From Forty-Acres to Foreclosure: A History Analysis of Borrowing While Black (Part One)

Melvin W. LaPrade
laprade@nurg.org

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Abstract

The work builds upon the simple observation that racial housing discrimination has been a crucial line of division in American society since the Civil War and although no longer sanctioned by law the role of race in housing outcomes remained a persistent as well as prominent aspect of contemporary urban policy. Racial discrimination in the filed of housing has been the subject of exhausting analysis by scholars and commentators from a variety of historical perspectives. The issues, debates and public policy approaches to end housing discrimination against African American individuals and neighborhoods hold a unique place in American history. I defined *racism* in the field of housing as the legal subjugation and restriction of property rights. I define *racial housing discrimination* as the process by which racism is legal carry out by the actions of individuals or public policy a process known as *de jure segregation*. I define *institutional racism* as the process through which intentional discriminatory housing policies or practices are sanctions and purposefully carried out by official public policy, the real-estate profession, or financial sector. Finally, I describe events leading to the passage of Title VIII of the *Civil Rights Act of 1968* eliminating racial discrimination in housing transactions.

The Promise of Forty Acres

Federal approval of the racist dogma declaring all people of African descent (both free and slave) "as being of an inferior order" not qualified for United States citizenship began with the 1857 *Dred Scott* decision. Supreme Court Chief Justice Roger Brooke Taney framed the major question as follows. "Can a negro, who ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all rights, and privileges, and immunities, guarantied by that instrument to the citizen? [1] By a vote of 7 to 2, members of the Supreme Court ruled the answer to the question was no. Chief Justice Taney words exemplified the inferior social status of blacks in society, in his judgment blacks, free or slave, are "altogether unfit to associate with the white race, either in social or political relations," and therefore "had no rights which the white man was bound to respect." [2] In reaching their verdict, the Supreme Court advanced the doctrine of federalism, the rights and powers of the state, over the authority of the federal government.

Emancipation and the Civil War victory of the North set in motion an evolution away from the constitutionally established notion of "southern property rights." During an era of egalitarianism, known as Reconstruction, in a remarkable, if temporary reversal of political traditions, Congress introduced, in January 1865, and the states ratified, on December 6, 1865, the Thirteenth Amendment. Section 1 of the Amendment outlawed slavery in the United States and reassigning the power to grant citizenship to the federal government. The slaveholding plantation land-use free labor system was shattered, however, the Thirteenth Amendment proved insufficient because it merely prohibited slavery, it did not prevent southern states from devising an intermediary status between slavery and full citizenship purposely intended to dispossess African Americans of their fundamental rights considered inherent in citizenship. So called "Black Codes", modeled

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[1] Dred Scott owner took him from Missouri, a state that permitted slavery, to Illinois, a sate that outlawed slavery. He was later returned to Missouri and after the death of his owner he sued for his freedom, *Dred Scott v. Sandford 60 U.S. (19 How.) 393* (1857).

[2] *Ibid*

after repressive Slave Codes, reaffirmed a racial caste system controlling the movement of African Americans by pass systems of laws requiring proof of residence, restrictions from residing in certain areas, and specifically banning African Americans from owning any lands or buildings outside designated areas of cities and towns.[3]

In the first substantive effort to provide African American property rights, on January 16, 1865, General Tecumseh Sherman issued Special Order 15 to "set apart", with the approval of the President, tracts of "tillable land" in the Sea Islands. The 30 miles of costal government-held abandoned and confiscated land extended from Savannah, Georgia to Charleston, South Carolina extending south to the St. John's River in Florida. Sherman's Order stipulated that "no white person whatever, unless military officers and soldiers detailed for duty, will be permitted to reside; and the sole and exclusive management of affairs will be left to the freed people themselves, subject only to the United States military authority and the acts of Congress." Commonly referred to as "forty acres and a mule," the Order established that whenever "three respectable negroes, heads of families" desire to settle on land "the parties will subdivide not more than (40) forty acres of tillable ground."[4] The Order further pledged military protection to the freedmen "until such time as they can protect themselves, or until Congress shall regulate their title. Special Order 15 allocated approximately 400,000 acres of land and surplus horses and mules to approximately 40,000 freedmen.[5]

Three months later, on March 3, 1865, Congress established the Bureau of Refugees, Freedmen and Abandoned Lands (Freedmen Bureau). The Freedmen Bureau

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[3] For a discussion of Black Codes, see Freedom to the free: Century of emancipation, 1863-1963, A report of the President by the U.S. Commission on Civil Rights (1970), Washington, DC: Government Printing Office, pp. 35-50.

