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Leroy D. Clark
The Catholic University of America, Columbus School of Law

Christine P. Clark

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DENIAL OF RIGHTS TO BLACK CITIZENS—
A SPECULATION ON THE RELATION TO
VIOLENCE AND CIVIL DISORDERS

BY LEROY D. CLARK* AND CHRISTINE P. CLARK**

While much public attention is given to the crimes committed by black citizens, little is heard about the unlawful acts and practices which are being committed against black citizens. Professor and Mrs. Leroy Clark uncover several startling inequities in the present manner of administering laws to the residents of the ghetto community, and they thoroughly document their proposition that the rights of black people receive little real protection and even less public concern. As the situation becomes worse, Negroes are led to an ever-diminishing respect for the law. Inevitably, the Clarks explain, some Negroes respond to what they consider to be the violent effect of illegalities directed against them by bringing violence to the streets of their city.

INTRODUCTION

THE Report of the National Advisory Commission on Civil Disorders indicates that the overwhelming majority of one form of group violence—riots or civil disorders—occurred in black communities. The following report on negative attitudes towards the law and its relationship to violence, therefore, will concentrate primarily on the attitudes of America's black citizens.

Much of the nation's attention is presently focused on law violations committed by its black citizens, but this article will explore those violations of law which are committed against black citizens, on the general theory that respect for law may be weakened if a group of citizens experience little protection in law for themselves. Section II will examine violations of the rights of black citizens in the creation and maintenance of ghettos and Section I will be devoted to other illegalities (primarily civil rights violations) which may affect attitudes toward the law.

I. ILLEGALITIES AGAINST BLACK CITIZENS THAT
AFFECT THEIR ATTITUDES TOWARD LAW

A. Employment Discrimination

1. The Facts

For the majority of Americans, employment begins the cycle of better opportunities identified with American life: education,
housing, health, and leisure time for activities. The unemployment rate is the one index of the extent to which many Americans may not purchase these benefits. This rate for whites ranges from 6 percent during recession periods to 2.5 percent (1953) or 4.1 percent (1966) in times of economic expansion. The unemployment rate for nonwhites is usually double that for whites.

Several reasons for this unemployment gap and the differential in economic opportunities which this gap reflects relate to historical deprivations of nonwhites in America. Inferior education and conditions of health create limitations on the ability to get and hold jobs. As an integral part of this cycle of deprivation, employment tests and union requirements reinforce the widely held impression that white skin or a white cultural background are primary requirements for most—and the better—employment opportunities in America. If this cycle of deprivation was the sole determinant of the economic deprivation of nonwhites, then a claim of employment discrimination would be less tenable than it is. However, the nationwide experience is that employment discrimination does exist. For instance, the neutral requirement of educational attainment is far from determinative in job success, for whites get jobs with less education than is required of nonwhite applicants. Unemployment rates, as of October, 1965, were more than twice as high for nonwhite high school graduates than for white.

The types of jobs available to nonwhites, as compared to whites, are also likely to be determined by factors other than educational attainment. Forty-two percent of all white male workers who have completed four years of high school hold white-collar jobs, as compared to 22 percent of nonwhite workers of equivalent education. Among service workers, 23 percent of all nonwhite males who have completed four years of high school hold such jobs, whereas only 5 percent of similarly educated white males find their talents so employed. Similar statistics are available to add support to the

1 U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, NEGROES IN THE UNITED STATES: THEIR ECONOMIC AND SOCIAL SITUATION, chart 15 at 20 (1966) [hereinafter cited as NEGROES].
2 Id.
3 See U.S. COMMISSION ON CIVIL RIGHTS, CLEARINGHOUSE PUB. NO. 10, EMPLOYMENT TESTING: GUIDE SIGNS, NOT STOP SIGNS (1968); 33 Fed. Reg. 14392 (1968) (U.S. Department of Labor, validation of employment tests by contractors and subcontractors subject to the provisions of Executive Order 11246); M. SOVERN, LEGAL RESTRAINTS ON RACIAL DISCRIMINATION IN EMPLOYMENT 177-205 (1966). Several reports in this area have been administratively restricted. They are: W. ENNEIS, EMPLOYMENT TESTING: SOME APPLICATIONS TO TITLE VII COMPLIANCE (Equal Employment Opportunity Commission, Office of Research and Reports, August 1968); EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, GUIDELINES ON EMPLOYMENT TESTING PROCEDURES (August 1966).
4 NEGROES, supra note 1, chart 20 at 24.
5 Id. at 204.
inference that discrimination remains a significant factor in determining employment opportunities for nonwhite citizens.\(^6\)

Income is another index of the operation of factors, other than educational qualifications, in employment. The statistics of 1963 differ little from those of 1958, a recession year. Without exception, at each level of education whites earn at least one-third more than nonwhites. Put another way, in 1958 nonwhites never earned more than 70 percent of the earnings which whites of identical educational achievement received; in 1963, an increased proportion of 73 percent was attained by nonwhites.\(^7\)

2. The Unions

The organization of workers into unions helped them secure increased pay, job security, and other protections. To the extent that black workers were a part of unions they benefited also. There are several reasons why the union movement, however, has not represented the interests of black workers. Unions have been relatively unsuccessful in reaching the unskilled or semiskilled occupations where most black workers are found. Further, some unions have actively discouraged management from hiring black employees and have diluted the effectiveness of black union members by requiring racially segregated locals, especially in the South. In many instances, union rules demand the continuation of collective bargaining arrangements that protect the majority of white workers who have obtained seniority but freeze black workers into menial positions.

