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APARTHEID BALTIMORE STYLE: THE RESIDENTIAL SEGREGATION ORDINANCES OF 1910-1913*

GARRETT POWER**

On May 15, 1911, Baltimore Mayor J. Barry Mahool, who was known as an earnest advocate of good government, women's suffrage, and social justice, signed into law "[a]n ordinance for preserving peace, preventing conflict and ill feeling between the white and colored races in Baltimore city, and promoting the general welfare of the city by providing, so far as practicable, for the use of separate blocks by white and colored people for residences, churches and schools."¹ Baltimore's segregation law was the first such law to be aimed at blacks in the United States, but it was not the last. Various southern cities in Georgia, South Carolina, Virginia, North Carolina, and Kentucky enacted similar laws.²

The legal significance of housing segregation laws in the United States was shortlived. In 1917 the United States Supreme Court struck down the Louisville, Kentucky ordinance³ and thereby constitutionally eviscerated the ordinances of other cities as well. But the historical significance of Baltimore's segregation ordinances remains.

History remembers the Mahool administration for having placed Baltimore in the forefront of municipal reform. The story of how the Mahool government earnestly proposed and enacted an apartheid statute as a progressive social reform has a contemporary message: It cautions us to discount the righteous rhetoric of reform; it reminds us of the racist propensities of democratic rule; and it sets the stage for understanding the development of a covert conspiracy to enforce housing segregation, the vestiges of which persist in Baltimore yet today.

Throughout the early nineteenth century Baltimore housing was not racially segregated, and even following the Civil War, blacks lived

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1. Baltimore, Md., Ordinance 692 (May 15, 1911).

2. C. JOHNSON, *PATTERNS OF NEGRO SEGREGATION 173-75* (1943); Rice, *Residential Segregation by Law, 1910-1917*, 34 J.S. HIST. 179, 181-82 (1968). The cities were: Atlanta, Ga.; Greenville, S.C.; Ashland, Roanoke, Richmond, Norfolk, and Portsmouth, Va.; Winston-Salem, N.C.; and Louisville, Ky.

3. *Buchanan v. Warley*, 245 U.S. 60 (1917).

in all of Baltimore's twenty wards. Although the majority of blacks resided in the city's central, southern, and eastern sections, there was no Negro quarter or ghetto. Blacks were scattered throughout the northern reaches of the town, clustering together in narrow, two-story alley houses and working nearby in domestic service while more affluent whites lived on the main thoroughfares.⁴

Urbanization was to modify this fluid mixture. In 1860 only 4.2% of all Negroes in the United States were city dwellers; by 1890 it had risen to almost 20%,⁵ as blacks joined whites in a rush to the cities. Between 1880 and 1900 Baltimore's black population increased 47% from 54,000 to 79,000. During this same period, the city's white population was increasing by 54%. Hence, while the black population was increasing by 25,000 people, the proportion of blacks in the population was on a slight decline.⁶

Negro newcomers with little money and limited job opportunities sought out the cheapest housing in town. They rented shanties and doubled up in small houses, resulting in Baltimore's first sizeable slums. The first slum to reach maturity was "Pigtown" in Southwest Baltimore. A contemporaneous account from 1892 describes it as follows:

Open drains, great lots filled with high weeds, ashes and garbage accumulated in the alleyways, cellars filled with filthy black water, houses that are total strangers to the touch of whitewash or scrubbing brush, human bodies that have been strangers for months to soap and water, villainous looking negroes who loiter and sleep around the street corners and never work; vile and vicious women, with but a smock to cover their black nakedness, lounging in the doorways or squatting upon the steps, hurling foul epithets at every passerby; foul streets, foul people, in foul tenements filled with foul air; that's "Pigtown."⁷

As neighbors who could afford to do so moved away from this squalor, Pigtown ripened into a ghetto.⁸ Whites were not the only residents to take flight. In this time of relative permissiveness in race relations, blacks also were free to buy houses elsewhere in the city.

4. Hawkins, *A Year of Segregation in Baltimore*, 3 *CRISIS* 17, 17 (1911). Cf. W. Paul, *The Shadow of Equality: The Negro in Baltimore 1864-1911* 388-90 (1972) (unpublished Ph.D. dissertation, University of Wisconsin).

5. Haynes, *Conditions Among Negroes in the Cities*, 49 *ANNALS* 105, 108 (1913).

6. *A Social Problem in Baltimore*, 77 *NATION* 497, 497 (1903) [hereinafter cited as *A Social Problem*].

7. *Baltimore News*, September 20, 1892, *quoted in* J. CROOKS, *POLITICS & PROGRESS: THE RISE OF URBAN PROGRESSIVISM IN BALTIMORE 1895 TO 1911* 20 (1968).

8. S. OLSON, *BALTIMORE* 233 (1980); *A Social Problem*, *supra* note 6, at 497.

Baltimore's black bourgeoisie, then perhaps 250 in number, sought to remove themselves from the "disreputable and vicious neighborhoods of their own race."⁹ Thus a first wave of blacks relocated in the northwestern part of the city as those blacks that could afford to do so purchased second-hand housing around St. Mary's Orchard and Biddle Streets, in what was to become the 17th Ward. (A street map of the 11th, 14th, and 17th Wards as they existed in 1904 appears at the end of this article.) Their neighborhood began in the alleys and then moved out to the wider streets, displacing Bohemians and Germans.

The Negro migration to Northwest Baltimore accelerated as whites abandoned their homes there and fled to newly opened suburban tracts. For example, when the B & O Railroad displaced 100 black families to expand its yards,¹⁰ they sought alternative housing in the northwest's 17th Ward. The second wave of black arrivals was poorer and doubled up to pay the rent; slum conditions similar to those in some of the city's southwestern sections began to develop.¹¹ By 1903 the Negro population was perhaps the majority in the 17th Ward;¹² the slum that had developed in the Biddle Alley neighborhood in the lower portions of the ward had replaced Pigtown as the worst in the city.¹³

Blacks were not the only slum dwellers. In the 1880's Russian Jews and Poles were immigrating to Baltimore in large numbers. These immigrants faced the same problems as Negroes — little money and few jobs. As a result, their housing conditions were similar to those in the black slums: the houses were overcrowded, poorly ventilated, and lacked water and sewerage. The major difference between these immigrant ghettos and the black ghettos was in the type of housing they contained: Immigrants converted once-substantial three- and four-story row houses into tenements for up to ten families. The black alley districts consisted of smaller ill-built structures. Another difference was that the immigrant ghettos tended to locate on the east side of town. Thus the growing immigrant population exacerbated black housing conditions by displacing Negroes from that area.¹⁴

These slums were but a symptom of the social chaos in turn-of-

9. Haynes, *supra* note 5 at 111 (discussing consequences of segregation in cities generally).

10. Hawkins, *supra* note 4, at 27; transcript of interview with Dr. J.O. Spencer, Record Group [R.G.] 102, Box 121, National Archives (June 20, 1916).

11. U.S. CHILDREN'S BUREAU, REPORT ON CONDITIONS AFFECTING BALTIMORE NEGROES 32, R.G. 102, Boxes 120-21, National Archives (1923) (Bureau Publication 119, part of a study of infant mortality in Baltimore) [hereinafter cited as CHILDREN'S BUREAU STUDY].

12. *A Social Problem*, *supra* note 6, at 497.

13. W. Paul, *supra* note 4, at 392.

14. Hawkins, *supra* note 4, at 27.

the-century Baltimore. Between 1870 and 1900, the city's population grew from 250,000 to 500,000, as ex-Confederates, Negroes, and European refugees crowded into the city. The year 1890 was the beginning of a severe slump in the economy. Families could not afford even the cheapest housing so they doubled and tripled up. Unemployment was rampant; women and children worked for minuscule wages under horrendous conditions in an effort to make ends meet. Services proved inadequate or nonexistent — police, fire protection, water supply, and schools were deficient and the city had not yet constructed a sanitary sewer system.¹⁵ Urbanization, industrialization, and depression had concentrated in Baltimore a growing population of the poor, the sick, and the ignorant.

The crisis in Baltimore and other cities produced a movement for social reform. Social reformers joined the already established Progressive Movement in opposing political machines such as the Rasin-Gorman Ring in Baltimore, and in advocating civil service reform, the merit system, streamlined government, home rule, and corrupt-practices legislation.¹⁶ But the social reformers who came from the universities and churches had greater ambitions. They advocated initiatives designed to remedy the fundamental ills of society — illiteracy, pestilence, crime, and poverty.¹⁷

The first leader of the organized Social Reform Movement in Baltimore was Daniel Coit Gilman, President of the Johns Hopkins University. In 1881, he founded the Charity Organization Society and modeled it after similar groups in London, Buffalo, Boston, and New York. It provided the poor with gifts of food, clothing, and coal, along with "friendly visitors" who volunteered to help on a one-to-one basis.¹⁸ In addition, Jane Addams's pioneer settlement house in Chicago was soon copied by Baltimore clergyman Edward H. Lawrence.¹⁹ Further, Baltimore philanthropists Robert Garrett and Henry Walters copied projects undertaken elsewhere in sponsoring playgrounds and public baths.²⁰

Social reformers found support for their efforts among Baltimore's medical community. Recent discoveries in bacteriology led prominent

15. J. CROOKS, *supra* note 7, at 155-56.

16. See generally J. CROOKS, *supra* note 7; R. HOFSTADTER, *THE AGE OF REFORM: FROM BRYAN TO F.D.R.* (1955); Crane, *The Origins of Progressivism*, in *THE PROGRESSIVE ERA* 11-34 (L. Gould ed. 1974).