[4] Special Field Orders, No. 15, Headquarters Military Division of the Mississippi, 16 Jan. 1865. Orders & Circulars, ser. 44, Adjutant General's Office, Record Group 94, National Archives; Also see, Claude F. Oubre, *Forty-Acres and a Mule: The Freedmen's Bureau and Black Land Ownership* (Baton Rouge: Louisiana State University Press, 1978).

[5] Claude F. Oubre, *Forty-Acres and a Mule: The Freedmen's Bureau and Black Land Ownership* (Baton Rouge: Louisiana State University Press, 1978).

had an estimated 850,000 acres of land under its control. In the largest land redistribution efforts aimed specifically for African Americans, Section 4 of the Act promised:

"to set apart, for the use of loyal refugees and freedmen, such tracts of land within the insurrectionary states as shall have been abandoned, or to which the United States shall have acquired title by confiscation or sale, or otherwise, and to every male citizen, whether refugee or freedman, as aforesaid, there shall be assigned not more than forty acres of such land, and the person to whom it was so assigned shall be protected in the use and enjoyment of the land for the term of three years…At the end of said term, or at any time during said term, the occupants of any parcels so assigned may purchase the land and receive such title…"[6]

Unfortunately, this attempt at meaningful racial equality for African Americans died with the assassination of President Lincoln. President Andrew Johnson, a Tennessee Unionist and ex-salve owner, used his executive power to rescind Special Military Order 15, issue a "proclamation of amnesty" extending clemency and "upon good behavior" a pardon, with restoration of all rights of property, "except as to slaves" to all rebels, including Confederate officers. African Americans had one of two options, forcible remove from the land or remaining by signing menial labor agreements and other forms of land contracts. As one group of notable scholars explained: Most African American's assumed that the land "would be theirs in perpetuity" and that "the federal government's decision to restore it to the rebels was a shattering and bewildering betrayal."[7]

Representative Thaddeus Stevens modified his call for land redistribution by introduction a bill entitled *Reparation Bill for the African Slave in the United States*.[8] Section 4 would provide "to each male person who is the head of a family, forty acres; to each adult male, whether the head of a family or not, forty acres, to each widow who is

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[6] The Freedmen and Southern Society Project, available at http://www.history.umd.edu/Freedmen/fbact.htm

[7] Slavery and Justice: Report of the Brown University Steering Committee on Slavery and Justice, Chapter Two, The Reparations Question, p. 67, available at http://brown.edu/Research/Slavery_Justice/documents/SlaveryAndJustice.pdf

[8] Reparations Bill for the African Slaves in the United States, The First Session Fortieth Congress, March 11, 1867, Thaddeus Stevens of Pennsylvania H.R. 29, available at http://www.mc.cc.md.us/Departments/hpolscrv/hr29_1867.txt

the head of a family, forty acres" of public lands belonging to the states that formed the confederate States of America. Section 5 added a provision for "a sum equal to fifty dollars, for each homestead, to be applied by the trustees hereinafter mentioned toward the erection of buildings on the said homesteads for the use of said slaves." Congress rejection of the *Reparation Bill* ended the promise of reparation or recompense to the four million Africans and their descendants enslaved in the United States and its colonies from 1619 to 1865.[9]

Era of de jure segregation

The nation's first experiment in racial democracy came to an abrupt end following a disputed presidential election and the withdrawal of federal troops from the south. It soon became apparent that under the "1877 Compromise", a new system of racial subordination had come into being in the South.[10] In Louisiana, the governing body passed a Separate Car Act allowing for "equal but separate accommodations for white and colored races."[11] The Supreme Court held that since "separate but equal" had been in long-standing usage in the south, there was no need to question the status quo. The objective of the Fourteenth Amendment "was undoubtedly to enforce the absolute equality of the two races before the law." However, in the opinion of the court, "in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either." [12] From this period until the passage of the Fair