Unions have also run closed apprenticeship training programs, which are the key to entering the skilled trades. While blacks constitute approximately 11 percent of the general population, a report of the U.S. Department of Labor in January, 1968, indicated that they constituted 3.6 percent of the 225,000 registered apprentices.\(^8\)

Complaints to the Equal Employment Opportunity Commission (EEOC) of racial discrimination by unions loom significant. In 1967, 884 charges of racial discrimination out of 4,786 were specifically directed against unions.\(^9\) These figures do not include the charges where a union was a joint respondent with an employer or employment agency. For example, the first federal court decision settling a complaint of racial discrimination found that a union had acquiesced in discriminatory bars to transfers to better paying

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\(^6\) Id.

\(^7\) Id. at 208.

\(^8\) U.S. Department of Labor, Manpower Administration, Press Release (Oct. 5, 1968).

\(^9\) EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, SECOND ANNUAL REPORT (1967).
jobs and less pay for black workers than for white workers doing equivalent work.\textsuperscript{10}

3. Mechanisms for Relief

The same government which has over the years compiled these statistics has also sought to remedy the inequities they reveal by improving its own employment practices and establishing mechanisms whereby aggrieved individuals may seek relief.\textsuperscript{11} Under the Civil Rights Act of 1964,\textsuperscript{12} Congress established the EEOC and empowered it to direct its attention to four major groups affecting and determining the national job situation: public and private employers, public and private employment agencies, labor organizations, and joint labor-management apprenticeship programs. Although Congress has not seen fit to grant this Commission either subpoena or cease-and-desist powers, the Commission can receive and investigate charges of employment discrimination, and individual Commissioners may initiate charges if they have information that the law against employment discrimination has been violated. If investigation confirms that there is "reasonable cause" to believe that a violation of Title VII of the Civil Rights Act exists, conciliation with the violating companies is the ultimate recourse for the EEOC. It can, however, refer cases to the Department of Justice for more forceful legal action and the Attorney General, at his discretion, may undertake court action. The Civil Rights Act also provides the alternative route of litigation to any individual complainant who can find the legal resources to pursue his claim of discrimination into and through the federal courts.\textsuperscript{18}

Thirty-two states have statutes prohibiting discrimination in employment and establishing commissions for enforcement.\textsuperscript{14} EEOC is required to defer to these state commissions for a limited period of time in order to allow them to resolve the complaint. It is obvious, in the face of the above data indicating massive and continuing racial discrimination, that these commissions have largely failed to end racially discriminatory employment practices. For example, the New York Commission, established in 1945, is the oldest one in the United States, and New York City has long had a Commission on Human Rights; yet, an industrywide survey done by EEOC showed a disproportionate absence of nonwhites in New York City


\textsuperscript{11} Negroes, supra note 1, at 43-45.


\textsuperscript{13} Id.

\textsuperscript{14} EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, SECOND ANNUAL REPORT 16 (1967).
white-collar employment in finance, communications, and in the 100 major corporations doing business there.\textsuperscript{15} Inadequate budgets, the absence of emergency injunctive powers, and undue reliance on conciliation explain the inability of state commissions to substantially reverse discrimination in employment.\textsuperscript{16} The result is that black citizens lose confidence in these agencies and resentfully acquiesce in discrimination in employment as the "normal" course of events. Many black citizens never make complaints to their state commissions, assuming that the likelihood of relief is small, if at all possible.

The Equal Employment Opportunity Commission is hampered by the lack of enforcement power. The failure of Congress to grant enforcement power to a federal agency reflects some nationwide ambivalence about how much "law" there can be in prohibiting practices which are so clearly a part of the American grain.

In 1968, EEOC had 6,056 cases which were recommended for investigation.\textsuperscript{17} There were 514 cases for which there were both a finding of reasonable cause of discrimination and a completed conciliation within the year. Of these, 201 led to a settlement satisfactory to both parties; in 265, no settlement could be reached, and 48 were "partially successful."\textsuperscript{18} Clearly, the majority of the cases considered by the EEOC are unresolved.

Since the majority of cases are not referred to the Department of Justice for further enforcement action, complainants with legitimate claims of discrimination in states lacking fair employment practices commissions have no remedy other than private suit. It is unlikely that an aggrieved petitioner could handle a complicated suit in federal court without counsel. Technically, the court could assign counsel to handle the matter, but in Southern States where the Bar avoids civil rights cases, such a complainant is not likely to seek, or to receive, its assistance. Private civil rights organizations, who retain local black attorneys and interested white attorneys, give concerned attention to these cases. To date, however, the civil rights organization litigating most cases of employment discrimination under the new Act has filed fewer than 90 cases.\textsuperscript{19} These figures

\textsuperscript{15} Hearings Before the Equal Employment Opportunity Commission on Discrimination in White-Collar Employment 582 (Jan. 15-18, 1968).
\textsuperscript{16} M. SOVERN, LEGAL RESTRAINTS ON RACIAL DISCRIMINATION IN EMPLOYMENT 19-60 (1966).
\textsuperscript{17} Internal Memorandum, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, COMPLAINT STATISTICS: JULY 1, 1967-JUNE 30, 1968, (1968).
\textsuperscript{18} Internal working statistics as reported during interview with Kathleen McMillan, Conciliator, Equal Employment Opportunity Commission, Oct. 16, 1968.
\textsuperscript{19} Internal Memorandum of Robert Belton, Associate Counsel, NAACP Legal Defense and Educational Fund, Inc. (March 1969).
mean that most complainants whom the Commission had found to be discriminated against received no redress whatsoever. Private litigators are aware that the Commission takes almost a year to even begin conciliation, although federal statutes require charges to be filed within approximately 90 days of the alleged unlawful employment practice.\textsuperscript{20} Indeed, some respondents who were sued before conciliation efforts began, although the 90 days had long since elapsed, successfully had their cases dismissed in federal court. The Commission explained that staff shortages caused the delays. Eight cases have been appealed to the Fourth and Fifth Circuits raising this issue but some complainants have been waiting more than a year for a resolution of their cases.\textsuperscript{21}

