Before the United States Commission on Civil Rights* (Jan. 2, 1959) (on file with author).

290. *U.S. Inquiry Begun on Bias in Housing*, N.Y. TIMES, Feb. 3, 1959, at 23.

291. *U.S. Inquiry Begun on Bias in Housing*, *supra* note 290, at 24.

292. *U.S. Unit Here Gets Housing Bias Data*, N.Y. TIMES, Feb. 4, 1959, at 24.

293. *Id.*

port open housing “translate their conviction into action” and undertake projects with their own money “and not the investments of others.”²⁹⁴

In the fall of 1959, the commission released its first report on civil rights in the nation. A deeply political document, the report reflected the nation’s broad disagreement over the issue of civil rights. Echoing the arguments of Black and Weaver, the commission found that housing was “the one commodity in the American market that is not freely available on equal terms to everyone who can afford to pay.”²⁹⁵ Housing discrimination, the commissioners concluded, was responsible for the creation of slums and blight, as well as juvenile delinquency, disease, and crime. However, the commission rejected proposals to prevent segregation. Arguing that “the need is not for a pattern of integrated housing,” but for “equal opportunity to secure decent housing,” the commission recommended that “an appropriate biracial committee or commission on housing be established in all cities with substantial non-white populations” to study the problem, receive complaints, and attempt to mediate them.²⁹⁶

Despite its moderate conclusions, several commission members felt that the report went too far. In a supplemental statement, Commissioners Storey, Battle, and Carlton (all Southerners) expressed support for local commissions, noting, “in dealing with the problem of housing, we must face realities and recognize the fact that no one pattern will serve the country as a whole.”²⁹⁷ They worried that “the repeated expressions, ‘freedom of choice,’ ‘open housing,’ and ‘scatteration’ suggest a fixed program of mixing the races anywhere and everywhere regardless of the wishes of either race.”²⁹⁸ The result of this, they argued, “would be dissension, strife, and even violence evident in sections where you would least expect it.”²⁹⁹

While the commission was reluctant to promote integration as a goal, it did state clearly that the government had a responsibility to prevent discrimination. Citing the Civil Rights Act of 1866, the commission further argued, “federal housing policies need to be better directed toward fulfilling the constitutional and congressional objective of equal opportunity” and recommended that the President issue an executive order prohibiting discrimination “in all Federally assisted housing.”³⁰⁰

294. *Id.*

295. *Federal Panel Asks, “Inventive, Creative and Educational” Civil Rights Law*, N.Y. TIMES, Sept. 9, 1959, at 45.

296. *Id.*

297. *Id.*

298. *Id.*

299. *Id.*

300. *Federal Panel Asks, “Inventive, Creative and Educational” Civil Rights Law*, N.Y. TIMES, Sept. 9, 1959, at 45.

The commissioners also adopted several other proposals from fair housing advocates, recommending that public housing be built in vacant areas away from established ghettos, and that the HHFA take a more active role in overseeing urban renewal programs to ensure that they do not exacerbate segregation.³⁰¹

Although President Eisenhower signed the bill creating the Civil Rights Commission, his administration ignored the commission's housing recommendations. All the while, fair housing was a major issue in many city and state legislatures. In December 1958, Pittsburgh passed an anti-discrimination law even broader than what New York had enacted.³⁰² In March 1959, the NCDH reported that thirteen states were considering legislation.³⁰³ By June, Colorado, Connecticut, Massachusetts, and Oregon had all passed legislation banning discrimination in the sale or rental of housing.³⁰⁴ While they differed in some respects, all the laws applied to the sale or rental of private housing and excepted the sale of homes by the owners and rental of homes in which the owner lived.³⁰⁵ All imitated New York's complaint structure, granting government agencies the power to investigate claims of discrimination.³⁰⁶ Celebrating these gains, the NAACP reported "unmistakable signs of progress toward the ending of discrimination against Negroes."³⁰⁷

While New York fair housing advocates celebrated the expanding movement, they complained that New York had lost the lead. The state fair housing bill languished in committee during 1958 and 1959.³⁰⁸ In 1960, Governor Rockefeller announced that he would make fair housing a priority, and he introduced his own bill, which was similar to that passed by New York City in 1957. But, Algernon Black argued, "by 1960 the fair housing forces were moving ahead of the original city law."³⁰⁹ The adjustment in tactics reflected a changing understanding of the law of discrimination.

301. *Id.*

302. It applied to the rentals and sales in developments of more than five units, and also regulated the activities of real estate agents. See *Pittsburgh "Open City" Law Second in Nation*, 3 TRENDS IN HOUSING 1 (Jan.-Feb. 1959) (on file with author).

303. See *13 States Weigh Bias Legislation*, N.Y. TIMES, Mar. 15, 1959, at R1.

304. See *1959 Record Year for State Civil Rights Laws*, 3 TRENDS IN HOUSING (May-June, 1959) (on file with author); *Laws in 14 States Bar Housing Bias*, N.Y. TIMES, June 28, 1959, at R1.

305. See *id.*

306. See Note, *supra* note 172, at 525.

307. *Housing Progress Seen by NAACP*, N.Y. TIMES, Dec. 27, 1959, at R1.

308. See Robison, *supra* note 128, at 58-61.

309. Black Papers, 1960 Metcalf-Baker—NYSCDH Still on the Last Lap, *supra* note 61, at Box 10.

Advocates had previously avoided restrictions on individual home sellers. In his 1955 book, *Forbidden Neighbors*, Charles Abrams wrote, “outlawing discrimination in one- or two-family houses would probably be premature in most places and invite difficulties.”³¹⁰ Debate over the 1957 Sharkey Bill, Black had argued that an attempt to regulate owner-occupied housing would be “unworkable.”³¹¹ In 1960, however, advocates argued that the failure to regulate these sales had public implications. “What an individual might do with his own owner-occupied dwelling might be his own concern, *so long as he did not put it on the market*. Once housing was put in the hands of a broker or advertised our [sic] publicly listed; once it was up for some sort of servicing for credit or insurance, regulation or protection by a functioning agency of the housing industry . . . that housing offered for rental or sale was in the public market.”³¹² Real estate brokers and boards, Black argued, were “public functionaries,” and housing involved “crucial factors connected with the general welfare.”³¹³ Arguing that “it is a fiction” that the housing market was not publicly subsidized, Black commented that “the housing industry had aspects of a public utility” and all aspects of it should be subject to regulation.³¹⁴

In addition to asking for the regulation of all housing, and the extending coverage of state law over the actions of real estate brokers and other professionals, the new Metcalf-Baker Bill provided exceptions only for the sale of homes when the owner negotiated privately with the seller and for rentals of two-family homes when the owner occupied one unit.³¹⁵ Rockefeller argued that his bill was more consistent with laws approved by other states and therefore more likely to pass, and he declined to support the expanded measure.³¹⁶ While they called the bill inadequate, after months of negotiation and lobbying, activists accepted the governor’s proposal, and the Administration bill passed in April 1961.³¹⁷

310. ABRAMS, *FORBIDDEN NEIGHBORS*, *supra* note 39, at 357.

311. Letter from Algernon Black to Editor, N.Y. TIMES (Jun. 17, 1957) (Black Papers, Box 10) (on file with author).

312. Black Papers, 1960 Metcalf-Baker—NYSCDH Still on the Last Lap, *supra* note 60, at Box 10.

313. *Id.*

314. *Id.* Abrams had made similar arguments as far back as the early 1940s. *See, e.g.,* ABRAMS, *FORBIDDEN NEIGHBORS*, *supra* note 39, at 357; HENDERSON, *supra* note 34, at 142–43.