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[9] For full discussion see, Congressman John Conyers proposed bill H.R. 40 which calls for a commission to study proposal for African American Act, http://conyers.house.gov/index.cfm/reparations

[10] The "Comprise of 1877" was reached to avert a constitutional crisis when the Democratic nominee, Samuel J. Tiden, defeated Republican candidate Rutherford B. Hayes by less than 3,000 votes, but failed one electoral vote shy of the required majority, Hayes received 165 and 20 remained in dispute. Hayes agreed to remove federal troops in exchange for rewarding him the 20 disputed electoral votes, given Hayes the presidency, for full discussion see, http://www.fandam.edu/politics/the-compromise-of-1877

[11] In this case, a group of Louisiana civil rights lenders challenged the constitutionality of the state's Separate Car Act. Homer Plessy was selected because he was racial classified as "only one eight black (his great-grandmother was black). Plessy argued that the Street Car Law violated the Thirteenth and Fourteenth Amendments.

[12] Plessy v Ferguson, 163 U.S. 537 (1896).

Housing Act of 1968, debates regarding African American property rights are rooted in the conflict between the common law "police powers" of the States reinforced by the "state rights" provisions of the U.S. Constitution granted under the 10th Amendment and 14th Amendment Constitutional guarantees of "equal protection under the law."

The U.S. Supreme Court institutionalization of the doctrine of Jim Crow "separate-but-equal" racial segregation, strengthened states rights, sanctioned white supremacy and a return to enforced draconian discriminatory land-use policies restrictions. As historian Carter G. Woodson, editor of the Journal of Negro History, observed:

> "After the Civil War a few Negroes in [the south], where such opportunities were possible, invested in real estate offered for sale by the impoverished and ruined planters of the conquered commonwealths. When, however, the Negro lose their political power, their property was seized on the plea for delinquent taxes and they were forced into the ghetto of towns and cities, as it became a crime punishable by social proscriptions to sell Negroes desirable residences. The aim was to debase all Negroes to the status of menial labor in conformity with the usual contention of the South that slavery is the normal condition of the blacks."[13]

In 1901, W.E. B. DuBois, Professor of Economics and History at Atlanta University, published a seminal sociological empirical investigation on "Negro Life" in the South.[14] He described the residence conditions as follows:

> The form and disposition of the laborers' cabins throughout the Black Belt, is to-day, the same as in slavery days. All are sprinkled in little groups over the face of the land centering about some dilapidated Big House where the head tenant of agent lives. [Out of all families in the town of Albany] only a single one occupied a house of seven rooms; only fourteen have five rooms or more. The mass live in one and two-room homes…

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[13] Carter G Woodson. *A Century of Negro Migration*. Washington D.C, the Association for the Study of Negro Life and History (1918), pp. Woodson (1918), pp. 130-31.

[14] The work was titled "*The Negro as He Really is: A Definite Study of One Locality in Georgia Showing the Exact Conditions of Every Negro Family—Their Economic Status—Their Ownership of Land—Their Morals—Their Family Life—Their House The Live in and The Results of the Mortgage System*." The World's Work (Volume II): A History of Our Time, Dubleday, Page & Company, New York (1901), pp. 849-865.

> All over the face of the land is the one-room cabin; now standing in the shallow of the Big House …Light and ventilation are supplied by the single door and the square hole in the wall with its wooden shutter. Within is a fire-place, black and smoky and usually unsteady with age. A bed or two, a table, a wooden chest and a few chairs make up the furniture, while a stray show-bill or a newspaper decorate the walls…
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> The rooms in these cabins are seldom over twenty or twenty-five feet square, and frequently smaller; yet one family of eleven lives, eats and sleeps in one room, while thirty families of eight or more members live in such one-room dwellings… To sum up, there are among these Negroes over twenty-five persons for every ten rooms of house accommodation. In the worst tenement abominations of New York and Boston there are in no case over twenty-two persons to each ten rooms, and usually not over ten.[15]