17. S. HUBER, *EFFICIENCY AND UPLIFT: SCIENTIFIC MANAGEMENT AND THE PROGRESSIVE ERA 1890-1920* 77 (1964).

18. J. CROOKS, *supra* note 7, at 158-59.

19. *Id.* at 162.

20. *Id.* at 180-83.

physicians to identify the need for public health programs. For example, in the 1890's Dr. William Osler, physician-in-chief at the Johns Hopkins Hospital, called public attention to the social implications of typhoid and tuberculosis and supported efforts to establish a pure water system. His colleague, Dr. William Henry Welch, in a speech in 1892, estimated that better sanitation in American cities could save 100,000 lives each year.²¹ In 1897, Dr. John S. Fulton, along with Osler and Welch, founded the Maryland Public Health Association.²² It discussed proposals for construction of a sanitary sewer system (Baltimore then had none) and for establishment of a city hospital for infectious diseases.²³ The proposal for a hospital, however, was poorly received. The City Council resisted creation of a "pest house," because it would reduce property values and spread disease to the surrounding neighborhood.

In 1902, on the other hand, the state government began a city-wide campaign against tuberculosis. Tuberculosis was then the most widespread and fatal of the infectious diseases: it killed 1,000 Baltimoreans each year.²⁴ This campaign stressed the relationship between overcrowded housing, lack of open space, tainted food, and a high incidence of TB. It lobbied for laws requiring registration of persons infected with TB, prohibiting spitting, and providing for construction of hospitals.²⁵

Not surprisingly, these first efforts at social reform proved unequal to the task. Self-help, friendly visiting, volunteerism, and timid government initiatives failed to abolish poverty, to prevent crime, and to cure tuberculosis and other infectious diseases. Among the reformers' greatest shortcomings was their failure to do more for blacks. The half-dozen privately financed settlement houses reached at most several hundred Baltimoreans; Negroes never saw a settlement. As initially established, public baths and playgrounds designed to humanize the urban environment were for whites only. These facilities were not available to blacks until 1905 and 1908, and then only to a limited extent.²⁶ Fledgling public health efforts had made no discernable impact on the black communities — the Negro death rate from both smallpox and tuberculosis was twice that of the white average.²⁷

21. *Id.* at 164-65.

22. *Id.* at 171-72.

23. *Id.* at 182-83.

24. *Id.* at 184.

25. *Id.* at 187.

26. *Id.* at 181, 183.

27. *Id.* at 188; S. Olson, *supra* note 8, at 236.

Notwithstanding their failures, social reformers remained undaunted. Unable to treat or to cure the fundamental ills from which the urbanizing, industrializing society suffered — illiteracy, morbidity, crime, and poverty — their response was to focus on a symptom rather than the disease. Slum housing came to the forefront of the reformers' concerns; environmentalism came to be an article of faith.²⁸ In Baltimore of 1903, progressive Mayor Thomas Hayes expressed this faith as follows:

debasement environments like these are the ones from which creep forth the pinched bodies and pinched souls which make our criminals and disturbing elements. These wretched abodes are menacing to both health and morals. They are the breeding spots from which issue the discontents and heartburnings that sometimes spread like a contagion through certain ranks of our laboring element.²⁹

Because city slums were to blame for vice, crime, pauperism, and anarchy, improved housing conditions would cure society's ills.

Not long after Mayor Hayes's remark, Gilman's Charity Organization Society commissioned an investigation entitled *Housing Conditions in Baltimore*.³⁰ This study was aimed at the alleys that housed Baltimore's blacks and at the sections occupied by rapidly increasing foreign populations, on the assumption that "conditions existed in those neighborhoods that could not but be detrimental to the welfare of their residents."³¹ Its preliminary concerns were that: houses covered so much of the lot-space as to diminish the supply of light and air; large numbers of families were crowding into dwellings originally designed for single-family occupancy; many rooms were gloomy and ill-ventilated; alley houses were damp and dilapidated; and sanitation was defective. The Society intended the investigation "to secure accurate and reliable information" and thereby to take "the first step towards the removal of these evils."³²

The investigation selected four districts for detailed field study. Two districts were described as "tenement districts" and included a large number of houses occupied by three or more families. One tenement district was occupied largely by Russian Jews, and the other was occupied almost exclusively by Poles. Two districts were described as

28. See generally Moore, *Directions of Thought in Progressive America*, in THE PROGRESSIVE ERA 35-55 (L. Gould ed. 1974).

29. S. OLSON, *supra* note 8, at 270.

30. J. KEMP, HOUSING CONDITIONS IN BALTIMORE (1907).

31. *Id.* at 12.

32. *Id.*

“alley districts” because they illustrated conditions prevailing in interior alleys and minor streets. These districts were occupied largely by Negroes along with a few native white families and Germans. In reality, the housing stock in the tenement and alley districts was not mutually exclusive — tenement districts included houses on interior streets, and alley districts included some tenements.

One of the districts studied, Biddle Alley, was the same neighborhood to which middle-class blacks had escaped in the 1880's. By 1903 it had fallen on hard times. The area investigated by the Society was bounded by Biddle and Preston Streets and Druid Hill and Pennsylvania Avenues. Two hundred and fifteen overcrowded houses, containing 270 apartments (seventeen percent of which were one room), were crammed into the alleys and minor streets within the block. Typically, the houses were two or three stories high and two rooms deep with a basement kitchen and living room. The most common problem was the “dirty, dark, damp and dilapidated” basements.³³ The investigation did not determine the number of residents in Biddle Alley; the Society felt that tabulating the information concerning the number of people living in alley houses was a “waste of time” because of the untrustworthiness of the tenants.³⁴

The Biddle Alley neighborhood was literally and figuratively at the bottom of what was becoming the black section of Baltimore. In 1903 the section with a majority Negro population was described as “bounded on the south by Biddle Street, on the west by Argyle Avenue, on the east by Druid Hill Avenue, and on the north by North Avenue. This region extends about a quarter of a mile from east to west and a mile north and south.”³⁵ It consisted of the 17th Ward to the south and a portion of the 14th Ward to the north.

The Negro district was highly stratified, both economically and socially. The lower portion of the district, found in the 17th Ward, which embraced the Biddle Alley neighborhood, was a filthy slum. Animal excrement and garbage lay in the streets. Privy faults and cesspools overflowed into the alleys and oozed into the basement, kitchen, and living areas.³⁶ Cholera and typhoid were a constant threat, and the district was the tuberculosis center for the city: According to one health department official, “there is not a house on Biddle Alley, in which there has not been at least one case of tuberculosis.”³⁷ Biddle

33. *Id.* at 45.

34. *Id.* at 43.

35. *A Social Problem*, *supra* note 6, at 498.

36. W. Paul, *supra* note 4, at 393-94.

37. J. KEMP, *supra* note 30, at 19.

Alley was the "lung block." The value of property in the 17th Ward was in a precipitous decline.³⁸

The upper portion of the district, found in the 14th Ward, contained the houses of the Negro community's business and professional people. A quiet residential neighborhood, properties sold for higher prices than in equivalent white neighborhoods. Middle-class white residents still lived in the area. The best black dwellings bounded along upper Druid Hill Avenue.³⁹

The *Housing Conditions in Baltimore* report, interrupted by the Baltimore Fire of 1904, was finished in 1907, under the direction of Janet E. Kemp. Its statistics and photographs vividly display the horrors of the slums and the plight of the slum-dwellers, but it was less compelling when suggesting solutions. The report's text observed: "Nothing but enlightened public sentiment crystallized into legislative requirements can ever guarantee sanitary surroundings to the small wage earner who cannot afford to pay a high rent."⁴⁰

The report suggested legislative requirements that differed for tenements and alley houses. The report proposed an inexpensive "market" solution for tenement districts. It sought to force landlords to improve existing tenements, and to require builders to construct model tenements, by proposing regulations setting height limits, requirements of separate toilets for each apartment, and annual inspections. The proposal was plausible. In the early twentieth century, tenements were profitable ventures. Commerical developers were building new flats for the "dollar-a-day" man.⁴¹ Together, housing codes and building restrictions might eliminate all substandard tenements by forcing entrepreneurs to pay the cost of improving them. The solution also was consistent with the classic concept of the state's police power. The report proposed regulations protecting health, safety, and morals which businessmen might not transgress in the pursuit of profit, but otherwise did not interfere with the economic order.