315. *See* Memorandum from Jack Wood to Roy Wilkins regarding Brief Primer on Proposed Metcalf-Baker Bill for New York (Dec. 16, 1959) (NAACP Papers, Part 5, Supplemental, Roll 1) (on file with author).

316. *See Governor Offers a Broad Measure on Bias in Housing*, N.Y. TIMES, Feb. 24, 1960, at 1.

317. *See* Memorandum from Jack Wood to Executive Staff Regarding Rockefeller’s Fair Housing Bill (Feb. 24, 1960) (NAACP Papers, Part 5, Supplement, Roll 1) (on

By the end of the 1950s, fair housing was enormously complex. While policymakers increasingly acknowledged that housing discrimination was wrong, resistance among real estate developers and white residents to integration efforts remained strong. At the same time, despite the passage of numerous anti-discrimination bills, drastic demographic changes in American cities increased segregation. The fair housing movement could not cope with all of the social, political, and economic aspects of residential segregation. In the late 1950s, urban change had a particularly dramatic impact on the public housing program. By this period, public housing in most large cities was overwhelmingly minority. Efforts to reverse this trend would pose serious implications for the principles of the fair housing movement.

VI. Integration or Anti-Discrimination: The Public Housing Controversy

While most histories of affirmative action date the beginning of such efforts to the late 1960s,³¹⁸ proposals for government programs to provide racial balance have a much longer history. As advisor to the Office of Production Management during World War II, Robert Weaver recommended several programs to promote blacks in war industries, but these proposals received little support.³¹⁹ However, by the late 1950s, as civil rights activists continued to battle both discrimination and increasing segregation, demands for greater government action intensified. Race conscious measures became more palatable to policymakers seeking solutions to deeply rooted racial problems.

As the history of the New York City Housing Authority's (NYCHA) aborted effort to achieve racial balance shows, these proposals raised fundamental conflicts for progressive policymakers in general and for the fair housing movement in particular. By pitting the desperate need for affordable housing among poor New Yorkers against the goal of integration, the NYCHA program put in stark relief the contradictions of anti-discrimination law. The class-based nature of the housing authority's program, which asked the poor to bear the burden in solving

file with author). The law was expanded in 1963 in accordance with most of the demands of fair housing advocates. See Robison, *supra* note 128, at 62–64.

318. See, e.g., W. ROBERT CRAY, *THE FOUR FACES OF AFFIRMATIVE ACTION* 4 (2001); CAPLAN, *supra* note 32, at 17–18.

319. Alma Rene Williams, *From the Black Cabinet to the President's Cabinet* (unpublished Ph.D. dissertation, Washington University, 1978) (on file with author); Sigmund Shipp, *Building Bricks Without Straw*, in *HISTORICAL ROOTS OF THE URBAN CRISIS: AFRICAN-AMERICANS IN THE INDUSTRIAL CITY, 1900–1950* 227 (Walter Hill & Henry Louis Taylor, Jr. eds., 2000).

a societal problem, remains a crucial aspect of current battles over affirmative action.

During the 1950s, public housing became increasingly tied to urban renewal, and the focus of the program shifted from providing housing to the “worthy poor” to providing support for private redevelopment.³²⁰ Since a large number of urban renewal dislocatees were minorities, and because they were excluded from other housing opportunities, public projects became the housing of last resort.³²¹ President Eisenhower’s HHFA Administrator, Albert Cole, stated explicitly that the purpose of public housing was to shelter those dislocated by urban renewal.³²² As a result, at the same time fair housing advocates celebrated victories in equal access, they began to worry that public housing was becoming increasingly segregated. By the mid-1950s, fair housing advocates’ fears would become reality as projects across the country became overwhelmingly black, and public housing became identified with the ghetto.³²³

Attacked from many sides, public housing had always been a difficult program to manage and support. As many projects entered their second decade, maintenance needs increased at the same time that funding decreased. Public housing projects were also hit by the increasing crime rate that afflicted many cities. As these trends were emerging, public housing became increasingly identified as minority housing. In New York during the 1940s, two-thirds of public housing tenants were white. By 1955, that number had dropped to one-half. By 1960, the percentage would be one quarter.³²⁴ The role of public housing in creating segregated communities further heightened the already strong opposition of many neighborhoods, making it more difficult to build outside of the ghetto. At the same time, many civil rights advocates opposed further development in areas that already supported public projects.³²⁵

Fair housing activists viewed the changes in public projects with alarm. They had frequently pointed to public housing as proof that integration could work, and now the buildings were becoming as seg-

320. See SCHWARTZ, *supra* note 34, at 124–125; PRITCHETT, *supra* note 10, at 108.

321. See Hirsch, *supra* note 96, at 220.

322. See Hirsch, *supra* note 96, at 220.

323. See Robert Weaver, Address at the 6th Annual Meeting of the National Committee Against Discrimination in Housing (May 21, 1954) (Weaver Papers, Supplement, Box 6) (on file with author); PRITCHETT, *supra* note 10, at 115–117.

324. PRITCHETT, *supra* note 10, at 116.

325. See *Rising Negro Proportion Seen in Public Housing*, 1 TRENDS IN HOUSING 3 (Dec. 1956) (on file with author).

regated as the other areas of American cities. Activists argued that by placing public projects in predominantly minority areas, housing authorities had helped to entrench segregation.³²⁶ They also noted that urban renewal projects, which displaced tens of thousands of minorities, combined with housing discrimination to force minorities into existing ghettos. As a result, they demanded that urban renewal programs take into account their affect on public projects. "It seems clear, if public and publicly-aided housing is not to retard but rather to promote racial integration of neighborhoods" that new projects must be built in undeveloped areas.³²⁷ The NYSCDH recommended that all public housing be located in vacant land or in small sites scattered "interspersed with existing or newly developed private housing in non-minority concentrated areas."³²⁸ The group also recommended that housing authority management "adopt affirmative policies and practices to encourage integration and non-segregation."³²⁹

Housing advocates had certainly considered the use of quotas, but had never specifically promoted them.³³⁰ Abrams waffled on the issue. Assessing the viability of integrated public housing, Abrams noted that there may be some cases in which the percentage of minorities "rises disproportionately."³³¹ In such cases, he concluded "an effort to keep the project in a workable balance is desirable."³³² Abrams distinguished these efforts from "quotas," however. "A quota system is a device to exclude people, not to include them; to effect segregation not to break it down."³³³ If there was adequate housing for all, Abrams claimed, segregation would not be a problem.³³⁴ "Until that has been attained," he argued, "the maintenance of workable communities during the development process is essential."³³⁵ But Abrams avoided considering a possible conflict between nondiscrimination and integration. Just a page

326. *See id.*

327. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, BACKGROUND OF RECOMMENDATIONS TO ACHIEVE NON-SEGREGATION IN PUBLIC AND PUBLICLY-ASSISTED HOUSING (May 28, 1956) (NAACP Papers, Part 5, Supplement, Roll 11) (on file with author).

328. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, TOWARD NON-SEGREGATION IN PUBLIC HOUSING AND PUBLICLY ASSISTED HOUSING (Jun. 21, 1956) (Black Papers, Box 9) (on file with author).

329. *Id.*

330. *See Note, supra* note 172, at 538–39. On civil rights activists' hesitancy over racial preferences, see MORENO, *supra* note 11, at 88, 140–141.

331. ABRAMS, FORBIDDEN NEIGHBORS, *supra* note 39, at 311–12.

332. *Id.* Paul Moreno asserts that Abrams was a champion of race conscious remedies while at the State Commission Against Discrimination. MORENO, *supra* note 11, at 140.