B. Education — Segregation and Inadequate Resources

Prior to 1954, the entire school system of the Southern States was totally segregated by race. This situation existed until 1954 because \textit{Plessy v. Ferguson}\textsuperscript{22} interpreted the fourteenth amendment of the Constitution as permitting the state to separate the races in schools as long as these schools were equal in all respects. \textit{Brown v. Board of Education}\textsuperscript{23} overruled \textit{Plessy} and made it unconstitutional for the state to segregate by race and required the states to proceed with "deliberate speed" to desegregate the schools. During the 58 years between \textit{Plessy} and \textit{Brown}, however, schools for black children were markedly inadequate and inferior to those provided for white children and violated the rights of black children, even under the \textit{Plessy} standard.\textsuperscript{24} Not only were black children provided inadequate educational resources, but often black teachers were paid less than white teachers for performing the same jobs.\textsuperscript{25}

In the 15 years since the 1954 \textit{Brown} decision, the segregated school system in Southern States remains almost intact in its total violation of the constitutional rights of black students. As of 1966, only 16.9 percent of the black students attended school with white students in 11 Southern States, and the overwhelming majority of

\textsuperscript{21} Internal Memorandum of Robert Belton, Associate Counsel, NAACP Legal Defense and Educational Fund, Inc. (July 1968). The issue has been resolved in the Fifth Circuit by Dent v. St. Louis-San Francisco Ry., 406 F.2d 399 (1969).
\textsuperscript{22} 163 U.S. 537 (1896).
\textsuperscript{23} 347 U.S. 483 (1954).
\textsuperscript{24} Brief for U.S. Government as Amicus Curiae at 17, Brown v. Board of Education, 347 U.S. 483 (1954). The Government's brief cited a report from the Department of Health, Education and Welfare indicating that the "estimated cost of equalizing Negro schools is in excess of two billion dollars."
\textsuperscript{25} Alston v. School Board, 112 F.2d 992 (4th Cir. 1940), \textit{cert. denied}, 311 U.S. 693 (1940); McDaniel v. Board of Public Instruction, 39 F. Supp. 638 (N.D. Fla. 1941).
schools which were all black in 1954 are still all black.\textsuperscript{28} This can only mean that despite the approximately 300 suits by private litigants to desegregate southern school systems, suits by the Department of Justice, and efforts to secure desegregation by the Department of Health, Education, and Welfare, most southern school boards are still consistently violating the educational rights of black citizens. As the desegregation process has proceeded, some black teachers have illegally been fired or demoted from supervisory positions,\textsuperscript{27} parents have been threatened, and violent attacks have been made on students exercising their right to transfer to previously all-white schools.\textsuperscript{28}

Racial segregation in northern schools is almost as entrenched as it is in southern schools. In a U.S. Commission Report on 75 urban centers, it was found that 75 percent of all black students at the elementary level were enrolled in schools that were 90 percent or more black. In the same cities, 83 percent of all white students in those grades attended schools which were 90 percent to 100 percent white.\textsuperscript{29} This has usually been characterized as "de facto" segregation, and the Supreme Court has not as yet found segregation which is not mandated by state law or actively arranged by the school board to be in violation of the fourteenth amendment.\textsuperscript{30} However, some northern school boards which have been sued have been found, under this standard, to have actively segregated black students, in clear violation of their constitutional rights.\textsuperscript{31}

Black students are not only isolated within the public school systems of the country, but are also the most overcrowded, have a lower percentage of certified teachers (most of whom have non-academic college majors and low verbal achievement levels), and are the oldest and most poorly equipped. On a per student basis, less money is spent on ghetto public schools than on suburban

\textsuperscript{26}U.S. Commission on Civil Rights, Southern School Desegregation, 1966-67, at 7-9 (July 1967). This figure covers schools which are not 100 percent Negro; in 1965 the figure was 75 percent. The percentage of those attending schools less than 95 percent Negro is much smaller (9 percent). Thus, much of the 16.9 percent figure includes a considerable amount of "token" integration.

\textsuperscript{27}See, e.g., North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ., 393 F.2d 736 (4th Cir. 1968); Rolfe v. County Bd. of Educ., 391 F.2d 77 (6th Cir. 1968); Wall v. Stanley County Bd. of Educ., 378 F.2d 275 (4th Cir. 1967).

\textsuperscript{28}U.S. Commission on Civil Rights, Survey of School Desegregation in the Southern and Border States 35-42 (1967).


public schools.\textsuperscript{32} The consequences of these conditions of deprivation are predictable: black students drop out, they perform poorly on achievement tests, and teachers evidence negative attitudes toward the students which further reinforce the spiral of failure.\textsuperscript{33}

C. Voting Rights

The first title of the 1964 Civil Rights Act was designed to protect the individual right to vote in federal elections without regard to race or color.\textsuperscript{34} The Voting Rights Act of 1965\textsuperscript{35} provided the further protection of direct federal action to effect speedier registration and exercise of voting rights without the extensive and delaying litigation required under previous civil rights legislation. Under it, literacy knowledge or character tests are suspended in any state or political subdivision where such a test was required as of November 1964, and where less than 50 percent of voting age residents either were registered or had voted in the 1964 presidential election. Such a standard, designed to reach the particular political exclusion of Negroes in the Southern States, also incidentally covered counties in four non-Southern States. In every Southern State, the percentage of registration of both nonwhites and whites increased substantially after passage of the Act,\textsuperscript{36} with the registration of nonwhites in Mississippi leaping from 6 percent to 60 percent of the voting age population in a 3-year period.\textsuperscript{37} The number of Negro officeholders more than doubled.\textsuperscript{38} However, historically entrenched resistance by southern whites to the enfranchisement of blacks did not simply end. Techniques of avoiding or diminishing Negro political participation have been employed at each stage of their attempt. Whites dilute the black vote, once it is obtained, by limiting its bloc effect and merging it with that of whites; they prevent Negroes from becoming candidates or assuming office; they exclude Negro registrants from precinct meetings, omit them from voter lists, exhaust them with interminable waiting lines, give erroneous voting instructions, and harass them while trying either to vote or to protect their right to vote.\textsuperscript{39} Negro determination,