The report's recommendations for alley districts differed. It proposed to reduce the density in existing alley houses, to condemn those that were uninhabitable, to ban sleeping in basements, and to prohibit erection of additional alley houses.⁴² Although these measures would improve the quality of housing, they necessarily would reduce the

38. S. OLSON, *supra* note 8, at 276.

39. W. Paul, *supra* note 4, at 391-92.

40. J. KEMP, *supra* note 30, at 93.

41. R. LUBOVE, *THE PROGRESSIVES AND THE SLUMS: TENEMENT HOUSE REFORM IN NEW YORK CITY 1890-1917* 182 (1962).

42. J. KEMP, *supra* note 30, at 87-92.

quantity. Thus the report's recommendations would work a particular hardship on blacks, who lived in the alleys, for whom no new houses were being built, and who encountered resistance when attempting to move into white neighborhoods. In effect, the report relegated the growing Negro population to a shrinking number of houses.

The report also distinguished between the inhabitants of tenements and alley-houses. Negroes were singled out for criticism: "This is not a study of social conditions, but it is impossible to observe these gregarious, light-hearted, shiftless, irresponsible alley dwellers without wondering to what extent their failings are a result of their surroundings, and to what extent the inhabitants, in turn, react for evil upon their environment."⁴³ The "low standards and absence of ideals" among Negroes was "held to some degree accountable for the squalor and wretchedness" which characterized the alley neighborhoods.⁴⁴

Despite the plausibility of its proposals and the prestige of its sponsors, the city took no action on the *Housing Conditions in Baltimore* report. In the northwest the Negro district continued to grow both in population and size. By 1910, 12,738 blacks had crowded into the 17th Ward,⁴⁵ constituting over fifteen percent of the city's overall Negro population and sixty-one percent of the ward's overall population.⁴⁶ The few remaining whites were rapidly leaving. It was the worst slum in the city.⁴⁷

Not surprisingly, those in the black community who could afford to do so also sought to move away from the squalor and disease. Middle-class blacks began to look covetously at quiet residential houses to the west and north. Between 1903 and 1910, the western boundary of the Negro district moved six or seven blocks from Argyle Avenue to Gilmore Street in the 15th and 16th Wards.⁴⁸ To the north, the black population in the 14th Ward continued to grow. By 1910, 8,392 Negroes resided there, the second highest number. Negroes were distributed fairly evenly over the remainder of the city, excepting five wards where their numbers were negligible.⁴⁹

Expansion of the Negro district to the west and north was not without incident. White residents struggled against the "black sea" for years.⁵⁰ For example, a protest convinced the School Board to reverse

43. *Id.* at 16.

44. *Id.* at 18.

45. CHILDREN'S BUREAU STUDY, *supra* note 11, at 5.

46. W. Paul, *supra* note 4, at 391.

47. *Id.* at 392; *see also supra* text accompanying note 13.

48. *A Social Problem*, *supra* note 6, at 497; Hawkins, *supra* note 4, at 27.

49. CHILDREN'S BUREAU STUDY, *supra* note 11, at 5.

50. *A Social Problem*, *supra* note 6, at 498.

a decision converting a white school to a black one.⁵¹ Windows were broken and black tar was smeared on white marble steps.⁵² And when a black family moved into a house on Stricker Street they were attacked and the house was stoned.⁵³ But white terrorism was no match for the combined purchasing power of housing-hungry blacks. Money talked.

In their effort to move eastward, on the other hand, blacks had been unsuccessful. Druid Hill Avenue had remained the eastern boundary of the Negro district. In its 1600 block, residences of the "best" Negro families were directly across the street from Western High School, the "best" public girl's school — which was for whites only.⁵⁴ This barrier was reinforced by the affluence of the white neighborhood to the east. Eutaw Place was a broad, landscaped boulevard which had been designed to encourage residential development and to enhance property values in the vicinity. The plan was a success and the Eutaw Place neighborhood had become one of the most fashionable residential sections of Baltimore.⁵⁵ It had spread three blocks west of the boulevard itself with Druid Hill Avenue serving as its western boundary.

In the summer of 1910, George W.F. McMechen purchased a house at 1834 McCulloh Street. McMechen, a Yale law graduate and a practicing attorney, moved with his wife and children from his former house on Prestman Street, ten blocks to the west. McMechen was celebrating his professional success by moving into one of the most fashionable neighborhoods in Baltimore.⁵⁶ The move is memorable only because McMechen and his family were black. He had crossed the eastern boundary of the Negro district and purchased a house in the Eutaw Place neighborhood.

This violation of the color line provoked considerable agitation. Police were necessary to protect the McMechen house from young ruffians.⁵⁷ A mass meeting was held on July 5, 1910 and a petition prepared requesting that the Mayor and City Council: "take some measures to restrain the colored people from locating in a white community, and proscribe a limit beyond which it shall be unlawful for

51. *Id.*

52. Hawkins, *supra* note 4, at 27.

53. Transcript of interview with Dr. J.O. Spencer, R.G. 102, Box 121, National Archives (June 20, 1916).

54. S. OLSON, *supra* note 8, at 277.

55. J. DORSEY & J. DILTS, A GUIDE TO BALTIMORE ARCHITECTURE 187 (2d ed. 1981).

56. George W.F. McMechen, Md. Vertical File, Enoch Pratt Free Library; Hawkins, *supra* note 4, at 28.

57. Hawkins, *supra* note 4, at 28.

them to go”⁵⁸ The petitioners were concerned that Negroes intended to “plant themselves on Madison Street and Eutaw Place” as well.⁵⁹

Milton Dashiell was George W.F. McMechen’s brother at the Maryland Bar. Dashiell had been born in Dorchester County, Maryland in 1859; he attended St. John’s College in Annapolis, read law, and was admitted to practice in 1882. For a time, he practiced in Kentucky before he returned to his home state.⁶⁰ According to all reports, his career was undistinguished; he was a “briefless lawyer.”⁶¹

Dashiell resided on the southern fringe of the 11th Ward at 1110 McCulloh Street. The neighborhood was all white, but it was located just a block away from the Biddle Alley district, the infamous “lung block.” The “Negro invasion” of Eutaw Place inspired Dashiell to draft a law designed to prevent blacks from further encroaching on white neighborhoods. The bill was introduced into the City Council by Councilman Samuel L. West.⁶²

The bill took a long and tedious course. Public hearings were held at which the primary spokesmen against the ordinance were Negroes. Both branches of the City Council finally passed the ordinance, by a strict party vote — all Democrats voted in favor and all Republicans voted against.⁶³

The *Baltimore Sun* summarized the ordinance’s provisions as follows:

That no negro can move into a block in which more than half of the residents are white.

That no white person can move into a block in which more than half of the residents are colored.

That a violator of the law is punishable by a fine of not more than \$100 or imprisonment of from 30 days to 1 year, or both.

That existing conditions shall not be disturbed. No white person will be compelled to move away from his house because the block in which he lives has more negroes than whites, and no negro can be forced to move from his house if his block has more whites than negroes.

That no section of the city is exempted from the conditions of the

58. Petition to the Mayor and City Council, Baltimore City Archives, Mahool Files, File 406 (July 5, 1910).

59. *Id.*

60. *Baltimore Sun*, December 18, 1910, at 7, col. 6.

61. Hawkins, *supra* note 4, at 28.

62. *Baltimore Sun*, December 20, 1910, at 7, col. 7.

63. *Id.*

ordinance. It applies to every house.⁶⁴

In addition, the ordinance prohibited negroes from using residences on white blocks as a place of public assembly and vice versa.⁶⁵

On December 17, 1910, City Solicitor Edgar Allan Poe issued an opinion declaring the ordinance constitutional. He opined that the ordinance was within the state's police power "because of irrefutable facts, well-known conditions, inherent personal characteristics and ineradicable traits of character peculiar [sic] to the races, close association on a footing of absolute equality is utterly impossible between them, wherever negroes exist in large numbers in a white community, and invariably leads to irritation, friction, disorder and strife."⁶⁶ He determined that this ordinance was permissible under the fourteenth amendment to the U.S. Constitution because "a State has the right under its police power to require the separation of the two races whenever the failure to so separate then [sic] injuriously affects the good order and welfare of the community."⁶⁷

Mayor J. Barry Mahool signed the ordinance into law on December 20, 1910. The occasion was a ceremonial one. Two pens were used in the signing — one was given to Dashiell and one to Councilman West. The pen was a "favor" which Dashiell announced he would "treasure . . . from every point of view."⁶⁸ West got into the spirit of the occasion by announcing that he would have a copy of the ordinance framed and hung in his home.⁶⁹

It is easy to understand racist Dashiell's pride of authorship, but from today's perspective, Mayor Mahool's support is enigmatic. This experiment in apartheid is at best a sell-out to Baltimore plutocracy, and at worst an invidious denial of housing to Baltimore's blacks. Yet Mahool, who is remembered as a champion of social justice,⁷⁰ eagerly signed the ordinance without apology.

At first it seems anomalous that a member in good standing of the Progressive Movement — which advocated the elimination of slums as the breeding ground for crime, disease, and poverty — would enthusiastically support a law designed to worsen Negro housing conditions. But in a broader historic context it makes sense. Progressive reformers

64. *Id.* at cols. 5-6.