333. ABRAMS, FORBIDDEN NEIGHBORS, *supra* note 39, at 311–12.

334. ABRAMS, FORBIDDEN NEIGHBORS, *supra* note 39, at 312.

335. ABRAMS, FORBIDDEN NEIGHBORS, *supra* note 39, at 312.

later, he argued “[s]ociety has a duty to be color-blind in dispensing aid or power in operating public projects.”³³⁶ In 1955, the NYSCDH held a seminar posing the question, “what do we really mean by integration? Does non-discrimination necessarily include integration? Are there any circumstances under which quotas are necessary?”³³⁷ Despite the pointed questions, the meeting failed to produce a clear statement of policy.

While policymakers avoided the issue, the small number of home-builders who actively supported integration argued that quotas were necessary to maintain integration. “Occupancy policy must be firm,”³³⁸ wrote builder Morris Milgrim. “Management must quietly decide on a policy of no less than fifty-five percent white, and preferably sixty-seven percent white, and stick to it, by not taking deposits from Negroes for more than about one-third of the lots. . . . Purchasers must be informed that ‘sales are two-thirds white, one-third Negro, and that’s how we’re going to keep it.’”³³⁹ Milgrim, however, was in the small minority of policymakers who directly confronted the issue.

In 1956, Charles Abrams, then chair of SCAD, participated in a public debate with Warren Moscow, the executive director of the NYCHA, over segregation in public housing. Moscow accused Abrams and SCAD of “championing a quota system sometimes referred to as ‘planned integration.’”³⁴⁰ Abrams, Moscow claimed, had advised the authority to maintain a “privately agreed upon ratio” of racial groups in the projects, and Moscow responded that the authority “would not pick out tenants on any basis except need.”³⁴¹ Abrams denied that he had recommended a quota system. He was simply “exploring” options.³⁴² A month later, the two organizations issued a joint statement declaring that “no controversy exists” in their policies of racial integration.³⁴³

Housing activists had generally avoided using the word quota, but events would soon force them to take sides. In the spring of 1957, in

336. ABRAMS, FORBIDDEN NEIGHBORS, *supra* note 39, at 314.

337. Memorandum from Algernon Black to Members of the New York State Executive Board Regarding Seminar on Problems and Techniques of Integration (June 21, 1955) (NAACP Papers, Part 5, Roll 12) (on file with author).

338. Letter from Morris Milgrim to Corneff Taylor, Executive Secretary Milwaukee Commission on Human Rights (June 11, 1955) (NAACP Papers, Part 5, Roll 12) (on file with author).

339. *Id.*

340. *Bias Issue Stirs Debate*, N.Y. TIMES, May 14, 1956, at 27.

341. *Id.*

342. *Id.*

343. *2 Housing Agencies Heal Race Dispute*, N.Y. TIMES, June 20, 1956, at 12.

response to allegations of corruption and mismanagement at the New York City Housing Authority, Mayor Robert F. Wagner directed City Comptroller Charles F. Preusse to conduct an in-depth study of the organization's operations and to make recommendations for reform. The report's most serious observations related to changes in the tenant population. "We find the entrance of undesirable families into the projects, creating a hard-core of problem tenants, which, while small in number, are the root of deep troubles both to their neighbors and to the Authority."³⁴⁴ Although Preusse cited no statistics to back his claim, his opinion was that the increase in minority tenants was directly related to the increase in "problem families." Preusse recommended that the NYCHA aim for a "more balanced population that would tend to remove any existing stigma from low-income public housing and would also tend to raise the standards of social conduct within the projects," and he counseled the authority to take race and income into its admissions policies.³⁴⁵ While he did not recommend quotas, Preusse noted that "some" people "occasionally suggest that percentage systems be set up for the various racial groups who may be admitted to housing projects."³⁴⁶

Immediately after the release of the report, the NYCHA announced the hiring of Madison S. Jones as Special Consultant on Race Relations. Jones had a long history of involvement in the field, having served as Race Relations Officer for the Federal Housing Administration, and as Special Assistant for Housing of the NAACP.³⁴⁷ Jones was a board member of the NYSCDH, the NCDH, the National Association of Housing and Redevelopment Officials, and the National Housing Conference. His stated responsibility was to "guide the Authority on all race relations matters" including "tenant selection."³⁴⁸

Jones's first major effort was an attempt to prevent further segregation of New York's public projects. In February 1959, the NYCHA established goals for the racial composition of its projects and instituted a program that "encouraged families to accept apartments in accordance with a plan aimed at achieving balanced communities."³⁴⁹ In imple-

344. Letter from Charles F. Preusse, New York City Comptroller, to Mayor Robert F. Wagner (Sept. 16, 1957) (NYCHA Papers, LaGuardia and Wagner Archives) (on file with author).

345. *Id.*

346. *Id.*

347. Press Release, New York City Housing Authority (July 17, 1958) (NYCHA Papers) (on file with author).

348. *Id.*

349. *From the Housing Authority*, N.Y. RECORDER, Sept. 3, 1960.

menting this plan, the authority divided its projects into four phases. In Phase I projects, where the tenant balance was tilting towards a black or Puerto Rican majority, white applicants received priority in admittance. Black and Puerto Rican applicants were only considered if there were no whites interested in moving into the project. For projects in Phase II, where blacks or Puerto Ricans were a majority, apartments were held open for a period in anticipation of white applicants. Phase III projects had a tenant body primarily white, and the authority encouraged black and Puerto Rican applicants. Phase IV projects were predominantly Puerto Rican.³⁵⁰ In adopting this plan, Jones argued that the authority was “trying to kill the idea that public housing is minority housing. If we can get into this thing sensibly with the community groups, we can reverse the tendency towards segregation.”³⁵¹ The integration program was initiated in some secrecy. NYCHA Board Member Ira S. Robbins later stated that was because it might be “misunderstood.”³⁵²

In the summer of 1960, Bernard Roshco, a former NYCHA staffer, wrote an article criticizing the plan. In Roshco’s view, the policy had achieved increases in integration in selected projects; in general it was a failure. The policy, he argued, resulted in the Authority holding apartments vacant, sometimes for months, in search of white applicants while eligible black and Puerto Rican applicants languished on the waiting list.³⁵³ In several instances, four-room apartments, usually reserved for families with one or two children, were rented to childless white couples willing to accept them.³⁵⁴ “Whatever the long-range benefits that may accrue from the integration program,” Roshco argued, “the immediate result for non-white applicants is a sharp reduction in the number of apartments available.”³⁵⁵ Roshco questioned the legality of the program, arguing that while “it is operating within the spirit” of anti-discrimination statutes, a court would likely find that the NYCHA violated the law.³⁵⁶ But the greater sin the authority committed, Roshco argued, was “undertaking to act as a benevolent autocracy” by hiding its policies “behind a fog of semantic obscurantism.”³⁵⁷

350. *See id.*

351. Bernard Roshco, *The Integration Problem and Public Housing*, THE NEW LEADER, July 4–11, 1960, at 10.

352. *Bias Laid to City in Tenant Choice*, N.Y. TIMES, July, 4, 1960, at 1.

353. Roshco, *supra* note 351, at 13.

354. *See Roshco, supra* note 351, at 12.

355. *See Roshco, supra* note 351, at 13.

356. *See Roshco, supra* note 351, at 13.

357. *See Roshco, supra* note 351, at 13.