\textsuperscript{32} \textit{DEP'T OF HEALTH, EDUCATION AND WELFARE, REPORT ON EQUALITY OF EDUCATION, summary at 9-20, (1966).}
\textsuperscript{33} \textit{Id. at 21; see also, K. CLARK, DARK GHETTO 128 (1965).}
\textsuperscript{34} 42 U.S.C. § 1971 (1964).
\textsuperscript{36} Except North Carolina, where the percentage of nonwhites increased from 46.8 percent to 51.3 percent. \textit{U.S. COMMISSION ON CIVIL RIGHTS, POLITICAL PARTICIPATION 13 (1968).}
\textsuperscript{37} \textit{U.S. COMMISSION ON CIVIL RIGHTS, POLITICAL PARTICIPATION 13 (1968).}
\textsuperscript{38} \textit{Id. at 214-21. The majority of black office holders listed on these pages has taken office since 1966.}
\textsuperscript{39} \textit{U.S. COMMISSION ON CIVIL RIGHTS, POLITICAL PARTICIPATION 13 (1968).}
despite these obstacles, to pursue their basic legal and American right to vote continues, and their registration rates rise.

The pattern of discrimination against blacks in their efforts toward full political participation does not alter at the level of party politics. Local white politicians ignore whatever pronouncements of equality are made at the state level. Mississippi pretends no such pronouncements and requires its residents, black and white, to take an oath which includes an endorsement of racial segregation in order to vote or to seek candidacy in primary elections.\(^4\) The U.S. Commission on Civil Rights found that the national policies of the parties do little more than outline the morally desirable, and that national committees have established no requirements of local party organizations which affirmatively seek the elimination of discrimination.

D. Administration of Federal Programs — denial of rights in health, farm, school lunch, and commodity distribution programs

Employment, education, and voting rights directly determine individual potential for participation in American life, but there are several other problem areas which are important even though not ordinarily considered major. Such matters as access to health facilities, the allocation of food commodities, and the use of federal agricultural services are relatively indirect, and the public at large as well as eligible participants are often unaware of the availability of benefits under these secondary programs, which, nevertheless, have long term and large-scale effects on total communities. These "benefits," once established, create statutory rights for eligible participants, and it is a violation of the federal statutes to withhold or curtail them on an arbitrary basis.\(^41\)

Nutrition for children clearly affects their health and consequently, their capacity to learn; nevertheless, a national citizens' committee confirmed that administration of the National School Lunch Program discriminated against the poor, who most needed better food.\(^42\) Another such committee established that needy people go hungry in the United States, that over 300 of the poorest counties in the nation receive no food assistance programs, and that anti-Negro hostility has motivated much of the local refusal either to institute such programs or to administer established programs without regard for race.\(^43\)

\(^4\) Id. at 145.
\(^41\) Cahn, New Sovereign Immunity, 81 HARV. L. REV. 929 (1968).
\(^42\) F. Robin, Their Daily Bread 32 (1968).
\(^43\) Citizens Board of Inquiry into Hunger and Malnutrition in the United States, Hunger, U.S.A. 53 (1968) [hereinafter cited as Hunger].
Governmental analysis of farm programs established by federal law shows that the Co-operative Extension Service, the Farmer's Home Administration, the Soil Conservation Service, and the Agricultural Stabilization and Conservation Service, all established by federal law, are invariably administered with open and clear racial discrimination. To mention but a few examples, there is discrimination: in the assignment of training work and in the offices of the few Negro personnel employed, in the denial of technical assistance to Negro farmers, in the lower loans allowed only for limited subsistence purposes (rather than for capital investments, which white farmers get), in the exclusion, not only of Negro professionals from policy-making positions, but also of Negro youth from 4-H services and from open competition. The findings of discrimination in 1965, 1967, and 1968 were identical.

Title VI of the Civil Rights Act of 1964 prohibits discrimination in federally assisted programs. Hospitals and other health facilities such as nursing homes, rehabilitation centers, research grants, and programs in public and mental health financed with federal monies under this title are required to serve all patients and to provide access to those who are professionally qualified without regard to race, color, or national origin. Those facilities completed on or after January 4, 1965, and no longer receiving any federal financial aid, are not covered by Title VI. Under Title III, the Attorney General may, at an individual's request, initiate suit against any public facility that discriminates, whether constructed by a state or any other political subdivision. A survey by a state advisory committee to the U.S. Commission on Civil Rights showed, in three different years over a 5-year period, some progress in equal opportunity in hospitals; the final assessment in 1967 was, however, that "while Negro patients are now accepted in the former 'white hospitals,' basically the old pattern of segregated hospital care still remains, in large measure, in effect."

An aspect of health not readily reached by health legislation, as much as by a real elimination of the network of discrimination,

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44 U.S. Commission on Civil Rights, Equal Opportunity in Farm Programs (1965).


47 Id.

48 Id. § 2000(b).

49 Tennessee State Advisory Committee to the U.S. Commission on Civil Rights, Employment, Administration of Justice, and Health Services in Memphis-Shelby County, Tennessee 83 (1967).
is the lower health standards which victimize nonwhites in America. Their rates of premature births, of postneonatal mortality, and of death are all higher. Clearly, better education leading to improved employment and housing for previously deprived people will result in higher levels of health that benefit the nation as a whole.