65. Baltimore, Md., Ordinance 610 (Dec. 19, 1910).

66. Memo from Edgar Allan Poe to Mayor J. Barry Mahool, Baltimore City Archives, Mahool Files, File 451 (Dec. 17, 1910).

67. *Id.*

68. Letter from Milton Dashiell to Mayor J. Barry Mahool, Baltimore City Archives, Mahool Files, File 406 (Nov. 26, 1910).

69. Baltimore Sun, December 20, 1910, at 7, col. 7.

70. J. CROOKS, *supra* note 7, at 102.

like Mahool found themselves faced with social chaos. Their efforts had failed to cure the fundamental ills — illiteracy, morbidity, crime, and poverty — from which the urbanizing, industrializing society suffered. Thus defeated, they resolved to treat two of the most bothersome and visible symptoms of society's ailments: riots and epidemic disease.⁷¹

Because the riots were often racial in nature, and because the black slums were viewed as the source of contagion, the reformers focused on the black neighborhoods. The ultimate goals of the Progressives, however, were not directed to improving the living conditions of black slum families. Progressive reformers were not concerned with the plight of Negroes; as C. Van Woodward observed: "The blind spot in the . . . progressive record . . . was the Negro . . ." ⁷² "Victim blaming" was much less costly than attempting to solve the underlying social problems.⁷³

Social Darwinism provided the ideological basis for this view, and some reformers used it to posit a basic inferiority of black people.⁷⁴ For example, the campaign rhetoric of the Disenfranchisement Movement (a nationwide effort to deny Negroes of their right to vote) depicted blacks as slovenly and corrupt brutes.⁷⁵ Turn-of-the-century census data supported the view that Negroes were a dying race: blacks showed a higher mortality rate and a lower birth rate than whites.⁷⁶

Viewed in this context, Mahool's support for the first segregation ordinance is less surprising. Similarly, the *Baltimore Sun*, which by 1911 had good credentials as a reform newspaper, editorially apologized for the segregation ordinance as follows: "Baltimore has to deal with the condition as it exists and not with the abstract theories of theorists and those who are not personally concerned."⁷⁷

Many Progressives thus agreed that poor blacks should be quarantined in isolated slums in order to reduce the incidents of civil disturbance, to prevent the spread of communicable disease into the nearby white neighborhoods, and to protect property values among the white majority. Historian George M. Frederickson tied these strands together:

71. R. LUBOVE, *supra* note 41, at 11-12.

72. C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 91 (3d rev. ed. 1974).

73. J. LEVIN & W. LEVIN, *THE FUNCTIONS OF DISCRIMINATION AND PREJUDICE* 41-42 (2d ed. 1982).

74. Schmidt, *Principle and Prejudice: The Supreme Court and Race in the Progressive Era. Part 1: The Heyday of Jim Crow* 82 *COLUM. L. REV.* 444, 453-54 (1982).

75. M. CALLCOTT, *THE NEGRO IN MARYLAND POLITICS 1870-1912* 101-38 (1969).

76. Schmidt, *supra* note 74, at 453.

77. *Baltimore Sun*, April 7, 1911, at 6, col. 3.

If blacks were a degenerating race with no future, the problem ceased to be one of how to prepare them for citizenship or even how to make them more productive and useful members of the community. The new prognosis pointed rather to the need to segregate or quarantine a race liable to be a source of contamination and social danger to the white community, as it sank even deeper into the slough of disease, vice and criminality.⁷⁸

The first segregation ordinance proved to be politically and legally deficient. It was a foregone conclusion that the ordinance would be vehemently opposed by the Negro community. But blacks were not alone in opposing the ordinance: they were joined in opposition by real estate brokers and white owners of property located in mixed neighborhoods. Objections arose before the ordinance was signed. For example, on December 10, 1910, a broker wrote Mayor Mahool expressing concern that the ordinance would preclude rental to Negroes in a block in which Negroes already lived but were in the minority. The writer said:

the property owners of this city who will lose thousands of dollars through the too strict terms of this ordinance, rely upon you to carefully raise such facts as are here presented before signing this ordinance, a serious effect of which will probably not be fully realized until some of us come face-to-face with some of our property vacant and in a mixed neighborhood.⁷⁹

On December 12, 1910, a property owner less gramatically, but more poignantly, made the same point:

I am also a property owner and I have a house i [sic] south Baltimore where one of the owners have rented the next two houses from mine to colored. My tenants are white. They tell me in spring they will move, now that this ordinance becomes a law and if white people don't move in my house I will have to pay expenses on property that does not pay my [sic] in return. I approve in keeping colored people to themselves and this ordinance as it is will work a hardship on property owners all over the city. I would approve of a law where there is no colored people in the block.⁸⁰

Hence, the ordinance was politically flawed in that it worked at cross purposes to the economic well-being of a significant white constituency.

78. G. FREDERICKSON, *THE BLACK IMAGE IN THE WHITE MIND: THE DEBATE ON AFRO-AMERICAN CHARACTER AND DESTINY 1817-1914* 255 (1971).

79. Letter to J. Barry Mahool, Baltimore City Archives, Mahool Files, File 451 (Dec. 10, 1910).

80. Letter from Charles S. Otto to J. Barry Mahool, Baltimore City Archives, Mahool Files, File 406 (Jan. 16, 1911).

In addition to its political flaws, literal application of the ordinance produced some unlikely incidents. One story is told of a white person who temporarily vacated his house while it was under repair, thereby making the block fifty-one percent black. Return to his own home would have made him a criminal.⁸¹ In the same vein, Daniel W. Shaw, a black Methodist preacher, wrote Mayor Mahool and asked the following question:

In reference to the operation of the . . . ordinance, I beg to ask: when colored Methodist preachers living in parsonages owned by their churches, located in blocks where the majority of the residences are white, are ordered by their bishops to move, and a new colored preacher is sent to take the charge, will the . . . ordinance prohibit the new colored preacher from moving into the house owned by his church located in the white block.⁸²

Mayor Mahool referred the question to Milton Dashiell, who righteously replied:

I am only able to say that the colored parson, considered to represent the most enlightened of the negro race, should have established his home in the midst of his race, and that he should have encouraged others of his race to do likewise The inquiry seems to me like a hypothetical one, and can be answered by the parson, unaided, save by the ordinance itself.⁸³

A legal challenge to the ordinance was not long in coming. In less than a month, twenty-six criminal cases were sent to court. In the first one to go to trial, Judges Harland and Duffy of the Supreme Bench of Baltimore, without going into the merits of the legislation, declared the ordinance ineffective and void because it was "inaccurately drawn."⁸⁴ There is no published report of their opinion, but presumably the inaccuracy was in the ordinance's title. Section 221 of the City Charter of Baltimore provided: "Every ordinance enacted by the City shall embrace but one subject which shall be *described* in its title"⁸⁵ The title of the first segregation ordinance was nondescriptive; it grandly declared that the provision was "[a]n ordinance for preserving order, securing property values and promoting the great interests and insuring

81. Hawkins, *supra* note 4, at 29.

82. Letter from Daniel W. Shaw to J. Barry Mahool, Baltimore City Archives, Mahool Files, File 406 (Jan. 16, 1911).

83. Letter from Milton Dashiell to Daniel W. Shaw, Baltimore City Archives, Mahool Files, File 406 (Jan. 17, 1911).

84. Hawkins, *supra* note 4, at 29.

85. BALTIMORE CITY CHARTER § 221 (1898) (emphasis added).

the good government of Baltimore City,"⁸⁶ without mentioning racial segregation of housing.

Partisans of the segregation ordinance were undaunted. Indeed, they viewed the court's decision as an encouragement "to push further their war into Africa."⁸⁷ Councilman West decided to drop lawyer Dashiell, however, and to seek the assistance of more eminent counsel. He turned to William L. Marbury, whose credentials as a segregationist were well established by his role in the Disenfranchisement Movement.⁸⁸

The second segregation ordinance corrected the legal flaws of the first. Further, in a major substantive change, Marbury drafted the ordinance to be inapplicable to "mixed" blocks. All black blocks were to remain all black, all white blocks were to remain all white, and integrated blocks were left to pursue their market destiny. Marbury designed this change to quiet opposition from white landowners and real estate professionals. He also changed the ordinance's style, replacing Dashiell's reasonably straightforward prose with redundant legalese. For example, the most important sentence in the second ordinance read as follows:

[I]t shall be unlawful for any colored person to move into or use as a residence or place of abode any house, building or structure, situated or located on any block . . . the houses, buildings and structures on which block, so far as the same are occupied or used as residences or places of abode, in whole or in part, shall be occupied or used as residences or places of abode by white persons

. . . .⁸⁹

Not everyone was pleased with the second segregation ordinance. A delegation of black property owners urged its veto,⁹⁰ and some brokers reiterated their concern that the ordinance would depress real estate values in mixed neighborhoods. Milton Dashiell wrote to Mayor Mahool from his sick room both to reaffirm his authorship of "the plan of segregation" and to object to some features of the Marbury version which were too liberal in permitting mixed occupancy.⁹¹ These objections notwithstanding, Mahool signed the ordinance on April 7, 1911.⁹²

86. Baltimore, Md., Ordinance 610 (Dec. 19, 1910).

87. Hawkins, *supra* note 4, at 29.

88. *Id.* at 30.