The NYCHA quickly responded to the article by defending its integration efforts. Chair William Reid held several conferences with journalists, civil rights leaders, and with the State Commission Against Discrimination, which had received complaints about the policy. Reid argued that housing managers were authorized to hold apartments vacant only when applicants were in process, and that the number of apartments kept vacant was very small. “Race does not take priority over the criterion of housing need. There has been no reduction in the number of apartments available to non-whites. No apartments are restricted to whites only. There are no quotas on the number of families in any racial group which may be admitted to any project.”³⁵⁸ Reid argued that the program was necessary to achieve the goal of integration. “Mere compliance with the laws which prohibit discrimination has not prevented segregation. . . . The authority is faced with the necessity of taking affirmative action in order to overcome segregation.”³⁵⁹

The revelation of the integration program resulted in a flurry of interest within the city’s civil rights community, and most of them announced their support for the initiative. Twenty-six of them, including the NAACP, the American Jewish Committee, the Citizens Housing and Planning Council, and the National Council of Christians and Jews, held a press conference to announce their approval. “We fully support the objectives of the New York City Housing Authority . . . in its efforts to achieve racial integration in the housing facilities it operates. We have worked with the Housing Authority to advance that objective in the past and will continue to do so in the future.”³⁶⁰ The *New York Times* also declared the program sound, and it acknowledged the difficult task facing the agency. “The housing authority is trying to be conscientiously against discrimination and against segregation—accident or otherwise—at the same time. It is not easy.”³⁶¹

But the State Committee Against Discrimination, applying the state’s anti-discrimination law, declared that it would undertake an investigation. Fair housing activists were put in a difficult situation by the ini-

358. *From the Housing Authority*, *supra* note 349.

359. *From the Housing Authority*, *supra* note 349; *See also Integration Drive Set for City Housing*, N.Y. HERALD TRIB., Aug. 28, 1960, at 1.

360. *See Foes of Bias Hail Housing Agency*, N.Y. WORLD TELEGRAM & SUN, Aug. 29, 1960, at 1; *Act on Integration for City Housing*, N.Y. J. AM., Aug. 28, 1960, at 1; *Bias Issue Stirs Housing Council*, N.Y. TIMES, Aug. 28, 1960, at 67; *Policy to Cut Bias in Housing Hailed*, N.Y. TIMES, Aug. 29, 1960, at 47.

361. *SCAD Against Integration?*, N.Y. TIMES, Sept. 24, 1960, at 22. Three years later, the *Times* would oppose race conscious remedies in employment. *See MORENO*, *supra* note 11, at 149.

tative. NYSCDH members disagreed about the appropriateness of quotas, and despite the fact that former board member Madison Jones requested the organization's support, Black declined to publicly back the policy. Because the organization was divided, Black chose to participate in the debate behind the scenes.³⁶² Black was primarily concerned that the investigation not turn concerns about public housing or integration into a political battle between city Democrats and the Republican state administration that would "be very damaging to the cause of equal opportunity in housing and at the same time the cause of integration," and he tried to play a mediating role between the organizations.³⁶³ The members of the housing authority, Black argued, were "people of integrity," with a "sincere commitment in trying either to maintain or bring about integration in public housing projects."³⁶⁴ Instead of focusing on the quota issue, Black worked to "quiet what could have been an ugly racial conflict in the political arena."³⁶⁵

In his recollections of the controversy, Black agreed that "for a black family that desperately needed an apartment and was not particularly interested in integration," the new policy "seemed like a tremendous injustice, and it was."³⁶⁶ The NYSCDH, however, waffled on its opinion of the integration policy. In its first public statement on the conflict, the group argued vaguely that "non-segregation" might require management to "adopt affirmative policies," but it urged that "in carrying out such a policy . . . no eligible person be denied housing in accordance with the preferences established by law."³⁶⁷ Some activists, such as Councilman Stanley Isaacs, recognized that the values espoused by the group conflicted. "We have been all out against discrimination. We all believe in proper integration. The present controversy proves that there can be conflict between these two aims." Isaacs argued that the group should take a stand. "I believe the effort to create balanced communities should be authorized by law, even if it involves a measure of discrimination."³⁶⁸

362. See Letter from Algernon Black to Madison Jones (Sept. 27, 1950) (Black Papers, Box 12) (on file with author).

363. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, THE CONTROVERSY BETWEEN THE NEW YORK CITY HOUSING AUTHORITY AND THE STATE COMMISSION AGAINST DISCRIMINATION (Black Papers, Box 12) (on file with author).

364. *Id.*

365. See *Citizens Panel Seeks to Settle Racial Dispute in City Housing*, N.Y. TIMES, Jan. 7, 1961, at 1; see also Black Papers, SCAD, *supra* note 60, at Box 11.

366. See also Black Papers, SCAD, *supra* note 60, at Box 11.

367. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, PROPOSED STATEMENT REGARDING THE INTEGRATION PROGRAM OF THE NEW YORK CITY HOUSING AUTHORITY (Sept. 1960) (Black Papers, Box 12) (on file with author).

368. Letter from Stanley Isaacs to Algernon Black (Oct. 6, 1960) (Black Papers, Box 12) (on file with author).

But the NYSCDH chose to take a less aggressive approach. While SCAD continued its investigation, the group conducted its own study of the integration program. In April 1961, the NYSCDH issued a formal “Statement of Principles for Program to Effect Integration in Public Housing.” The policy of the housing authority was crucial, the group argued, because “the success or failure of integration in public housing has an important influence on integration in other housing, as well as on general acceptance of integration.”³⁶⁹ The statement raised familiar issues about public housing projects and the role of urban renewal in segregation, and it proposed several policies to improve race relations in public housing projects. While the statement recognized that public housing was “in a transitional stage which justifies special steps,” it refused to take a position on the question of quotas. Instead, the group proposed other methods to enable the housing authority to shape the racial makeup of the tenant body.³⁷⁰ The statement suggested that the housing authority stop allowing applicants to request a particular project and instead “adopt a set of objective criteria” by which to determine which development to direct the applicant.³⁷¹

In April 1963, SCAD Vice Chair Bernard Katzen issued the report of his “informal” study of the integration program, a document that was prescient in its analysis of the crucial issues that would confront affirmative action in the decades to follow. Katzen concluded that, in implementing the policy, the NYCHA had denied applicants housing on the basis of race.³⁷² Since the issue was central to the mission of his agency, Katzen felt it necessary to provide a broader analysis of the issue. In an “addenda” to his report, Katzen outlined the arguments in favor of and against such quotas.³⁷³ Advocates argued that temporary controls may be necessary to effectuate the goal of integration.³⁷⁴ “This point of view,” Katzen stated, “calls for social engineers who are not color-blind but rather distinctly color conscious.”³⁷⁵ Quotas, according

369. NEW YORK STATE COMMITTEE AGAINST DISCRIMINATION IN HOUSING, REVISIONS TO STATEMENT OF PRINCIPLES FOR PROGRAM TO EFFECT INTEGRATION IN PUBLIC HOUSING (Apr. 11, 1961) (UNH Papers, Box 58, Folder 13) (on file with author).

370. *Id.*

371. *Id.*

372. Report on Informal Investigation of Tenant Selection Practices and Policies of the New York City Housing Authority (Apr. 9, 1962) (Black Papers, Box 12) (on file with author). On SCAD’s views of quotas, see MORENO, *supra* note 11, at 128.

373. Report on Informal Investigation of Tenant Selection Practices and Policies of the New York City Housing Authority (Apr. 9, 1962) (Black Papers, Box 12) (on file with author). On SCAD’s views of quotas, see MORENO, *supra* note 11, at 128.

374. Report on Informal Investigation of Tenant Selection Practices and Policies of the New York City Housing Authority (Apr. 9, 1962) (Black Papers, Box 12) (on file with author). On SCAD’s views of quotas, see MORENO, *supra* note 11, at 128.