II. ILLEGALITIES CONNECTED WITH THE MAINTENANCE OF THE GHETTO

A. Housing — Segregation and Deterioration

Constant and extensive mobility of southern Negroes has impacted areas in large northern cities now known as "ghettos." Open racial segregation and unchecked invasion of the rights of blacks in the South, together with rumors of freer conditions and better employment opportunities in the North, have attracted Negroes there at ever increasing rates (1960 census figures show that 54 percent of American Negroes then lived in the South, where they constituted 20 percent of the Southern population). Between 1940 and 1963, 3.3 million nonwhites left the South, more than one million of whom settled in the large cities of the Northeast and the north-central regions. More than half of these settlers lived in census tracts where the population was at least 90 percent Negro and where the density per square mile far surpassed that of other largely white tracts.

Regular infusions of mass numbers of people for whose arrival there had been no planning led to quick and steady deterioration in already old housing facilities. One comparison of the housing occupied by white and nonwhite families headed by a male, veteran and nonveteran, showed that in both owner-occupied and renter-occupied units, nonwhites consistently lived in worse facilities than did whites. Further, the median value of nonwhite war veterans' homes was but 72 percent of white nonveterans' homes, and 66 percent of white war veterans' homes.

At the present time, the extent to which residential segregation and discrepancies between white and nonwhite housing standards are symptoms of housing discrimination is not clearly established. However, it is reasonable to conclude that racial discrimination in the housing market is at least a substantial factor in creating the conditions described above and is therefore widely prevalent in our society.

50 See, NEGROES, supra note 1, at 221-24 and HUNGER, supra note 43, at 34-37.
51 NEGROES, supra note 1, at 3.
52 Id. at 240.
53 Id. at 241.
The extent to which the various forms of housing discrimination are *illegal*, as well as inequitable, varies from place to place and from situation to situation. There are presently 17 states and the District of Columbia which have laws prohibiting various forms of housing discrimination.54 (In each of those states where there is a law against discrimination and a substantial number of black citizens, there is still intense "ghettoization" in urban areas.)

The Civil Rights Act of 1964, passed at the height of national conscience for the denial of citizens’ rights to American blacks, did not cover housing. Housing was the most recent "right" granted federal protection by the Congress. Under the Federal Fair Housing Act of 1968,55 those previously without legal recourse can attempt to purchase some "federally assisted housing" with greater assurance that their economic capacity will be the sole criterion.56 However, there are limitations such that major parts of the housing market are not affected. The Act covers large apartment houses and subdivisions where there is a first sale and also, housing financed with federal monies since 1962. Since December 31, 1968, all federally financed housing is covered except for single-family houses sold or rented by the owner and small multiple-dwelling housing occupied by the owner. One year later, single-family dwellings will be open to all purchasers under this Act if brokers’ services and racial advertising are used.57 It is important to stress that *all* housing in which there is no federal financial participation, in one form or another, is *not* covered by the Act.

Little can yet be said about the operation of the Housing Act. It is difficult to specifically document the existence of widespread illegal housing discrimination against black citizens. However, the inference is clear and convincing that such practices continue to exist on a large scale, and this conclusion is even more apparent to the black citizens against whom the discrimination is practiced. In September 1968, a Senate committee voted $9,000,000 to enforce the Act, but the House and Conference Committee voted nothing, apparently on the basis that existing appropriations were sufficient.58 Thus it appears likely that insufficient funding is inhibiting effective enforcement of the Act.

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56 Id. §§ 3604-3606.
57 Id. § 3603.
DENIAL OF RIGHTS

B. Public Housing

One of the major contributors to the "ghettoization" of black citizens was a federal program of public housing that was designed to assist low income families. This program, initiated in 1934, has always had a high proportion of black applicants, and their percentage increases. In 1952, nonwhites occupied 37.9 percent of the available public housing; this figure increased to 46 percent by 1961.\(^{69}\) As of 1956, about 70 percent of the black tenants in public housing lived in segregated projects.\(^{60}\)

Local public housing authorities usually claim that the resulting segregation was not an active policy of the housing authority itself (as it was before 1950, when federal policies requiring segregation were changed), but due solely to the individual choices and requests of both black and white tenants. The Federal Public Housing Administration, created in 1937, long took the position in suits to desegregate public housing that it could not procedurally be sued in the District of Columbia, where its main office was located, nor in the district of the local public housing authority which received federal funds.\(^{61}\) This procedural block to litigation impeded the desegregation of public housing projects.

It is clear, however, from subsequent refinements of the equal protection clause of the fourteenth amendment, that the constitutional rights of tenants are violated when public funds are used to achieve segregated housing. It was only in 1964 that the Department of Housing and Urban Redevelopment specifically ruled that it was the duty of local public housing authorities to cease racial segregation of tenants and to secure locations of new public housing in such a manner as to minimize the potential for racial segregation.\(^{62}\)

C. Urban Renewal

In addition to public housing, urban renewal was another measure to counter the rate and extent of slum blight. Under this program, slum neighborhoods were cleared at government expense. The project was then given to private developers at favorable rates which encouraged immediate reconstruction on a massive scale.

By 1957, after the program had been in existence for 8 years, family relocation services had arranged housing accommodations


\(^{60}\) National Committee Against Discrimination in Housing, Inc., Trends in Housing 4 (1956).

\(^{61}\) J. Greenberg, Race Relations and American Law 288 (1962).