89. Baltimore, Md., Ordinance 654, § 2 (April 7, 1911).

90. Baltimore Sun, April 8, 1911, at 9, col. 5.

91. Letter from Milton Dashiell to J. Barry Mahool, Baltimore City Archives, Mahool Files, File 475 (April 6, 1911).

92. Baltimore, Md., Ordinance 654 (Apr. 7, 1911).

Approximately a month after its adoption, the City Council repealed the second segregation ordinance and reenacted it with amendments. The text of the ordinance remained essentially the same; the purpose of the reenactment was to cure a technical flaw in enactment. The Council added two new provisions: neither black schools nor black churches could be established in white blocks and vice versa.⁹³ Mahool signed the third segregation ordinance on May 15, 1911, as his last official act. The next day he was replaced in office by regular Democrat James H. Preston, who had defeated Mahool's bid for reelection in the 1911 Democratic primary.

A challenge to Baltimore's third segregation ordinance was two years in coming. A criminal indictment was filed against John E. Gurry, "a colored person," charging that he had unlawfully moved into a residence on an all-white block. Gurry was defended in the Criminal Court of Baltimore City by W. Ashbie Hawkins,⁹⁴ a Negro, who was to play an active role in legally attacking the segregation ordinances.⁹⁵

At trial the court dismissed the indictment against Gurry, finding the ordinance nonsensical. Judge Elliott focused on sections 1 and 2 of the ordinance. According to his interpretation, section 1 excluded whites from blocks "in whole or in part" black, and section 2 excluded blacks from blocks "in whole or in part" white.⁹⁶ Hence, he concluded, the ordinance would depopulate mixed blocks by precluding whites and blacks alike from moving there. Therefore, the ordinance must fail because of its own unreasonableness.⁹⁷

The ordinance, of course, could be interpreted another way. Lawyer Marbury intended for it to exclude blacks from blocks "in whole or in part" residential, where all the residences are occupied by whites. The Maryland Court of Appeals rescued Marbury from his circumlocution by adopting this interpretation, which permits either blacks or whites to move onto mixed blocks.⁹⁸ The Maryland high court had a substantive quarrel with the ordinance, however. It found the ordinance unconstitutional because it took away the vested rights of the

93. Baltimore, Md., Ordinance 692 (May 15, 1911).

94. *State v. Gurry*, 3 Baltimore City Ct. 262 (1913).

95. Hawkins came to Baltimore to attend Morgan College. Thereafter he attended the University of Maryland Law School for a year before he transferred to Howard University Law School. He later was associated in the practice of law with George W.F. McMechen, who had broken the color line on McCulloh Street. See W. Ashbie Hawkins, *Baltimore Newspost*, April 7, 1941 (Biography File, Enoch Pratt Free Library); 7 MORGAN ST. C. BULL. 24, May 1941. For a contemporaneous account of these events, see Hawkins, *supra* note 4, at 28-30.

96. Baltimore, Md., Ordinance 692 (May 15, 1911).

97. *State v. Gurry*, 3 Baltimore City Ct. at 263.

98. *State v. Gurry*, 121 Md. 534, 539, 88 A. 546, 548 (1913).

owner of a dwelling to move into it if he happened to be white and the block was all black, or vice versa.⁹⁹

There was no lapse in coverage, however: a week before the Maryland Court of Appeals struck down the third segregation ordinance, the Baltimore City Council had enacted a fourth. The fourth segregation ordinance cured the constitutional infirmity of its predecessor by making its application prospective only; it provided "that nothing herein contained shall be construed or operate to prevent any person, who at the date of the passage of this ordinance, shall have acquired a legal right to occupy, as a residence any building or portion thereof . . . from exercising such legal right . . ." ¹⁰⁰

In the short run the segregation ordinances served the goal of their proponents — the protection of Eutaw Place from a "Negro Invasion"¹⁰¹ — while presenting blacks with few problems. To the contrary, blacks at first were able to buy or to rent at distress prices as whites fled mixed blocks.¹⁰² The ordinances failed to accomplish the more long term goals of the white majority, however, and eventually worked a positive hardship on blacks, the effects of which are apparent even today.

The ordinances did not succeed in protecting against crime and contagion, the more general objectives of the white middle class. For example, the ordinances had targeted the 17th Ward for degradation. Its streets and alleys were "honeycombed with saloons and gambling dens, as well as numerous billiard halls, dance halls and several brothels."¹⁰³ In the making was what modern sociologist Kenneth Clark was to call the "pathologies of the ghetto."¹⁰⁴ Blacks formed a self-help organization, the Baltimore Colored Law and Order League, to pressure municipal government to enforce liquor laws, but to little avail.¹⁰⁵ Rowdiness and theft increased in frequency and spread to surrounding

99. *Id.* at 550-51, 88 A. at 553 (holding that the state legislature had never authorized the city to pass such an unreasonable ordinance).

100. Baltimore, Md. Ordinance 339 (Sept. 25, 1913).

101. A black real estate dealer described this development as follows:

The crowding among the colored people, especially in the 17th Ward is greatly on the increase They have been moving rapidly into the 17th Ward and packing it. Normally they would have spread over all of McCulloh Streets [sic] and the larger streets in this Ward and the district to the northwest. This movement has been prevented by the artificial pressure of the Segregation Act.

Transcript of interview with William L. Fitzgerald, R.G. 102, Box 121, National Archives (June 28, 1916).

102. Hawkins, *supra* note 4, at 30.

103. W. Paul, *supra* note 4, at 393.

104. K. CLARK, DARK GHETTO DILEMMAS OF SOCIAL POWER 12-20 (1965).

105. W. Paul, *supra* note 4, at 397.

areas, both as a product of and a reaction against this environment.¹⁰⁶ Thus, creation of a black ghetto increased crime in the contiguous white neighborhoods.

Housing segregation also failed to protect the white community from contagion. The mortality rate among Negroes from tuberculosis remained 260% higher than that of whites and the death rate from all diseases ninety-six percent higher than that of whites.¹⁰⁷ H.L. Mencken directly commented on the segregation ordinance's negative effect on public health:

But who ever heard of a plan for decent housing for negroes in Baltimore? Most of them live in filthy hovels, crowded together in the winter, breeding diseases in themselves and constantly communicating these diseases to the rest of us. The persons who govern us have never thought to look to this matter. When the darky tries to move out of his sty and into human habitation a policeman now stops him. The law practically insists that he keep on incubating typhoid and tuberculosis — that he keep these infections alive . . . for the delight and benefit of the whole town.¹⁰⁸

Even Mayor James H. Preston, who after replacing Mayor Mahool became a great proponent of the segregation ordinance, conceded that it failed to protect the public health of the white middle-class:

[T]he evil effects of the unhealthy state of the negro race are not confined within their own numbers. With little if any knowledge of their home surrounding we call upon these people to serve us in our households, prepare our food, tend our children and perform countless other services wherein personal contact is a matter of course. Regardless of our efforts to maintain [a] sanitary and healthful environment for ourselves and families the insidious influence of slum conditions is carried into our very midst to defile and destroy.¹⁰⁹

In short, the ordinances failed to segregate germs in the 17th Ward.

The ordinances also were disastrous for Baltimore's black community because their effect was to limit further the overall housing supply available to an increasing black population. An economist asked to guess the likely impact of a law which limited the supply of housing for which there was an increasing demand would make two prophecies —

106. *Id.*

107. Preston, *What Can Be Done to Improve the Living Conditions of Baltimore's Negro Population?* 5 BALTIMORE MUN. J. 1, 1 (March 16, 1917).

108. H.L. Mencken, 1 *The Free Lance* 137 (1911-1915) (unpublished collection found in Mencken Room, Enoch Pratt Free Library, Baltimore).

109. Preston, *supra* note 107, at 1.

the price of Negro housing would increase, and the quality of Negro housing would decline. Both came to pass. Although the ordinances at first made some housing available to blacks as whites abandoned their homes on mixed blocks, only a limited number of mixed blocks existed and the pressure for additional Negro housing was unrelenting. The Negro population in Baltimore was 85,000 in 1910. It had been increasing by approximately 600 per year during the previous decade,¹¹⁰ yet the additional housing available to blacks was being exhausted. A growing population was "bottled-up" into a limited number of houses.¹¹¹

On the surface the segregation ordinances do not seem designed to shrink black housing opportunities. Indeed, the ordinances permitted the creation of new all-black subdivisions. But circumstances conspired to foreclose this possibility. New housing was financed largely by building and loan associations created by ethnic groups and labor unions that refused to extend credit to Negroes. By 1900 there was only one black building and loan association.¹¹² Even if a black family could find the capital, few blacks could afford new housing. According to census figures from 1910, which show home ownership among Negroes in seventy-three southern cities with a black population of 5,000 or over, Baltimore ranked seventy-second. Only 933 of the city's 85,000 blacks owned their homes.¹¹³ Finally, even if a group of middle-class blacks could be found who could afford new housing on the outskirts of town, they were likely to receive a hostile reception from white neighbors.¹¹⁴

For example, a move of Morgan College to the northeast suburbs encountered great opposition. Residents resisted the plan to create a community of "scientifically sanitary" housing for the black faculty; the president of the local community association declared his preference to live near a community of "ignorant and tractable negroes" rather than one of "educated negroes."¹¹⁵ During this period "Patapsco Park" was advertised in the *Afro-American* newspaper as "the only suburb strictly for colored people."¹¹⁶ But for most blacks, second-

110. CHILDREN'S BUREAU STUDY, *supra* note 11, at 2-3.

111. Transcript of interview with S.C. Fernandez, R.G. 102, Box 121, National Archives (June 19, 1916).

112. S. OLSON, *supra* note 8, at 234-35.

113. CHILDREN'S BUREAU STUDY, *supra* note 11, at 33.

114. Transcript of interview with Dr. J.O. Spencer, R.G. 102, Box 121, National Archives (June 20, 1916).

115. S. OLSON, *supra* note 8, at 278; transcript of interview with William L. Fitzgerald, R.G. 102, Box 121, National Archives (June 28, 1916).