375. Report on Informal Investigation of Tenant Selection Practices and Policies of

to proponents, serve “not only as a corrective agent but as an educational force in the community,” he concluded.³⁷⁶

Opponents, however, argued that quota systems are wrong “because the slightest compromise with true equality of opportunity, even for worthy ends, would open the way for the unbridled use of a quota system for restrictive and discriminatory ends.”³⁷⁷ A quota system, Katzen continued, “sets up an artificial situation in which progress toward a balanced community is actually retarded, in that it encourages ‘tokenism’ and accepts and perpetuates the concept that there are, in fact, racial differences which affect a person’s desirability as a neighbor.”³⁷⁸ Katzen concluded that even if SCAD decided that quotas were a good policy, the agency did not have the authority “to sanction a philosophy of promoting integration through means which the present law declares discriminatory,” and he declared that the program should be discontinued.³⁷⁹

By the time the report was issued, the controversy had died down, and civil rights activists were focused on other causes. Katzen’s report had little impact on the NYCHA, which had quietly given up on integration by that time. By 1963, New York’s public housing was overwhelmingly minority, and the quota program had done nothing to stop the trend.³⁸⁰ But the controversy raised issues that would continue to shadow the fair housing movement.

In the late 1950s and early 1960s many working-class neighborhoods in New York and elsewhere experienced dramatic racial change. The roots of this transformation were complex, but many working-class

the New York City Housing Authority (Apr. 9, 1962) (Black Papers, Box 12) (on file with author). On SCAD’s views of quotas, see MORENO, *supra* note 11, at 128.

376. Report on Informal Investigation of Tenant Selection Practices and Policies of the New York City Housing Authority (Apr. 9, 1962) (Black Papers, Box 12) (on file with author). On SCAD’s views of quotas, see MORENO, *supra* note 11, at 128.

377. Report on Informal Investigation of Tenant Selection Practices and Policies of the New York City Housing Authority (Apr. 9, 1962) (Black Papers, Box 12) (on file with author). On Katzen’s view of quotas, see MORENO, *supra* note 11, at 150.

378. Report on Informal Investigation of Tenant Selection Practices and Policies of the New York City Housing Authority (Apr. 9, 1962) (Black Papers, Box 12) (on file with author). On Katzen’s view of quotas, see MORENO, *supra* note 11, at 150.

379. Report on Informal Investigation of Tenant Selection Practices and Policies of the New York City Housing Authority (Apr. 9, 1962) (Black Papers, Box 12) (on file with author). On Katzen’s view of quotas, see MORENO, *supra* note 11, at 150. Two legal scholars had recently reached the same conclusion. See Note, *supra* note 172, at 549–50; Note, *Benign Quotas: A Plan for Integrated Private Housing*, 70 YALE L.J. 126, 133 (1960). A judge in Illinois also concluded that such quotas were illegal under *Shelley*. See *Progress Dev. Corp. v. Mitchell*, 182 F. Supp. 681, 707 (N.D. Ill. 1960). But others supported the idea. See Oscar Cohen, *The Case for Benign Quotas in Housing*, 21 PHYLON 20–29 (1960).

380. *Housing Policy of City Changed*, N.Y. TIMES, Jan. 27, 1964, at 16.

whites blamed African-Americans and other minorities for causing declining property values and exacerbating “white flight.”³⁸¹ White working-class residents faulted government inaction for neighborhood change. In later years, these residents argued that they were forced to bear the burdens of racial integration that elites in the suburbs did not have to endure. Several scholars and journalists have argued that the rise of conservatism can be traced directly to the competition between blacks and whites for housing and other resources during these years.³⁸² While the reality of urban change was much more complicated, efforts to create integrated housing did have significant class implications for white and minority residents.

VII. Conclusion: Fair Housing in the Sixties and Beyond

In 1948, the U.S. Supreme Court declared that it was powerless to prevent discrimination in the “private” housing market, and most policymakers believed that government had no role to play in promoting residential integration. By 1960, the fair housing movement had succeeded in changing at least elite opinion on this matter, and it also secured several legislative victories in pursuit of its program. The efforts of fair housing activists resulted in a dramatic reorientation of the debate over the government’s role in race relations. As with other aspects of civil rights, the 1960s witnessed the flourishing of fair housing efforts that led to the passage of the federal Fair Housing Act of 1968, as well as the Supreme Court’s dramatic expansion of legal remedies for housing discrimination. The period also witnessed the rise of an active opposition to government regulation of housing. The story of fair housing in the 1960s merits its own detailed treatment, but the framework for the debate was established during the 1950s. All of the major questions that would confront the movement were raised in its formative stages. This conclusion briefly traces the fair housing effort in the 1960s and thereafter, and then returns to some of the implications of this history.

In the midst of his presidential campaign, John F. Kennedy energized the fair housing movement by stating that he would end the federal

381. On the process of, and response to neighborhood change in this period, see SUGRUE, *supra* note 112; GREGORY, *supra* note 197; GERALD H. GAMM, *URBAN EXODUS: WHY THE JEWS LEFT BOSTON AND THE CATHOLICS STAYED* (1999); PRITCHETT, *supra* note 10.

382. See JONATHAN REIDER, *CANARSIE: THE JEWS AND ITALIANS OF BROOKLYN AGAINST LIBERALISM* (1985); THOMAS BYRNE EDSALL & MARY EDSALL, *CHAIN REACTION: THE IMPACT OF RACE, RIGHTS AND TAXES ON AMERICAN POLITICS*.

government's role in housing discrimination. Kennedy criticized the Eisenhower Administration for failing to do more in the area of civil rights. "One stroke of the pen would have worked wonders for millions of Negroes who want their children to grow up in decency," he argued.³⁸³ Kennedy's statement was a great victory for housing activists; an acknowledgement that the federal government had a responsibility to prevent discrimination in housing. Fair housing activists were further heartened by Kennedy's selection for HHFA administrator. President Kennedy nominated NCDH Chair Robert Weaver, making him the highest federally appointed black official in history. "It was so logical, it should have been inevitable—but can you believe it?" crowed Algernon Black.³⁸⁴

Advocates would soon thereafter have their optimism tempered as Kennedy, afraid of a backlash from Southern legislators, delayed issuing the executive order he had promised.³⁸⁵ For the next two years, the NCDH focused much of its attention on its "Stroke of the Pen" campaign to secure the order.³⁸⁶ When Kennedy did finally address the issue in December 1962, the order was much more limited than advocates had hoped. It applied only to housing directly funded by the federal government, and only to housing produced after the effective date.³⁸⁷ But the mere issuance of the order was a validation of the principal that discrimination in housing was no longer acceptable federal policy.³⁸⁸

The early 1960s saw a flourishing of the fair housing movement across the country. Aided by several grants, including a large donation from the Ford Foundation, the NCDH published its first manual, *The Fair Housing Handbook*, and expanded its efforts to nurture fair housing programs.³⁸⁹ By 1964, there were more than 300 fair housing groups affiliated with the organization.³⁹⁰

383. J. Anthony Lukas, *Integrated Housing: A Matter of Timing*, REPORTER, Feb. 15, 1962; see also Black Papers, Needed—A Stroke of the Pen (Oct. 1961) (Black Papers, Box 12) (on file with author).

384. Memorandum from Algernon Black to Members of the National Committee Against Discrimination in Housing Executive Board (Jan. 4, 1961) (Black Papers, Box 12) (on file with author).

385. HENDERSON, *supra* note 34, at 167–69; CARL M. BRAUER, JOHN F. KENNEDY AND THE SECOND RECONSTRUCTION 85 (1977).

386. See SALTMAN, *supra* note 56, at 52.

387. On the Executive Order Controversy, see MEYER, *supra* note 8, at 167–70; BRANCH, *supra* note 8, at 679; HENDERSON, *supra* note 34, at 168–71; Lukas, *supra* note 383; BRAUER, *supra* note 385, at 208.