\(^{62}\) 24 C.F.R. § 1.4 (Supp. 1968) (HUD Regulation prohibiting discrimination in any federally supported program).
for 91 percent of the 48,028 families displaced by urban renewal projects;63 nonwhites constituted 76 percent of the total number.64 By 1961, the absolute number of families requiring relocation had increased threefold to 124,998,65 and the proportion of nonwhite families required to relocate still remained high at 66 percent.66 By that time, however, less than 9 percent of those reported as white entered public housing whereas the percentage for nonwhite families remained near 25 percent.67 These figures show that nonwhites have constituted the bulk of those displaced by urban renewal over a 4-year period, and that during this period, a fairly constant proportion of nonwhites had to resort to public housing, even though an increased percentage of those displaced by urban renewal were white.68 This seems to be an index of racial discrimination operating in the private housing market, but to the extent that most public housing was racially segregated, urban renewal was aiding the racial concentration.

Although there is no clearly established legal right to housing, decent or otherwise, access to housing according to purchasing power is a basic assumption for most Americans. One requirement for the relocation of families displaced by urban redevelopment is that their rehousing accommodations meet local standards of what is "decent, safe, and sanitary."69 As of 1961, the reports concerning the condition of relocating quarters indicated that the cumulative percentage of housing which did not meet these standards was nearly 8 percent. For whites, that percentage was 5 percent; for nonwhites, 10 percent.70 Even such protective measures as governmental relocation services, therefore, were subject to a substantial consideration in the American housing market, i.e., color. Nonwhites constituted the majority of those displaced; they had to move more often to public housing, and they were more likely to live in substandard housing under the urban renewal program.

D. Slum Housing — Ineffective Tenant Remedies

Since antidiscrimination commissions have not lessened racial concentration in ghettos and since persons with low incomes have

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65 Id. at 11.
66 Id. at 10.
67 Id. at 13.
68 While the percentage of nonwhites was decreasing from 76 percent to 66 percent, the percentage of whites was increasing.
70 Relocation 1961, supra note 64, at 17.
a limited housing market, it is necessary to examine whether the legal process affords adequate remedies for the repair and rehabilitation of deteriorated housing. Legal remedies which can effect only repairs are totally inadequate because 5.2 million of the 9.5 million seriously deficient housing units are so dilapidated that the repair would be more costly than razing and new construction. About one-half of these units are in urban slums.\textsuperscript{71}

In most states, the tenants of the units which are reparable have no direct right to make repairs and to deduct the costs from their rent. Landlords are favored under most laws in that a lease is not treated like a contract; under a "contract" approach, the tenant would be free from his obligation to pay rent when the landlord failed in his obligation to make repairs.\textsuperscript{72} In New York State, which does have some form of tenant "self-help," a tenant may deposit his rent with the court after Housing Code violations have been recorded and have remained uncorrected for at least 6 months.\textsuperscript{73} The effect of this remedy is diluted, because an understaffed Buildings Department may not have recorded the violations and the economic sanction may be of little significance to the landlord if the rents are low. There is no assurance that the repairs will be made.

Code enforcement by municipalities has likewise not provided most tenants with prompt and effective relief.\textsuperscript{74} Where the city Housing Department relies on criminal sanctions against slum landlords, the courts typically impose small fines which the landlord simply pays as a cost of running the business, and continues to leave the premises unrepaid. The city is also hampered in any attempt to use the rents of tenants to finance repairs, since the rents are usually inadequate to make repairs on property which has been neglected for long periods of time. In some instances, the city has taken entire buildings into receivership, but this practice entails a time-consuming process of choosing buildings which can be repaired, and is limited by the extent of funds the city can provide above and beyond the income provided by rents.

E. The Absence of Legislation to Correct Inequities

Many conditions which confront the ghetto resident contribute to the intense awareness there of unfair treatment. These are con-

\textsuperscript{72} Viterbo v. Friedlander, 120 U.S. 707 (1886); Price v. Pocahontas Fuel Co., 49 F.2d 39 (4th Cir. 1931). "[U]nfitness . . . does not as a general rule constitute an eviction or justify the tenant in abandoning the premises and, on such grounds, making defense to an action for rent." See also, 32 Am. Jur. Landlord and Tenant § 654, at 515 (1941).
\textsuperscript{73} N.Y. Real Prop. Actions § 755 (McKinney 1963).
\textsuperscript{74} Gribetz & Grad, Housing Code Enforcement, Remedies and Sanctions, 66 Colum. L. Rev. 1254 (1966).
ditions which he perceives as "wrong," but for which there is no presently existing remedy. Given the lack of sophisticated political organization among the poor, legislation to correct inequities in their living conditions usually lags far behind the need for such legislation, thus contributing to the ghetto resident's feeling that the law does not operate for him. There has not been a nationwide survey to compare credit practices and consumer prices in ghetto areas with such practices and prices in other neighborhoods, but some studies have shown higher prices and interest rates in ghetto communities. To some extent these higher costs may be a result of the higher costs of servicing a ghetto community (e.g., higher incidence of pilferage or higher insurance rates) and the difficulty in collecting from economically insecure persons, but, nevertheless, higher costs do create a sense of being singled out for an unfair practice.

A ghetto resident, because of limited education, may also be greater prey to misleading advertising or burdensome contracts. Consumer problems are also marked by inadequate procedures in litigation, for studies have shown that many ghetto residents are subjected to default judgments in actions for which service of process was never even attempted. Also, wage garnishment practices in 20 states permit creditors to attach the wages of workers through court action without a hearing or a trial, thus giving the creditor leverage to collect on contracts to which the debtor may have a defense. The very threat of garnishment may be sufficient to make a frightened debtor pay an unreasonable amount, since garnishment of wages may cost an employee his job. New York is the only state which has passed legislation to protect employees from loss of employment when their wages are garnished. The omission of migrant workers — many of whom on the East Coast are black — under NLRB and minimum wage legislation is another example of an absence of protection.