116. CHILDREN'S BUREAU STUDY, *supra* note 11, at 33.

hand houses were the only option.

Increased demand and a limited supply naturally results in rising prices. By 1916 various observers noted, and three different studies confirmed,¹¹⁷ that blacks were forced to pay more than whites for housing. As blacks dispossessed whites on mixed blocks, the rents went up. Dr. J.O. Spencer, President of Morgan College, tells of a case where a black family moved into a house that previously had been rented to whites for \$27.50 per month and were charged \$32.00.¹¹⁸

As the price went up, the quality of housing in black neighborhoods was inexorably declining. In a market characterized by increased demand, a limited housing stock, and rising cost, Negroes had no choice but to crowd together in order to make the rent.¹¹⁹ Even the small alley houses were turned into tenements for three or more families. In 1913, the director of the National League on Urban Conditions Among Negroes described what was happening in the picturesque slang of that period: "For the poorer and less thrifty element . . . loose building regulations allow greedy landlords to profit by 'gun-barrel' shanties and cottages, by 'arks' of which the typical pigeon-house would be a construction model, and by small houses crowded upon the same lot."¹²⁰

Baltimore's middle-class black neighborhood also was under siege. Established in the 14th Ward along upper Druid Hill Avenue, it had been "mixed" when the segregation ordinances went into effect. A quiet residential neighborhood with stately three-story town houses, W.E.B. DuBois described Druid Hill Avenue as "one of the best colored streets in America."¹²¹ Its middle-class inhabitants had the same aspirations as their white neighbors — they sought to distance themselves from the crime, contagion, and squalor of the slums. But the segregation ordinances fated the neighborhood eventually to become a slum. Speculators outbid homeowners for the houses and converted them into tenements for three or more families. A familiar pattern repeated itself: As the lower-class population grew, entrepreneurs established saloons, gambling places, and brothels. The black bourgeoisie resisted through such self-help organizations as the Baltimore Colored Law and Order League, but it was at best a holding action.¹²²

117. See S. OLSON, *supra* note 8, at 277, and authorities cited therein.

118. Transcript of interview with Dr. J.O. Spencer, R.G. 102, Box 121 National Archives (June 20, 1916).

119. CHILDREN'S BUREAU STUDY, *supra* note 11, at 32; Transcript of interview with William L. Fitzgerald, R.G. 102, Box 121, National Archives (June 28, 1916).

120. Haynes, *supra* note 5, at 111.

121. S. OLSON, *supra* note 8, at 277.

122. W. Paul, *supra* note 4, at 397.

Notwithstanding this negative assessment of the effects of the segregation ordinances, they were popular with white citizenry. Dollars dictated this positive response. In a letter to Mayor Preston in 1916, Reverend W.J. McMillan, the pastor of the Maryland Avenue Presbyterian Church, expressed the views of the white majority:

Personally I believe that the segregation matter is one of the greatest problems of the modern municipality. The proximity of the negro race to good property means its undoing. This is the fact with which we must deal rather than concerning ourselves with the theories that race prejudice ought not to be. Personally I believe that the property of the church which I serve has been injured \$5,000 in the last twelve months by the negroes' getting the block on Oak Street between 24th and 25th Streets.¹²³

Mayor Preston summed up the official attitude in a letter to the President of the New York Title and Mortgage Company: "Our segregation ordinance is acting admirably in Baltimore, in operation and effect — and has very great influence on property values and on the condition of both races."¹²⁴

The "Baltimore idea" for promoting residential segregation was quickly adopted in other southern and border cities. In 1912 Mooresville and Winston-Salem, North Carolina enacted segregation ordinances. One year later Asheville, North Carolina; Richmond, Norfolk, and Roanoke, Virginia; Atlanta, Georgia; Madisonville, Kentucky; and Greenville, South Carolina passed similar legislation. And in 1914 Louisville, Kentucky; Birmingham, Alabama; and St. Louis, Missouri followed suit.¹²⁵

Indeed the success of residential segregation ordinances was the catalyst for the emergence of the National Association for the Advancement of Colored People as an effective counterforce to segregation. The NAACP had been founded in 1909.¹²⁶ But its membership and political power grew as it established local branches to press court challenges to the segregation ordinances.¹²⁷ The success of these challenges varied: The North Carolina Supreme Court had struck down an ordinance as a violation of property rights;¹²⁸ Georgia's Supreme Court

123. Letter from the Rev. W.J. McMillan to Mayor Preston, Baltimore City Archives, Preston Files, File 506 (Jan. 18, 1916).

124. Letter from Mayor Preston, Baltimore City Archives, Preston Files, File 506 (Mar. 17, 1917).

125. Schmidt, *supra* note 74, at 499-500.

126. Rice, *supra* note 2, at 182.

127. Schmidt, *supra* note 74, at 503.

128. *State v. Darnell*, 166 N.C. 300, 81 S.E. 338 (1914); (city charter authorized aldermen to enact any ordinance they deem proper for city's good order and general welfare so long as

vacillated, first rejecting,¹²⁹ then approving,¹³⁰ different versions of Atlanta's ordinance; and the Virginia Court of Appeals sustained its ordinances with some qualifications.¹³¹

As we have already seen, the Baltimore branch of the NAACP, under the leadership of W. Ashbie Hawkins, had successfully attacked an early version of Baltimore's segregation ordinance.¹³² Hawkins' plan to take a constitutional challenge to the United States Supreme Court had been postponed by this success. But in 1915, Hawkins again started up the judicial ladder when he challenged, before the Maryland Court of Appeals, the constitutionality of Thomas S. Jackson's criminal conviction for violation of Baltimore's fourth segregation ordinance.¹³³ At the request of Mayor Preston, William L. Marbury filed a brief in support of the city's position. Preston remained apprehensive; he wrote to Marbury: "In this brief there is a page and a half of argument. It seems to me that this is too important a matter to be 'kissed down the wind' so lightly."¹³⁴ Mayor Preston went on to request his City Solicitor, S.S. Field, to file an additional brief in support of the constitutionality of the segregation ordinance.

The Maryland Court of Appeals postponed its decision in the case pending a decision by the United States Supreme Court in a closely related case. In 1914, the City of Louisville, Kentucky had passed a segregation ordinance of its own. The text of the Louisville ordinance closely resembled the text of the first segregation ordinance which Milton Dashiell had drafted for Baltimore. The ordinance made it unlawful for blacks to reside in residential blocks more than fifty percent white and vice versa.¹³⁵

The Supreme Court case was a product of the efforts of the NAACP's national headquarters. The NAACP had formed a Louis-

the ordinance did not contravene state constitution and its laws, and did not authorize enactment of racial segregation ordinance).

129. *Carey v. City of Atlanta*, 143 Ga. 192, 84 S.E. 456 (1915); (city's racial segregation ordinance violated due process clauses of both the state constitution and the fourteenth amendment to the federal constitution, because it denied a person's inherent right to acquire, to enjoy, and to dispose of property).

130. *Harden v. City of Atlanta*, 147 Ga. 248, 93 S.E. 401 (1917); (city's racial segregation ordinance, by its terms applicable only prospectively, did not violate due process).

131. *Hopkins v. City of Richmond*, 117 Va. 692, 86 S.E. 139 (1915); (enactment of racial segregation ordinance is within the city's police power to promote peace and good order, and ordinance is constitutional insofar as it is applied only to persons whose property rights accrued after its enactment).

132. See *supra* text accompanying notes 94-95.

133. *Jackson v. State*, 132 Md. 311, 103 A. 910 (1918).