At the dawn of the 20th century, the majority of African Americans throughout the South lived in smaller rural areas. Few had the resources to acquire their own land. As a result, most were "for cash tenants" - renting the land in exchange for funds from the sale of their crops - or "sharecropper tenants" - renting the land in exchange for an agreed upon percentage of the crops. In either case, they were tenants, not owners - dependent, isolated, and immobile. During the first African American migration to the North, many fled to escape southern social oppression, others to take advantage of new economic opportunities. Carter G. Woodson anticipated the plight of these newcomers in his landmark 1918 study "Century of Negro Migration":

> Within the last two years there has been a steady stream of Negroes into the North in such large numbers as to overshadow in its results all other movements of the kind in the United States…The given causes of this migration are numerous and complicated…Some say that they left the South on account of injustice in the courts, unrest, lack of privileges, denial of the right to vote, bad treatment, oppression, segregation or lynching. Other say that they left to find employment, to secure better wages, better school facilities, and better opportunities to toil upward. Negroes in seeking new homes in the North, moreover, invade residential districts hitherto exclusively white…To say that either the North or the South can easily become adjusted to this change is entirely too sanguine. The North will have a problem….The northern man who once denounced the South on account

[15] *Ibid*, pp. 853-854.

> of its maltreatment of the Blacks gradually grows silent when a Negro is brought next door. There comes with the movement, therefore, the difficult problem of housing.[16]

Between 1910 and 1930, thousands of Blacks from the rural south began migrating into the north - more than doubling African American populations in several northern cities. Studies of Black migration patterns found the most dramatic increases in Detroit (611 percent), Cleveland (307 percent), and Chicago (148 percent).[17] Deliberate societal practices designed to separate white and African American neighborhoods fashioned the historical starting point of a unique system of racial apartheid. Overt, legal, and blatant discriminatory housing policies by lenders, developers, and real estate agents restricted the movement of African American home seekers by denying access to entire sections of the available housing inventory.

Enacted in 1910, as the first racial zoning law in the country, Baltimore's *West Segregation Ordinance* created all-white and all-black neighborhoods. City officials stated that Blacks needed to be "quarantined in isolated slums in order to reduce the incidents of civil disturbance" and "to protect property values" of white neighborhoods. In 1917, the National Association for the Advancement of Colored People (NAACP) brought the first housing discrimination case ever brought before the Supreme Court.[18] The Supreme Court unanimous ruling that racial zoning was "not a legitimate exercise of the police power of the state" was a significant victory, but it did not lead to an end to *de jure* segregation. African Americans seeking housing in white areas were often the victims of harassment tactics, like fire bombings against black families who moved into

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[16] Woodson (1918), pp. 167-87.

[17] J.T. Woofter, *Negro Problems in Cities*. New York, Doubleday, Doran and Company, Inc.(1928).

[18] Buchanan v. Warley, 245 U.S. 60 (1917). In this case, William Warley, an African American and active member of the Louisville chapter of the NAACP arranged to purchase a home in a section of Louisville designated exclusively for white residents with the expressed goal of challenging the city's racial zoning ordinance.

white neighborhoods, physical violence and organized boycotts against realtors who sold or rented to them.[19]

Racial Restrictive Covenants

Racial restrictive covenants and compacts, so-called "Gentleman's Agreements", provided an institutional method to enforce racial discrimination in housing markets for decades. Southern cities, however, did not maintain this state-sponsored racial hierarchical system alone. The effective nullification of equal housing rights occurred with the full acquiescence of the academic community. As real estate emerged as an academic field of study, structural relationships (i.e. housing policy) interacted with the cultural legacies (racial stereotypes and biases) to produce and nurture a cultural ideological consensus within the real estate professional that the exclusion of African Americans residents was necessary to avoid property value declines. As a means of enforcing separation, the real estate profession recommended "suitable restrictive covenants" as an excellent method to maintain neighborhood stability. Urban scholars documented how the euphemistic notation: "infiltration of unharmonious racial groups" became real estate code for the movement of African Americans into new residential areas.