388. See Memorandum from Frances Levenson to NCDH Board of Directors (Dec. 5, 1962) (Black Papers, Box 12) (on file with author).

389. See SALTMAN, *supra* note 56, at 62.

390. See SALTMAN, *supra* note 56, at 56.

But pressure for open housing confronted consistent opposition by white residents in most cities, and increased opposition by realtors. By the early 1960s, most large cities were witnessing dramatic racial change. Increasing housing production in the suburbs, urban fiscal crises, and declining housing stock coupled with the continued demand among blacks for housing, resulted in the opening of new areas to black settlement. In response to these changes, neighborhoods across the country experienced “white flight”—the rapid change from white to black. In some cities, whites responded violently to the arrival of minorities, and urban tensions increased.³⁹¹

While most anti-discrimination laws had only recently been passed and barely implemented, many whites blamed the fair housing movement for racial change in urban neighborhoods, and they argued that they should have the right to refuse to sell their homes. In Detroit, residents advocated the “Homeowners’ Rights Ordinance,” to protect an individual’s “right to choose his own friends and associates” and to “maintain what in his opinion are congenial surroundings for himself.”³⁹² “The ordinance passed by a 55-to-45 margin.”³⁹³ In California, resentment over neighborhood change was so high that it enabled realtors to secure the rescission of the state’s fair housing act. After the legislature passed the Rumford Fair Housing Act in 1963, the California Real Estate Institute undertook a campaign for a referendum to amend the state Constitution to guarantee the right of a homeowner to “decline to sell, lease, or rent . . . as he in his absolute discretion chooses.”³⁹⁴ Despite the efforts of the NAACP, NCDH, labor leaders, and the intervention of HHFA Administrator Weaver (who argued that federal housing funds for California would dry up if the referendum passed), voters approved the referendum by a two-to-one margin.³⁹⁵ Fair housing advocates also experienced violent reactions to their efforts in many cities. Among the worst incidents occurred in Chicago, where the “Open City Movement,” led by Rev. Martin Luther King, saw a summer of confrontation with white residents.³⁹⁶ In Milwaukee, fair housing

391. On the racial changes of the early 1960s, see PRITCHETT, *supra* note 10, at 147–151; SUGRUE, *supra* note 112; GREGORY, *supra* note 197.

392. See SUGRUE, *supra* note 112, at 227; MEYER, *supra* note 8, at 176.

393. See SUGRUE, *supra* note 112, at 227; see also MEYER, *supra* note 8, at 178.

394. See SUGRUE, *supra* note 112, at 227; see also BECKY NICOLAIDES, MY BLUE HEAVEN: LIFE AND POLITICS IN THE WORKING-CLASS SUBURBS OF LOS ANGELES 308–15 (2002).

395. See NICOLAIDES, *supra* note 394, at 179–81. See also SALTMAN, *supra* note 56, at 62; Thomas Casstevens, *California’s Rumford Act and Proposition 14*, in THE POLITICS OF FAIR HOUSING LEGISLATION (Lynn W. Eley & Thomas Casstevens eds., 1968). The referendum was later invalidated by the U. S. Supreme Court in *Reitman v. Mulkey*, 387 U.S. 369 (1967).

396. See MEYER, *supra* note 8, at 186; on the fair housing battle in Chicago, see

advocates, led by Father James Groppi, were assaulted when they tried to march through white neighborhoods.³⁹⁷

Despite this opposition, fair housing advocates continued to press for anti-discrimination laws, and they called on President Lyndon Johnson to increase federal efforts against bias. Johnson sent the first national fair housing bill to Congress in 1965, but the Civil Rights Bill of 1966 was met with substantial opposition, and did not emerge from a Senate filibuster.³⁹⁸ The rapidly changing racial politics of the 1960s kept attention focused on civil rights measures, however, and in 1967 Johnson reintroduced the bill. In February 1968, Senators Walter Mondale and Edward Brooke introduced the fair housing bill as an amendment to other civil rights legislation.³⁹⁹ After some negotiation with Republican Minority Leader Everett Dirksen, the bill was amended to exempt individuals renting units in buildings where they lived and sellers who marketed their houses without the aid of real estate brokers.⁴⁰⁰

The Senate's consideration of the fair housing proposal focused on the impropriety of denying middle class blacks the right to buy a house.⁴⁰¹ According to Mara Sidney, advocates argued that the fair housing law would help "black professionals who 'deserved' to escape the ghettos, while their lower-income counterparts would receive only the example of those departing to rekindle their belief in the American dream."⁴⁰² In the floor debate over the bill, Senator Mondale argued, "it is impossible to gauge the degradation and humiliation suffered by a man in the presence of his wife and children when he is told that despite his university degrees, despite his income level, his profession, he is just not good enough to live in a white neighborhood."⁴⁰³ The bill, supporters argued, would enable the private market to work as it should.

JAMES R. RALPH JR. NORTHERN PROTEST: MARTIN LUTHER KING, JR., CHICAGO, AND THE CIVIL RIGHTS MOVEMENT (1993).

397. See MEYER, *supra* note 8, at 190–94.

398. See HUGH DAVIS GRAHAM, CIVIL RIGHTS AND THE PRESIDENCY 127 (1992); Richard Sander, *Individual Rights and Demographic Realities: The Problem of Fair Housing*, 82 NW. U. L. REV. 874, 880 (1988).

399. See GRAHAM, *supra* note 398, at 128; Mara S. Sidney, *Images of Race, Class and Markets: Rethinking the Origin of U.S. Fair Housing Policy*, 13 J. POL'Y & HIST. 181, 182 (2001).

400. See MEYER, *supra* note 8, at 206–07; Sander, *supra* note 398, at 880; Jean Dubofsky, *Fair Housing: A Legislative History and a Perspective*, 8 WASHBURN L.J. 149, 154 (1969).

401. In her detailed analysis of the congressional debates over fair housing, Mara Sidney points out that the focus on middle-class blacks did not occur in the deliberations on the 1966 bill, but it was central to the 1968 proposal. Sidney, *supra* note 399, at 183.

402. Sidney, *supra* note 399, at 183.

403. 114 CONG. REC. 3421–22 (1968); see also Dubofsky, *supra* note 400, at 154.

Those with the ability to pay would be able to choose where they wanted to live. “The basic purpose of the legislation,” said Mondale, “is to permit people who have the ability to do so, to buy any house offered to the public if they can afford to buy it. It would not overcome the economic problem of those who could not afford to purchase the house of their choice.”⁴⁰⁴

In pushing for fair housing laws, legislators sought to allay concerns of their white constituents that it would result in dramatic change in their neighborhoods. Senator Brooke argued that the bill would not “lead to a mass dispersal of the ghetto population to the suburbs; but it will make it possible for those who have the resources to escape the stranglehold now suffocating the inner cities of America.”⁴⁰⁵ The only people who would move would be upstanding middle class families that would contribute positively to their new neighborhoods. These people deserved to live the American dream just like their white counterparts. As Robert Weaver had argued two decades before, these pioneers would be role models who would show that integration was a good thing.