134. Letter from Mayor Preston to William L. Marbury (Nov. 29, 1915), Baltimore City Archives, Preston Files, File 506.

135. *Buchanan v. Warley*, 245 U.S. 60 (1917).

ville branch and had recruited prominent local counsel, but orchestrated the litigation from its New York office. With the assistance of the local black leaders and white members of the Louisville Real Estate Exchange, it created a test case in the context least favorable to the ordinance's unconstitutionality.¹³⁶

The scenario had William Warley, president of the Louisville branch of the NAACP, contract to buy a corner lot from Charles Buchanan, a white real estate agent. The lot in question was in a "white block" but was surrounded by black residences. The contract provided that Warley was not required to perform "unless I have the right under the laws of the State of Kentucky and the City of Louisville to occupy said property as a residence."¹³⁷ Buchanan sought specific performance of the contract in the state courts and Warley set up the ordinance as his excuse for not performing. The state courts held the Louisville ordinance constitutional and therefore a complete defense to Warley.¹³⁸

Hence the case of *Buchanan v. Warley* had been staged to work a role reversal. Buchanan, the plaintiff challenging the constitutionality of the ordinance, was a white real estate agent. Warley, the defendant defending the ordinance, was the black president of the Louisville branch of the NAACP. The explanation of this litigation strategy is straightforward. At the turn of the twentieth century the U.S. Supreme Court had come to accept Jim Crow laws: in *Plessy v. Ferguson*,¹³⁹ decided in 1896, the Court found state law requiring racial segregation on railroads consistent with the fourteenth amendment; and in *Berea College v. Kentucky*,¹⁴⁰ decided in 1908, it found that the state of Kentucky had the power to require racial segregation in a private college. But during this same era the Court had actively embraced the credo of "economic laissez-faire." In 1905, in *Lochner v. New York*,¹⁴¹ the Court constitutionally protected freedom of contract in the baking business from maximum-hour legislation. In *Buchanan*, the NAACP hoped to convince the Court to protect Buchanan's constitutional right to engage in the real estate business without meddlesome interference from the City of Louisville (and thereby incidentally to protect blacks from residential housing segregation).

136. See generally Rice, *supra* note 2, at 183-88 (a detailed discussion of *Buchanan*'s historical background). See also Schmidt, *supra* note 74, at 498 (summary of the decision).

137. *Buchanan v. Warley*, 245 U.S. at 70 (quoting contract).

138. Schmidt, *supra* note 74, at 498.

139. 163 U.S. 537 (1896).

140. 211 U.S. 45 (1908).

141. 198 U.S. 45 (1905).

Buchanan v. Warley was first argued before the Supreme Court in April of 1916 before seven justices. The Court then ordered reargument before a full bench. The significance of the case was well recognized; twelve amicus briefs were filed on both sides. From Baltimore, City Solicitor Field filed a brief defending the ordinance, while W. Ashbie Hawkins (who had hoped himself to argue a case challenging the Baltimore ordinance before the Supreme Court) filed a brief on behalf of the Baltimore NAACP.¹⁴² The case was reargued and the Court finally rendered a decision in November of 1917.

The NAACP's litigation strategy almost back-fired. Justice Holmes prepared a dissent in which he argued that the case should be dismissed because of its collusive nature. Holmes said: "The contract sounds so very like a wager upon the constitutionality of the ordinance that I cannot but feel a doubt whether the suit should be entertained without some evidence that this is not a manufactured case."¹⁴³ But Holmes decided not to deliver his dissent and a unanimous Court held the Louisville housing segregation ordinance unconstitutional.¹⁴⁴

The NAACP's tactic had worked. Justice Day's opinion emphasized Buchanan's property right to dispose of his lot as he saw fit.¹⁴⁵ Also in the opinion, however, were expressions of concern for the rights of Negroes. Day found "the difficult problem arising from a feeling of race hostility" an insufficient basis for depriving citizens of their constitutional rights to acquire and to use property without state legislation discriminating against them on the sole basis of color.¹⁴⁶ From today's perspective the opinion seems analytically imprecise. The Court intertwined Buchanan's right to substantive due process with Warley's right to equal protection.¹⁴⁷ But the opinion served perfectly the NAACP's purpose. The Supreme Court was afforded a mechanism through which it could squelch residential segregation laws without overruling recent precedents that had sustained racial segregation in transportation and schools.

Nationwide, the black press exulted in the *Buchanan* decision.¹⁴⁸ The Baltimore *Afro-American* editorialized: "The joy in Bunkville [sic] when home run Casey came to bat in the final inning of a famous game with the bases loaded is nothing compared with the rejoicing in Balti-

142. *Buchanan v. Warley*, 245 U.S. at 68-69.

143. Schmidt, *supra* note 74, at 512.

144. *Buchanan v. Warley*, 245 U.S. 60 (1917).

145. *Id.* at 79.

146. *Id.* at 80-82.

147. Schmidt, *supra* note 74, at 517-23.

148. *Id.* at 508.

more, Richmond, St. Louis and other Southern towns over the outcome of the Louisville Segregation decision."¹⁴⁹ Law reviews from all parts of the country generally were critical of the decision. The critics were unable to see how segregation could be reasonable in transportation and education but not in housing.¹⁵⁰ An interested observer, Baltimore City Solicitor Field, lamented in the *Virginia Law Review* the "modern tendency to look upon property rights as more sacred than personal rights"¹⁵¹ (i.e., the *property right* of blacks to acquire and use property free from racial discrimination versus the *personal right* of whites to discriminate on the basis of race).

The Maryland Court of Appeals responded promptly. Just three months after the Supreme Court decision, it rendered an opinion in *Jackson v. State*, striking down the Baltimore segregation ordinance on the grounds that it and the Louisville ordinance were "essentially alike in theory and purpose."¹⁵² The court concluded: "It is thus definitely settled, upon highest authority, that the right of the individual citizen to acquire or use property can not be validly restricted, by State or municipality, on the ground of his color."¹⁵³

Black Baltimoreans seized the opportunity to renew their movement into white neighborhoods. Two black families moved into the 1100 block of Bolton Street, one of the oldest middle-class residential sections of the city; another family moved into the 1200 block of McCulloh Street.¹⁵⁴ White Baltimoreans responded with petulance and frustration. Miss Alice J. Reilly asked, "What is the use of trying to beautify a city or put in any civic improvements if Negroes are to acquire all of the property?"¹⁵⁵

Mayor Preston was undaunted. He sought the advice of Dr. A.K. Warner of Chicago, where plans for keeping Negroes out of white territory were in effect.¹⁵⁶ In addition to pursuing the Chicago Plan, Mayor Preston conceived of another "radical measure" to complement his plan for segregation. He proposed "the elimination of certain congested sections, populated by Negroes, in which has been noted a very high

149. Baltimore Afro-American, November 10, 1917, *quoted in Rice, supra* note 2, at 194.

150. Schmidt, *supra* note 74, at 509-11; Rice, *supra* note 2, at 195-96.

151. Field, *The Constitutionality of Segregation Ordinances*, 5 VA. L. REV. 81, 84 (1917).

152. 132 Md. at 312, 103 A. at 910.

153. *Id.* at 316, 103 A. at 911.

154. Undated newspaper clippings, Baltimore City Archives, Preston Files, File 506.

155. Letter from Alice J. Reilly to James H. Preston, Baltimore City Archives, Preston Files, File 506.

156. Letter from Real Estate Bd. to James H. Preston (July 20, 1918), Baltimore City Archives, Preston Files, File 106.

percentage of deaths from . . . communicable diseases.”¹⁵⁷

It is doubtful that Preston appreciated the irony of his requesting advice from Dr. Warner. Chicago was then undergoing widespread rioting in response to Negro movement into white neighborhoods. Before it was over there would be fifty-eight bomb explosions, two Negroes dead, many people of both races injured, and property damage in excess of \$100,000.¹⁵⁸ Chicago was a peculiar place to seek advice for one whose avowed purpose was improving race relations.

Nevertheless, Preston determined to implement the Chicago Plan. It was a simple one. The plan was “to forc[e] out the blacks already residing in [white] neighborhoods and [to ensure] that no others entered. The activities of [the white property owners’ association] consisted both of mass meetings to arouse the neighborhood residents against the blacks and the publication in white journals of scathing denunciations of the race.”¹⁵⁹ The auspices of the Real Estate Board of Baltimore, the City Building Inspector, and the Health Department also would be employed to discourage “block busting.” In essence, Preston proposed to replace de jure segregation with de facto segregation, enforced by a conspiracy in restraint of rental or sale to Negroes.

The plan for segregation passed its first test. In August of 1918 Mayor Preston became aware that Louis Buckner, owner of the house at 649 Lee Street, proposed to rent to Negroes the second floor flat of his three-story house in an all-white neighborhood. When asked if he did not feel he was being inconsiderate to others in the block, Buckner responded: “They do not pay my way, I must look out for myself.”¹⁶⁰ He was visited by the Secretary of the Real Estate Board of Baltimore and at the Mayor’s behest, by the Inspector of Buildings for Baltimore. Buckner was counselled against the rental and that if the rental went through he would be cited for any code violations. Finally, at a meeting between Buckner and the Real Estate Board, Buckner assured the Board’s members that he would not rent to blacks.¹⁶¹

Slum clearance—Mayor Preston’s own “radical measure”—was not a new idea. Years before, the Baltimore & Ohio Railroad had used its condemnation powers to dispossess one hundred black families

157. *Need for Better Housing for Negroes Revealed in Tuberculosis Statistics*, 5 BALTIMORE MUN. J. 5 (Aug. 10, 1917).