There are other inequitable situations which are not easily susceptible to individual litigation and may be correctable only through massive infusions of resources, which again presuppose effective political influence. Sanitation services in densely populated ghetto communities, for example, appear grossly inadequate. Also, the lack of health services probably contributes to a mortality rate

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75 NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 139 (1968) [hereinafter cited as CIVIL DISORDERS].
76 2 COLUM. J.L. SOC. PROB. 1, at 9-10 (1966).
77 CIVIL DISORDERS, supra note 75, at 140.
three times as high among nonwhite babies from 1 month to 1 year old than among white babies in the same age group.\textsuperscript{79}

**Summary: The Link between the Denial of Rights and Violence**

This examination of the denial of rights has not included the racial discrimination that occurs in the selection of juries, in public accommodations or in welfare practices; nevertheless, it presents a picture of the massive and illegal abuse of rights which belong to black citizens of the United States. Liberties, achievements and pleasures—not to mention the basics of employment, decent and fairly priced housing, and educational opportunities—taken for granted by most Americans are rarely enjoyed by black Americans.

This article emphasizes the problems of employment because employment is essential to providing access to the basic necessities. Employment leads to the purchasing power which in turn can provide housing. Clean housing and adequate space for children provide the proper conditions for their study. Clearly, higher health standards increase the capacity to enjoy and contribute. Sets of cross-effects become apparent even though they are not readily separated and measured; but the ability to earn a living begins the chain reaction.

During the civil disorders of summers past, a dominant concern of the rioters with the securing of goods became evident. The recent report of the Presidential Commission found that the typical rioter was a high school dropout, was "usually under-employed or employed in a menial job" and sought not primarily to vent spleen on whites but "the material benefits enjoyed by the majority of Americans."\textsuperscript{80}

The long-range correction to our basic societal disorders will come primarily through granting the right of equal education; to the extent that this right is systematically denied, the education of black children will determine, as it has already, the patterns of their participation in—or alienation from—American society. Grossly inadequate education defeats motivation and feeds the dropout rate. Such removal from the usual means of mobility for the low-income community causes young people to become easy prey to the temptation of attaining economic benefits through illegal means. For young black people, the crimes committed will not typically be the white-collar crimes of embezzlement, tax fraud, or the like, but will involve the kinds of property-seeking crimes

\textsuperscript{79} Hungers, supra note 43, at 34-37; Civil Disorders, supra note 75, at 136.

\textsuperscript{80} Civil Disorders, supra note 75, at 4.
which the poor commit, namely theft, robbery, and looting, which carry a greater potential for violence.

Major civil rights are little more than paper legalities for American citizens who are black. Laws against discrimination in employment, in housing, in education, in voting, and in varied federal programs have scarcely begun to eliminate the exclusion and disadvantages inflicted upon a percentage of the American citizenry who are not white. This failure can mean only that whites continue the acts, established as illegal, that perpetuate the discriminatory pattern. The result is that one sector of the American public selects some illegal acts by members of another sector to decry ("crime in the streets"), while at the same time ignoring their own less blatant illegalities that cumulatively prompt the acts decried. The widespread attention accorded the illegalities committed by some blacks, as opposed to the widespread illegalities committed against many blacks, makes its black victims cynical.

The conception of what laws "ought" to be obeyed (the "moral" motivation as opposed to deterrence through anticipation of punishment) differs profoundly for ghetto blacks and for the average white. Law prohibiting racial discrimination does not have the legitimacy and validity in the eyes of whites that other laws have, and whites are less hesitant about violating them than, for example, the laws prohibiting theft. The antidiscrimination laws are probably regarded as were 1920's prohibition laws—to be honored in breach. They are seen as a general statement of principles but not really a statement of legal prohibitions which entail a strong possibility of detection, certainty of sanctions, and public "disapproval" for having disobeyed the law. Those in government charged with enforcement of laws protecting minorities respond to the general white public's view; statutes making racial discrimination criminal rarely result in prosecution and civil proceedings are subjected to delay, conciliation, infrequent use of the contempt power, and compromises not wholly satisfactory to the complaint.

On the other hand, some blacks who participate in riots have a diminished regard for the laws protecting property—perhaps corresponding to the white disregard for civil rights laws—because the property they attack is owned by persons who are the symbols of a society which has unlawfully or unfairly kept them in their insecure, unlivable circumstances. The law, with only the threat of sanctions, has a limited potential for continually securing non-violent, conforming behavior from a sizable minority which feels strongly motivated and perceives itself as striking out against unjust conditions. Since the ultimate goal of the correction of intolerable and inequitable conditions is easily seen as "just" and "right," blacks'
concern over the means to reach the goal is weakened. Indeed, militants characterize any dispute about means, particularly any questions about morality, as the diversionary activity of intellectuals, "Uncle Toms," or those lacking courage. This view that any means are appropriate is reinforced when resistance of general white population and inadequate enforcement resources undermines the laws designed to protect blacks. It is possible, theoretically, to increase surveillance, apprehension and punishment of a rebellious minority, but the potential for gradually creating a repressive regime for the majority community also increases.

In summary, it can be said that the law is effective in controlling antisocial individuals with the threat of penalties, but as for unlawful actions by the general public or even a sizable group within it, the law ultimately can function only through consensus and acceptance. There have been recent attacks on the courts and other enforcement officials for their cautious approach in the area of racial discrimination, especially by lawyers in the civil rights field who see their efforts diluted.81

Some of the caution, especially by federal officials on the executive side, is attributable to political "expedience" diluting strict law enforcement, but a more basic restraining influence is the knowledge that a coercive instrument like the law is inadequate, and may lose even a limited effectiveness, if implemented vigorously in the face of widespread opposition. The average white citizen who violates an antidiscrimination law may simply conceive of it as an individual act of discretion as to whom he will work, live or associate with. The problem is that these individual acts taken together have accumulative and institutional effects which contribute to a functional anarchy in relations between blacks and whites. (This breakdown in mutual obligations is evidenced in black militant statements that "the oppressed are not bound to respect any of the rights of the oppressors").