On March 11, 1968, the Senate passed the Civil Rights Bill of 1968 by a vote of 71–20. The House of Representatives debated its procedure to consider the bill, but Martin Luther King’s assassination on April 4, 1968, brought a quick vote on the Senate measure, which Johnson signed a week after King’s death.⁴⁰⁶ The Fair Housing Act of 1968 prohibited discrimination in the sale or rental of housing, and it allowed aggrieved parties to sue for damages. It also prohibited discrimination by mortgage lenders and real estate brokers, and it directed HUD to adopt “affirmative programs” to promote fair housing.⁴⁰⁷

Three months later, the U.S. Supreme Court added to the law against housing discrimination. In *Jones v. Alfred H. Mayer Co.*,⁴⁰⁸ the Court ruled that section 1982 of the Civil Rights Act of 1866 barred discrimination in the sale or rental of property.⁴⁰⁹ Reviewing the legislative history of the Civil War Amendments, the Court reasoned that the Thirteenth Amendment gave Congress the authority to ban discrimination in all property transactions, private as well as public.⁴¹⁰ Writing for the

404. 114 CONG. REC. 3421 (1968).

405. 114 CONG. REC. 2279 (1968); *see also* Sidney, *supra* note 399, at 197.

406. *See* GRAHAM, *supra* note 398, at 129; MEYER, *supra* note 8, at 208–09; Dubofsky, *supra* note 400, at 162.

407. *See* Sander, *supra* note 398, at 880.

408. 392 U.S. 409 (1968).

409. *Jones*, 392 U.S. at 413.

410. *See* Sander, *supra* note 398, at 879.

majority, Justice Potter Stewart stated, “when racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery.”⁴¹¹

Unlike the fair employment provisions of the Civil Rights Bill of 1964, which created the Equal Employment Opportunity Commission (EEOC) to investigate claims of discrimination and pursue relief, the Fair Housing Act did not create a new government infrastructure. Instead, the bill gave the department of Housing and Urban Development responsibility for overseeing the law’s implementation.⁴¹² HUD Secretary Weaver argued that he needed \$11 million dollars to create an enforcement infrastructure. Congress gave him less than \$2 million.⁴¹³

Despite the passage of the act and the enunciation of Supreme Court doctrine, segregation persisted in the decades after the passage of the Fair Housing Act.⁴¹⁴ In 1993, Douglas Massey and Nancy Denton released a major study that argued that segregation was still a fact of life for the overwhelming majority of American urban areas.⁴¹⁵ While other scholars argued that integration had increased in some cities, all housing analysts agreed that segregation was the norm.⁴¹⁶ Housing bias also continued to restrict the options of minority Americans. In 1979 and 1989, HUD investigations reported that more than half of blacks experienced discrimination in their search for housing.⁴¹⁷

In response to continued segregation in urban areas, many public housing authorities and some private developers attempted to craft initiatives to support integration. The most famous example of such a program occurred at the Starrett City development in Brooklyn, New York. In order to prevent the project (which at the time was the nation’s largest private housing development) from “tipping” and becoming overwhelmingly black, the developers announced that they would im-

411. *Jones*, 392 U.S. at 442–43.

412. GRAHAM, *supra* note 398, at 129.

413. See MEYER, *supra* note 8, at 214.

414. See Sander, *supra* note 398, at 883 (explaining that integration increased only slightly between 1970 and 1980).

415. MASSEY & DENTON, *supra* note 10.

416. See Richard Sander, *Housing Segregation and Housing Integration: The Diverging Paths of Urban America*, 52 U. MIAMI L. REV. 977, 1009–10 (1998) (arguing that integration has increased in certain cities and discussing models of segregation to examine why). For other discussions and theories of segregation, see Abraham Bell & Gideon Parchomovsky, *The Integration Game*, 100 COLUM. L. REV. 1965, 1985–90 (2000); DIVIDED NEIGHBORHOODS: CHANGING PATTERNS OF RACIAL SEGREGATION (Gary Tobin ed., 1987).

417. See Kushner, *supra* note 27, at 933; see also JOHN YINGER, HOUSING DISCRIMINATION STUDY: INCIDENCE AND SEVERITY OF UNFAVORABLE TREATMENT (1991); JOHN YINGER, CLOSED DOORS, OPPORTUNITIES LOST: THE CONTINUING COSTS OF HOUSING DISCRIMINATION (1995).

pose a quota on admissions and maintain a strict balance of whites, blacks, and Latinos.⁴¹⁸ In 1984, the U.S. Department of Justice filed a complaint against Starrett City, alleging that the quota violated the Fair Housing Act. In a divided opinion, the Second Circuit Court of Appeals concluded that the quota was illegal. The court distinguished the case from *Otero v. New York City Housing Authority*,⁴¹⁹ in which they upheld a program to support integration in a public housing development. In *Starrett City*, the court found the “use of rigid racial quotas of indefinite duration to maintain a fixed level of integration by restricting minority access to scarce and desirable rental accommodations” violated the Constitution.⁴²⁰

In his dissenting opinion, Judge Jon Newman stated, “Congress enacted the Fair Housing Act to prohibit racial segregation in housing.”⁴²¹ Because the goal of the quota program was to support integration, Newman argued it was allowed under the Act.⁴²² Newman asserted that the Senate had neglected to address the issue in its debate over the bill, because they “probably could not even contemplate a private real estate owner who would deliberately set out to achieve a racially balanced tenant population.”⁴²³ He concluded that, if they had considered the question, they may well have approved such a program.⁴²⁴ In the aftermath of the *Starrett* decision, as well as other Supreme Court precedents limiting the scope of affirmative action programs, the use of quotas and other efforts at “managed integration” has declined in the last decade.⁴²⁵

418. See *United States v. Starrett City Associates*, 840 F.2d 1096, 1098 (1988).

419. 484 F.2d 1122 (1973); see also *id.* at 1134 (“Congress’ desire in providing fair housing throughout the United States was to stem the spread of urban ghettos and promote open, integrated housing even though the effect in some instances might be to prevent some members of a racial minority from residing in publicly assisted housing in a particular location.”).

420. *Starrett City Associates*, 840 F.2d at 1103. For discussions of the case and others on housing quotas, see Rodney Smolla, *In Pursuit of Racial Utopias: Fair Housing, Quotas and Goals in the 1980’s*, 58 S. CAL. L. REV. 947 (1985); Michael Tein, *The Devaluation of Nonwhite Community in Remedies for Subsidized Housing Discrimination*, 140 U. PA. L. REV. 1463 (1992); Richard Sander, *Individual Rights and Demographic Realities: The Problem of Fair Housing*, 82 NW. U. L. REV. 874, 908–13 (1988); Comment, *Benign Steering and Benign Quotas: The Validity of Race-Conscious Government Policies to Promote Residential Integration*, 93 HARV. L. REV. 938 (1980); Comment, *Tipping the Scales of Justice: A Race-Conscious Remedy for Neighborhood Transition*, 90 YALE L.J. 377 (1980); Ackerman, *Integration for Subsidized Housing and the Question of Racial Occupancy Controls*, 26 Stan. L. Rev. 245 (1974).

421. *Starrett City Associates*, 840 F.2d at 1103.

422. According to Mara Sidney, the senators “almost always fell short during debate of naming integration as the ultimate goal of the proposed law, even as they described the segregated conditions of American neighborhoods. Sidney, *supra* note 309, at 208.

423. *Starrett City Associates*, 840 F.2d at 1106.