During this same period, Homer Hoyt, an economist at the University of Chicago, developed a ranking system of racial and ethnic groups from those having the "most favorable influences" (English, Germans, Scotch, Irish, and Scandinavians) to those exerting "injurious" effects on property values (Negroes and Mexicans). Hoyt's racial ranking hypothesis seized the imagination of the popular and technical literature. The National Association of Real Estate Boards (NAREB) disseminated and amplified a racist housing policy throughout the real estate profession. Article thirty-four of the NAREB code endorsed restrictive racial covenants as "effective devices to maintain neighborhood homogeneity." As late as 1957, NAREB instructional material incorporated clauses

[19] The most famous outbreaks of racial friction and violence occurred during the "Red Summer" of 1919. Over a period of six months, forty race riots took place in such major urban areas as East St. Louis, Missouri, Houston, Texas, Chester and Philadelphia Pennsylvania, Washington, D.C. and Chicago, Illinois.

against the introduction of "undesirable influences" into a neighborhood including "a colored man of means who was giving his children a college education and thought they were entitled to live among whites."

Mortgage Redlining

During the Great Depression in the early 1930s, responding to a collapsing housing industry, the Roosevelt Administration created the Home Owners' Loan Corporation (HOLC) program to purchase first mortgages in danger of foreclosure held by financial institutions in exchange for federally interest guaranteed mortgage bonds. HOLC then refinanced these mortgages to the homeowner at a lower interest rate and longer-terms. At its peak, HOLC processed over 35,000 loan applicants per week. In total HOLC made over one million refinance mortgage loans with a total dollar value of $3.1 billion, which represented roughly one-sixth of the urban home mortgage debt in the United States.[20] Soon after, the Roosevelt Administration enacted the Housing Act of 1934. Title II of the Act authorized the Federal Housing Administration (FHA) as a business corporation to "encourage home building by insuring to lenders all new mortgage loans on small homes on an actuarial basis."[21] After World War II, the enactment of the Servicemen's Readjustment Act of 1944, which created the Veterans Administration (VA) housing program, resulted in suburban expansion. VA mortgage programs offered long-term low down payment mortgages available for war veterans making home ownership and suburban residence possible

Historians convincingly have argued that, in the final analysis, the FDR Administration's acceptance of general societal prevailing attitudes regarding race contributed to the institutionalization of a racist federal housing policy. Urban historian Elizabeth Wood described this process as the *conspiracy for segregation*. "The conspiracy included, of course, the real estate and home building industries," she wrote, "but these never, in spite of the magnificent job that was done in mobilizing intellectual

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[20] Lowell C Harriss. "History and Policy of the Home Owners' Loan Corporation." *National Bureau of Economic Research* Cambridge, MA (1951), Table 4, p.30.

[21] Charles Abrams, *The Future of Housing*. New York, Harper Brothers (1947), p. 223.

experts (college professors, economists, market analysts), could have succeeded so well without the assistance and leadership of the federal government - which controlled, after all, the purse strings."[22] Official federal housing policy played a central role in the establishment and perpetuation of neighborhood "redlining."

Frederick Babcock, who had written previously about the need for residential segregation, became the FHA chief underwriter. Ernest Fisher an executive board member of NAREB, and a former student of Hoyt, became the FHA's first chief economist.[23] The FHA hired Hoyt to assist in the development of its first underwriting manual. "If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes," the manual stated, consistent with Hoyt's earlier racial infiltration philosophy, "A change in social or racial occupancy generally contributes to instability and a decline in values."[24] HOLC "Residential Security Maps" defined four color-coded categories of mortgage credit risks - green "new, homogenous neighborhoods" in high demand, blue areas that had "reached their peak", but were "still desirable" and could be expected to remain stable, yellow neighborhoods described as "definitely declining", and red, "hazardous" areas deemed too risky for investment. It became a common practice of the era to draw red circles around black settlements, a practice sanctioning federally institutional support for neighborhood redlining. As noted by LaDavia Hatcher, "A Case for Reparations," the VA mortgage program "conformed to the attitudes and accepted the procedures of the FHA" therefore although the VA mortgage program "made federal financed home loans exclusively available to World War II veterans, these loans were not available to African

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[22] Elizabeth Wood. "The Conspiracy for Segregation in Housing," *Journal of the American Institute of Planners* (20), 1958, pp. 168-69.

[23] FHA (1959).