81 See Robert L. Carter, The Warren Court and Desegregation, 67 MICH. L. REV. 237 (1968). The author suggests that the Court was in error in adopting the "all deliberate speed" formula in school desegregation because it encouraged opponents of desegregation to adopt delaying, evasionary tactics. However, the author states, "I am forced to recognize that even if the court had functioned as I suggested it should have [adopt a position that immediate desegregation was mandated], we would probably be no nearer to the elimination of racism in this country than we are today." Id. at 248.

He thought, however that the "image" of the Court would have been improved if it had been more forthright. But that is the nub of the problem — would the image have been improved amongst the resisting southern whites? Or if the Court had moved immediately against de facto school segregation in the North would its "image" have been improved amongst the white middle class who thought that they had purchased a "good" (predominantly white) school by their move to the suburbs? The Court as Mr. Carter ultimately acknowledges is a weak reed in the face of mass white racism. It is a "political" as well as "judicial" institution, and its constituency is broader than blacks or lawyers with an interest in the precise logical development of the law.
Reports and studies frequently mention the loss of confidence in remedial procedures where they have been instituted.\(^2\) Equally important is the fact that such procedures require the most of the victim, who is least able to spare the time, energies, and money for the diligent pursuit of his claim. For example, there is considerable evidence that a disproportionate number of black defendants are executed for the crime of rape in the South (398 of the 443 executed were Negro) and nationally, for all crimes, though 11 percent of the population is nonwhite, 53 percent of those executed for capital offenses were nonwhite;\(^3\) however, the courts have not sustained this claim as a denial of equal protection, primarily on the ground that more definitive proof was needed to show that race largely determines who receives the death penalty. Such proof would require extensive and detailed information of all the death penalty cases in a given state over a number of years and the isolation of a large number of variables. The average defendant, especially if black, has not had the resources necessary to pursue such a claim.\(^4\)

Black people, who on every social index consistently rank lowest in their participation in the standard American fare, know that it is not their recent arrival in this country that causes this fact. They also recognize the basic inconsistency between labeling certain basic rights as "inalienable" and then requiring blacks alone to employ special measures to attain these "inalienable" rights.

Even to seek the federal legislation securing the rights of equal housing, employment, and voting, the civil rights movement in the South has had to employ special measures of nonviolent protest demonstrations, which were really a lobbying effort. The southern participants, primarily black, were able to absorb the physical assaults and mob attacks from whites during the course of their nonviolent demonstrations because of the impact on the national conscience and the possibility of securing protective federal legislation; however, the nonparticipating northern black who read about, heard, or saw televised accounts of violent attacks on the demonstration participants, had no sense of "achievement," but simply viewed the endurance of the assaults as self-degrading before

\(^2\) CIVIL DISORDERS, supra note 75, at 4; TEXAS ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS, EMPLOYMENT PRACTICES AT KELLY AIR FORCE BASE, SAN ANTONIO, TEXAS 17 (1968).


\(^4\) The center for the Study of Criminology and Criminal Law, directed by Professors Marvin Wolfgang and Anthony Amsterdam, has recently compiled data invaluable to such defendants. Its review of capital punishment in rape cases confirms that in the South in 8 out of 11 states, no factor of chance other than race influences the application of the death penalty. The destruction by fire of the data for the remaining states precludes any conclusion about them.
vicious whites. In a paradoxical way, it seems that the northern observers of these illegalities against black protesters were left with a strong sense that blacks were continually to be the butt of unlawful action by whites.

Most persons, white and black, probably expect that there will be laws that provide legal redress for the gross wrongs which they experience. When this is not the case, a particular feeling of vulnerability may result. The average layman may not have the sophisticated view of law as a developing phenomenon in which "wrongs" are progressively corrected; this may be even more true of the low-income person who is not active in the political process. The sense of vulnerability may lead to one of futility and anger, which in turn could lay the foundation for the response of violence. This feeling is even more vivid in blacks, who believe that wrongs affecting whites will be corrected, while those affecting blacks will not.

Beyond the area of clear rights is that of clear wrongs. These are the inequities which have not yet been declared illegal by legislation. The typical practicality of Americans and the determination to change the intolerable is also a characterization of those Americans who are not white. In the ghetto, where all the riots have occurred, the incapacity to alter the daily vestiges of slavery which ghetto inequities represent has led some to the use of violent methods to bring about this change. Black ghetto Americans believe that violations of humanity implied in lower health standards, inadequate municipal services, and higher prices, ought to be against the law and that if they are not, then the law does not operate for them.

We may lament the fact that, increasingly, protest is taking place outside our established political and legal framework in forms which frequently are destructive and self-defeating. But our laments are likely to sound hollow and to be unavailing if we do not take steps which will make possible a response to just grievances within our established political and legal processes. This quote concludes a 250-page report on the determined and deliberate denials, by American whites, of the ballot to American blacks. Political participation has traditionally been the route and means of correcting abuses and of having the interests of particular groups expressed. Blacks have been blocked in their efforts to take this route. This fact may have prompted some to take other routes; one has been violence in the streets.

On the other hand, the daily denial of decent housing, equal educational opportunities, and employment is a kind of "violence" against blacks which has low visibility, because the physical con-

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85 U.S. COMMISSION ON CIVIL RIGHTS, POLITICAL PARTICIPATION 179 (1968).
comitants are realized only over a long period of time, in such indexes as a higher disease rate, malnutrition (which can lead to mental retardation), and a high mortality rate.

This low level, indirect violence must be ended in order to end the violent response of its victims.