424. *Id.*

425. On the Supreme Court and affirmative action, see CAPLAN, *supra* note 32.

Scholars and policymakers have criticized the Fair Housing Act for several decades. In a 1988 symposium noting the twentieth anniversary of the law, Arthur Flemming argued that FHA “did not have the teeth it required if we were really going to deal with the issue of fair housing in a meaningful and effective way.”⁴²⁶ Many critics argued that the law prevented structural change because it relied almost exclusively on individual plaintiffs to prevent discrimination.⁴²⁷ The result, many argue, has been that only affluent blacks have been able to use the Fair Housing Act as a tool for protection of their rights.⁴²⁸

In 1988, Congress passed the Fair Housing Act Amendments of 1988, which increased the penalties for violations of the law, and provided HUD with greater authority to investigate claims of discrimination. Professor James Kushner, a leading scholar of housing discrimination, argued that the law “dramatically strengthens the arsenal available to combat housing discrimination and neighborhood segregation.”⁴²⁹ But, despite the increased funding and enforcement of fair housing laws, segregation persists, and most scholars argue that housing discrimination laws remain weak. In 1998, Professor John Calmore concluded, “among modern civil rights laws, fair housing persists as the least effective.”⁴³⁰ Further, he argued, “[f]air housing rights have been individuated away other than for affluent people of color.”⁴³¹

Many scholars have begun to question the ability of the fair housing model to bring about integration. Calmore argues, “the rights-based strategy of fair housing, as enforced by HUD and in the courts, is an ideological victory that nonetheless has had insignificant effects in desegregating the metropolis and thereby improving the material life of

426. Arthur S. Flemming, *The Politics of Fair Housing*, 6 YALE L. & POL’Y REV. 385, 386 (1988).

427. See, e.g., James Kushner, *supra* note 27, at 933; John Charles Boger, *Toward Ending Residential Segregation: A Fair Share Proposal for the Next Reconstruction*, 71 N.C. L. REV. 1573, 1583 (1993) (“[B]y most accounts, the Fair Housing Act has been a disappointing failure”); MASSEY & DENTON, *supra* note 10, at 14–15 (“As long as the Fair Housing Act is enforced individually rather than systematically, it is unlikely to be effective in overcoming the structural arrangements that support segregation and sustain the ghetto. Until the government throws its considerable institutional weight behind efforts to dismantle the ghetto, racial segregation will persist.”).

428. See Alex Johnson, *Shaping American Communities: Segregation, Housing and the Urban Poor: How Race and Poverty Intersect to Prevent Integration: Destabilizing Race as a Vehicle to Integrate Neighborhoods*, 143 U. PA. L. REV. 1595, 1632 (1995); Kushner, *supra* note 27, at 932.

429. James Kushner, *The State of the Union: Civil Rights: The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing*, 42 VAND. L. REV. 1049, 1051 (1989).

430. Calmore, *supra* note 22, at 1071.

431. Calmore, *supra* note 22, at 1073.

the ghetto poor.”⁴³² Reginald Robinson asserts that the law “is absolutely incapable of specifically targeting the underlying social forces that persist in the making and unmaking of urban ghettos.”⁴³³ Several writers have called for a different approach to the questions of housing segregation. They argue that housing policy should focus less on directly combating discrimination and give more attention to increasing the supply of housing. A crucial aspect of these proposals focus on efforts to force suburban areas to reduce zoning and other barriers and accept their “fair share” of affordable dwellings.⁴³⁴

The history of the fair housing effort reveals that the limitations of these laws were embedded in the principles of the movement. Fair housing advocates sought to eliminate discrimination in housing markets, particularly for those who could afford decent housing.⁴³⁵ On that limited issue, as evidenced by the increase in middle income suburban blacks, the laws have been somewhat successful.⁴³⁶ While many fair housing advocates believed that government should help to provide decent housing for all Americans, their proposals against housing discrimination were not directed at this larger question.⁴³⁷ Housing affordability remains a crucial problem for Americans of all races, but the roots of that crisis are more complex than the failure of fair housing laws.⁴³⁸

In addition, the fair housing movement never resolved questions that arose when the principle of anti-discrimination and the desire for integration conflicted. Housing discrimination and racial segregation,

432. Calmore, *supra* note 22, at 1127, citing Mark V. Tushnet, *The Critique of Rights*, 47 SMU L. REV. 23 (1993).

433. Reginald Leamon Robinson, *The Racial Limits of the Fair Housing Act: The Intersection of Dominant White Images, the Violence of Neighborhood Purity, and the Master Narrative of Black Inferiority*, 37 WM. & MARY L. REV. 69, 109 (1995).

434. See, e.g., John Charles Boger, *Toward Ending Residential Segregation: A Fair Share Proposal for the Next Reconstruction*, 71 N.C. L. REV. 1573 (1993); Charles E. Daye, *Whither Fair Housing: Meditations on Wrong Paradigms, Ambivalent Answers, and a Legislative Proposal*, 3 WASH. U. J.L. & POL’Y 241 (2000).

435. See Sidney, *supra* note 399, at 183 (“[T]he enforcement mechanism and other features of the fair housing policy design were consistent with the rhetoric that supporters used to win votes for fair housing in a hostile environment.”).

436. On black suburbanization, see John Stahura, *Changing Patterns of Suburban Racial Composition, 1970–1980*, 23 URB. AFF. Q. 448–460 (1988) (on file with author); Thomas Phelan & Mark Schneider, *Race, Ethnicity and Class in American Suburbs*, 31 URB. AFF. REV. 659–680 (1996) (on file with author).

437. See Sidney, *supra* note 399, at 207 (“By embracing the classification of housing as a free-market commodity, the fair housing policy rationale accepted housing patterns that stem from differences in income—that is, economic segregation.”).

438. For the most recent data on the “crisis” of affordable housing, see *Meeting Our Nation’s Housing Challenges: The Report of the Bipartisan Millennial Housing Commission* (2002).

while they are intimately related, are not the result of the same set of factors.⁴³⁹ Achieving racial integration would require an assessment of the interaction of race and class in the creation of American communities. It would also necessitate a careful analysis of the complex nature of the housing market and a rethinking of the government's role in this sector. Fair housing activists began to engage such questions in the postwar years, but their proposals addressed only limited aspects of a very large and complicated problem.⁴⁴⁰

During the past two decades, the number of black homeowners has increased significantly, and it has increased somewhat for other minority groups.⁴⁴¹ During the 1990s in particular, the number of African-Americans living in the suburbs increased dramatically.⁴⁴² In general, blacks in the suburbs, like their counterparts in cities, live in segregated neighborhoods. The intransigence of segregation in residential patterns has led several civil rights activists to call for a de-emphasis on integration as a goal for the movement. Civil rights efforts should focus instead on securing additional resources for black communities.⁴⁴³ The Department of Housing and Urban Development under the Bush Administration, while it continues to profess support for fair housing laws, has also focused most of its efforts on increasing minority homeownership. In the field of housing, policymakers from all parts of the political spectrum seem to agree that integration is not a goal that will be attained in the near future.⁴⁴⁴ Declining interest in integration is the result of frustration with the inability of legal rules to restructure the complicated web of economic and social factors that shape American communities. It is also the result of several decades of conflict over the government's role in promoting integration in schools and the workplace. This frustration lies primarily in the failure to understand the complicated and conflicted roots of fair housing and other civil rights laws.

439. See Sander, *supra* note 398, at 1009–10.

440. For an argument that affirmative action is only a small part of a broader movement for social equality, see Randall Kennedy, *Persuasion and Distrust: A Comment on the Affirmative Action Debate*, 99 HARV. L. REV. 1327 (1986), at 1334.

441. On black homeownership, see Eric Belsky & Mark Duda, *Anatomy of the Low-Income Homeownership Boom in the 1990s*, in LOW-INCOME HOMEOWNERSHIP: EXAMINING THE UNEXAMINED GOAL 15–63 (Nicolas Retsinas & Eric Belsky eds., 2002).

442. See *Area Black Homeownership Grows: Study Also Finds Region Profoundly Segregated by Race*, WASH. POST, Jun. 19, 2002, A1.

443. CAPLAN, *supra* note 32, at 57–58.

444. See Nancy Denton, *Half Empty or Half Full: Segregation and Segregated Neighborhoods 30 Years After the Fair Housing Act*, 4 CITYSCAPE 107–22 (1999).