[24] U.S. Federal Housing Administration Underwriting Manual 1938, section 934.

Americans veterans for at least two and a half decades. As a result, a lasting dent was impressed into their wealth portfolios and overall future advancements."[25]

Shelley v Kraemer

After several defeats, NAACP lawyers adopted a revised legal assault against "the evils of segregation and racial restrictive covenants." The NAACP's modified objective was to persuade the Courts that even if restrictive covenants were private agreements, judicial enforcement of them by state courts constituted discriminatory state action, which violated the Equal Protection Clause of the Fourteenth Amendment. Harvard-educated African American economist Robert Weaver, a former member of FDR's "Black Cabinet", became a leading voice challenging the rationale of racial covenants. Under Weaver's direction, NAACP lawyers prepared a "Brandeis Brief" of over twenty articles from peer review social science journals that documented the devastating sociological and economic impact of housing discrimination and expressed opposition to court enforcement of racial restrictive covenants.[26] In support of these efforts, acclaimed African American poet Langston Hughes penned the widely circulated poem "Restrictive Covenants" in his collection of poems entitled *One-Way Ticket*.[27] S*helley v. Kraemer* was the first test of this new strategy.

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[25] LaDavia S. Hatcher , "A Case for Reparations: The Plight of the African American World War II Veteran Concerning Federal Discriminatory Housing Practices." *The Modern American*, (Summer 2006), pp. 18-19.

[26] The concept of the "Brandeis Brief" concentrates less on legal argumentation than on sociological, economic, and statistical data. Significant articles included were, Oscar I. Stern. 1946. "Long Range Effect of Color Occupancy," *The Review of the Society of Residential Appraisers*: XII: 113-116; Charles Abrams 1951. "The New Gresham's Law of Neighborhoods'—Fact or Fiction," *The Appraisal Journal* XIX: 324-337; and Belden Morgan. 1952. "Value in Transition Areas: Some New Concepts," *The Review of the Society of Residential Appraisers*, XVII: 44-48.

[27] Set in the south side of Chicago the poem read in part,

"In Chicago
they've got covenants
Restricting me
Hemmed In
On the South Side of Chicago
Can't breath free."

On June 29, 1947, the civil rights groups' fight to end racial covenants gained an important ally when President Harry S. Truman became the first President ever to address an NAACP annual conference. Truman framed his address at the Lincoln Memorial, as part of the ideological battle against Jim Crow discriminatory policies. President Truman unequivocally announced a "new concept of civil rights" based not on "the protection of the people against the Government, but protection of the people by the Government." No other president had previously so specifically committed the federal government to the protection of the property rights of African Americans. Attorney General Tom C. Clark to drafted a "friend-of-the-court brief" on behalf of the NAACP in S*helley v. Kraemer* - the first *amicus brief* ever filed by the federal government in a private civil rights case.

In S*helley v. Kraemer,* Chief Justice Vinson, writing for a unanimous Supreme Court, held that the state many not give discriminatory acts of private individuals the force of law. Chief Justice Vinson words delineated the legal precedent of the nation's fair housing and civil right agenda for the next generation by concluding that: "Freedom from discrimination by the States in the enjoyment of property rights was among the basic objectives sought to be effectuated by the framers of the Fourteenth Amendment. That such discrimination has occurred in these cases is clear. Because of race or color these petitioners have been denied rights of ownership or occupancy enjoyed as a matter of course by other citizens of different race or color."[28] Though racial covenants were legally unenforceable, the practice of incorporating racial restrictive convents into deeds remained a common practice for both the FHA and VA. As late as 1958, the Committee on Race and Housing put emphasis on the fact that FHA "officially encourages open occupancy" however the agency "does not attempt to control the discriminatory practices of private builders or lenders." Under both the Truman and Eisenhower administrations, discriminatory housing practices remained *de facto* federal housing policy.

Fair-Housing Act of 1968

[28] Shelley v. Kraemer, 334 U.S. 421 (1948).

Throughout this time, the federal government did not provide specific guidance on whether racial integration was required or whether racial segregation "by voluntary choice" permitted. Legal scholar Alfred Avins, expressing a viewpoint shared by many in the legal profession, described fair housing laws as a "conflict between reserved private rights such as freedom of association" versus laws forbidding discrimination in housing. He describes fair housing laws as "compulsory integration devices" which are "designed to eliminate freedom of choice." He concludes that the "evidence is overwhelming that anti-discrimination laws in housing are motivated by the desire to promote compulsory integration."[29] In its 1959 report on housing discrimination, the Civil Rights Commission summed up the African American housing experience this way: "housing seems to be the one commodity in the American market that is not freely available on equal terms to everyone who can afford to pay. Two year later, "the situation is not noticeably better." According to the Commission:

> "Throughout the country large groups of American citizens, mainly Negroes but other minorities too, are denied an equal opportunity to choose where they will live. Much of the housing market is closed to them for reasons unrelated to their personal worth or ability to pay. New housing, by and large, is available only to whites. And in the restricted market that is open to them Negroes generally must pay more for equivalent housing than do the favored majority. 'The dollar in the dark hand' does not 'have the same purchasing power as a dollar in a white hand.'[30]

John F. Kennedy became the first presidential candidate to promise an end to racial discrimination in housing. Kennedy argued that President Eisenhower "could sign an executive order ending discrimination in housing tomorrow." One stroke of the pen, Kennedy argued, "would have worked wonders for millions of Negroes."[31] Once

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[29] Alfred Avins "Open Occupancy vs. Forced Housing Under the Fourteenth Amendment, The Bookmailers Inc., New York (1963), p. 22.

[30] 1961 U.S. Commission on Civil Rights Report on Housing, p. 1.

[31] H. Wofford. *Of Kennedy and kings: Making sense of the sixties*. New York, Farrar, Straus and Giroux (1980), p. 18.

president, Kennedy's approach toward ending housing discrimination became a gradual one.[32] Kennedy called for legislative action to end housing discrimination. Notwithstanding Kennedy's plea, a powerful alliance between northern Republicans and southern "Dixiecrats" (members of the Democratic Party) successfully blocked any fair housing proposals. Kennedy would faced increase criticism from Democratic liberals and civil rights leaders who complained that he had wasted two years" before fulfilling his promise of "a stoke of the pen" and that when he did, it applied to less than one percent of the housing inventory and only fifteen percent of new construction.[33]

Following the assassination of President Kennedy, President Lyndon B. Johnson addressed a joint session of Congress urging that: "No memorial oration or eulogy could more eloquently honor President's Kennedy's memory than the earliest possible passage of the civil rights bill for which he fought so long."[34] Unlike other civil rights bills, however, fair housing legislation failed to gain public support. In a 1963 Harris poll respondents were asked, "*Would you favor a Federal law forbidding discrimination in housing against Negroes*?" Fifty-six percent of all Whites responded, "No". An overwhelming majority, 80 percent, of southern Whites disapproved. In 1967, a Gallup poll asked, "Would you like to see Congress pass an open housing bill or reject it? A majority of Americans - 54 percent – wanted Congress to reject a fair housing bill, as did 51 percent of Democrats and 61 percent of Republicans.[35] Congress habitually detained fair housing bills in committees, preventing roll call votes from the entire House. The Senate routinely blocked efforts to gain the required two-thirds to invoke cloture against filibusters.

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[32] Reeves, Richard. *President Kennedy: Profile of Power*. New York, Touchstone Reeves (1993).

[33] On February 28, 1963, President Kennedy signed an Equal Opportunity in Housing Executive Order forbidding discrimination based on race, color, creed, or national origin in housing built or purchased with federal aid, see Harry Golden. Mr. Kennedy and the Negroes. New York, The World Publishing Company (1964), p.135.

[34] Golden., p. 188.

[35] Paul Burstein, "Public Opinion, Demonstrations, and the Passage of Antidiscrimination Legislation." Public Opinion Quarterly (1979), pp. 157-172.

After failing to get a fair-housing bill through Congress in both 1966 and 1967, on January 24, 1968, in a special Message to Congress on Civil Rights, President Johnson called on Congress to complete the task of making equal opportunity in housing a reality for all Americans.[36] In early 1968, freshman Democratic Senator Walter "Fritz" Mondale and Republican Senator Edwin Brooke, the only African American member of the Senate, co-sponsored an amended compromise fair housing bill. White House negotiations with the republican senate leadership reached major concessions to the bill's mission statement. The original mission statement of the fair housing bill read:

It is the policy of the United States to ***prevent, and the right of every person to be protected against, discrimination on account of race, color, religion, or national origin in the purchase, rental, lease, financing, use and occupancy of housing*** throughout the Nation (emphasis added).

The compromised final mission statement read:

It is the policy of the United States to provide, ***within Constitutional limitations***, fair housing throughout the United States (emphasis added)

On March 11, 1968, the Senate passed the compromise version of the fair-housing bill by an overwhelming vote, 71 to 20. Opponents of fair-housing legislation in the House of Representatives Rules Committee moved to "delay consideration" of the bill. After the murder of Martin Luther King Jr., on April 4, President Johnson called King's death a "senseless act of violence," signed an order declaring martial law in the nation's capital and announced a national day of mourning, saying that, "the dream of Dr. Martin Luther King Jr. has not died with him." In a letter to Speaker of the House John McCormack and Minority Leader Gerald Ford, Johnson wrote, "the most immediate action that Congress could take was passing the fair housing law, which still loomed in the House Rules Committee. We must move with urgency, with resolve, and with new energy in the Congress, in the courts, in the White House—wherever there is leadership

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[36] For excellent reviews of the major events, floor debates, and backroom negotiation leading to the passage fair-housing legislation, see Jean Eberhard. "Fair Housing: A Legislative History and a Perspective," Washburn Law Journal (vol. 8), pp. 149-66.

—until we do overcome." [37] On April 8, the day of King's funeral, the House Rules Committee voted 8 to 7 to pass a fair housing bill. Republican John Anderson changed his vote and endorsed the bill. The assassination of Martin Luther King Jr. had changed his position. The next day, the full House approved the nation's first fair housing bill as part of the Civil Rights Act of 1968 by a vote of 250 to 172.[38] On April 11, one week after King's death, Johnson signed the fair-housing legislation calling it "The proudest moments of my Presidency."

Jones v. Alfred H. Mayer Co

The Fair Housing Act included all housing except single-family homes sold without the use of a real estate agent and owner-occupied multifamily dwellings with up to four units (the so-called "Mrs. Murphy's boarding house" exemption). The Supreme Court clarified coverage of fair-housing legislation in the case of *Jones v. Alfred H. Mayer Co*. An interracial couple (the Jones) wanted to buy a home in a residential development near St. Louis, Missouri. Mayer Construction Company refused to sell the home to the Jones. Jones sued Mayer, claiming that the company had violated the Civil Rights Act of 1866. The clause relating to fair housing reads:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

The Supreme Court ruled that Congress had intended to eliminate all forms of discrimination, including public and private housing discrimination when it passed the Civil Rights Act of 1866, and that Congress could therefore enact laws to end housing discrimination whether sanctioned by the states or not. Thanks to the Supreme Court's reinterpretation of the largely neglected century old Racial Republican Reconstruction-era statute, racial housing discrimination (public or private) was now officially illegal in

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[37] Nick Kotz, *Judgment Days: Lyndon Baines Johnson, Martin Luther King Jr., and the Laws that Changed America*. New York, Houghton Mifflin Company (2005), pp. 417-18.

[38] The final roll call had 152 Democrats and 77 Republicans voting for the Fair Housing Act and 89 Democrats and 106 Republicans voting against the bill.

the United States. In an address, celebrating the centennial of the signing of the Emancipation Proclamation, President Kennedy told Congress: "Through these long one hundred years, while slavery has vanished, progress for the Negro has been too often blocked and delayed."[39] In the year celebrating the sesquicentennial of Emancipation, what lingers is the more nuanced task of maintaining the gains of fair housing while at the same time pushing to eliminate the more subtle and covert forms of housing discrimination, forms that are often more difficult to bring to light.

[39] Remarks Recorded for Emancipation Proclamation centennial ceremony, Lincoln Memorial September 22, 1962, available at http://www.jfklibrary.org/Asset-Viewer/Archives/JFKPOF-040-014.aspx