158. CHICAGO COMM’N ON RACE RELATIONS, *THE NEGRO IN CHICAGO* 122-23 (1922), quoted in Johnson, *supra* note 2, at 178.

159. W. TUTTLE, JR., *RACE RIOT—CHICAGO IN THE RED SUMMER OF 1919* 171 (1972).

160. Letter from Real Estate Bd. of Baltimore to James H. Preston (Aug. 16, 1918), Baltimore City Archives, Preston Files, File 106.

161. Letter from Real Estate Bd. of Baltimore to James H. Preston (Aug. 22, 1918), Baltimore City Archives, Preston Files, File 106.

when expanding its railyard in South Baltimore.¹⁶² But Preston proposed to use the strategy in a more calculated fashion. The Commission on Housing Conditions would convert "the worst infected blocks" into parks.¹⁶³

The first public slum clearance project provided for "the parking of St. Paul and Courtland Streets" between Lexington and Centre Streets. The city began in 1914 to buy up properties that were used as third-rate rooming houses and cheap flats.¹⁶⁴ Eventually, in 1917, proceeds from a harbor loan were used to hire landscape architect Thomas Hastings, who replaced Courtland Street with a sunken garden and widened St. Paul Street. The project was intended to improve the traffic flow, as well as to eliminate a downtown slum.¹⁶⁵ When completed in 1919, some Baltimoreans called it Preston's Folly, others called it Preston Gardens.¹⁶⁶

Hence, in the aftermath of *Buchanan v. Warley*, the Baltimore plan for segregation had come to consist of two discrete strategies — clearance and containment. Clearance was used to remove Negro slums from areas where they were not wanted; containment was used to prevent the spread of black residential districts.

The plan for segregation went into operation at a tumultuous time. Following World War I, Baltimore was undergoing dramatic growth. In 1918 the city had added a new annex which tripled its area. Between 1920 and 1930 the city's population rose from 730,000 to one million. In that period, housing starts peaked at 6,000 per year, most of them in the new area.

Along with this growth came a redefinition of "race spaces." Negroes continued to pour into Baltimore from the countryside, but restrictive immigration laws had stopped the influx of Europeans. Population in the new annex doubled.¹⁶⁷ Although the white middle class was in the vanguard of the exodus to the suburbs, by 1930 they had been joined by the foreign-born. The Negro population in the old city increased from fifteen percent to thirty percent, while white population in the old city decreased by one-half.¹⁶⁸ Baltimore was becoming a black center surrounded by a white ring. The racial Social

162. See *supra* note 10.

163. See *Need for Better Housing for Negroes Revealed in Tuberculosis Statistics*, 5 BALTIMORE MUN. J. 5 (Aug. 10, 1917).

164. Kelly, "The Birth of Preston Gardens," *Baltimore Sun*, May 9, 1954 (found in vertical file Parks, Baltimore, Preston Gardens, in Enoch Pratt Free Library).

165. *The Parking of St. Paul and Courtland Streets*, 7 BALTIMORE MUN. J. 5 (May 23, 1919); see also 5 BALTIMORE MUN. J. 4 (Oct. 5, 1917).

166. Kelly, *supra* note 164.

167. S. OLSON, *supra* note 8, at 302-03.

168. *Id.* at 324-25.

Darwinists who had been instrumental in proposing residential segregation had assumed that Negroes would constitute a declining percentage of the population.¹⁶⁹ In the old Baltimore City the opposite was proving to be the case.

The exodus of whites to the new annex ameliorated crowding in black housing. Most families lived in a separate house with less than one person per room.¹⁷⁰ In the short run the problem was quality, not quantity. A 1933 study found that Baltimore's "blighted" areas — areas in which the physical condition of dwellings is below the standard for rehabilitation, and with substantial health and sanitary problems— were predominantly populated by blacks.¹⁷¹ These districts received few municipal services. Garbage and refuse went uncollected. Alleys were infested with rats. The sewer system had been completed in 1914, but many houses in the 17th Ward were still not connected; it is said that building inspectors were bribed.¹⁷² When toilets were installed, in some small houses there was so little space they were placed next to the front door.¹⁷³ The vast majority of the Negro population continued to live under unsanitary conditions, to infect one another, and to spread communicable diseases to the broader community.

It was in this setting that the city undertook to clear "pest holes." One such effort was the construction of a Negro school on one-half of the Biddle Alley district — the old "lung block." The black community objected that because substitute housing was not provided, such projects merely removed poor blacks from one slum to another.¹⁷⁴

Although improved public health continued to be used as a justification for slum clearance projects, this justification was not taken too seriously. Knowledgeable observers recognized that clearance projects merely crowded the displaced population into other blighted areas. A 1934 study prepared for Mayor Howard W. Jackson provided a more candid rationalization: blighted black areas close to the downtown commercial district and white neighborhoods yield declining tax reserves and are a nuisance. Therefore, the public interest would be served by their replacement with white housing or industry.¹⁷⁵

169. *See supra* text accompanying notes 74-76.

170. S. OLSON, *supra* note 8, at 325-26.

171. IRA DE A. REID, SUMMARY REPORT: THE NEGRO COMMUNITY OF BALTIMORE 27-28 (1934).

172. Interview with Mrs. Eugene R. Smith, instructor at Morgan College, R.G. 102, Box 121, National Archives (June 20, 1916).

173. *Id.*

174. S. OLSON, *supra* note 8, at 326.

175. W.W. EMMART, REPORT ON HOUSING AND COMMERCIAL CONDITIONS IN BALTIMORE, CONSTITUTING A STUDY PREPARED FOR MAYOR HOWARD W. JACKSON (1934).

Another study, prepared under the auspices of the Joint Committee on Housing created by the State Advisory Board of the Federal Emergency Administration of Public Works, considered the feasibility of the rehabilitation for six particular blighted areas.¹⁷⁶ The planners selected these six areas because they were close to better areas, served by an adequate transportation system, and would contribute to the cost of existing streets, schools, sewers, and utilities.¹⁷⁷ The study recommended restoration and modernization for white habitation of three of the areas, even though all six were primarily populated by blacks.¹⁷⁸ In two areas found suitable for black housing, the buildings had decayed "beyond the point of even low level Negro occupancy,"¹⁷⁹ the sites had "no other value except for Negro residence and never will have,"¹⁸⁰ and were "certainly only usable for Negro habitation unless commerce and industry can absorb it, which seems doubtful"¹⁸¹ The study was criticized by an Urban League analyst as promoting "newer, bigger and better slums."¹⁸² In any case, the removal of blacks from areas where they proved inconvenient or expensive to the white majority had become part of the plan for segregation.

Containment was the other strategy. We have already discussed how, when de jure segregation failed, de facto segregation was implemented through a conspiracy which restrained residential sales or rentals to Negroes in white neighborhoods. Once the conspiracy was in place it grew and formalized. Originally it was enforced through peer pressure from neighbors, administrative harassment by housing and health inspectors, and by the suasion of the Baltimore Real Estate Board. Later this conspiracy came to be institutionalized.

In 1922 the National Association of Real Estate Brokers (NAREB), of which the Baltimore Board was a member, published a textbook entitled *Principles of Real Estate Practice*. The textbook emphasized that "the purchase of property by certain racial types is very likely to diminish the value of other property."¹⁸³ It was deemed unethical to sell blacks property that was located in white neighborhoods. As recently as 1950 the NAREB's code of ethics provided:

176. *Report of the Joint Committee on Housing in Baltimore*, THE BALTIMORE ENGINEER 6 (Jan. 1934).

177. *Id.* at 6-7.

178. *Id.* at 8-10.

179. *Id.* at 8.

180. *Id.*

181. *Id.* at 9.

182. Reid, *supra* note 171, at 32.

183. U.S. COMM'N ON CIVIL RIGHTS, UNDERSTANDING FAIR HOUSING 3 (Clearinghouse Pub. No. 42, 1973).

The realtor should not be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality or any individual whose presence will clearly be detrimental to property values in the neighborhood.¹⁸⁴

In the 1930's the new housing market was in Baltimore's annex where row houses were being built. These houses were sold to whites only. It would have been considered foolhardy to sell to blacks and whites in the same row. Some builders perpetuated this restriction by placing restrictive covenants in the deeds prohibiting resale to blacks.¹⁸⁵ The Maryland Court of Appeals upheld the enforcement of racial restrictions under the fourteenth amendment, because the discrimination was private rather than public.¹⁸⁶

Mortgage lenders joined in the conspiracy. Traditionally in Baltimore, most house purchases were financed by mutual savings and loan associations, which discriminated against blacks. Credit unions for ethnic and white church groups, and for work organizations (e.g., B&O), also excluded blacks from participating.¹⁸⁷ And when general banking institutions began to extend mortgage credit they "redlined" black and integrated neighborhoods as unstable and risky. Later, in the 1930's when the federal government became active in housing fields, it denied Federal Housing Administration support in neighborhoods with "inharmonious racial groups."¹⁸⁸

In Baltimore in 1934 the 3,800 middle-class black families who could afford to own a house were those most immediately affected by the conspiracy of containment. If they already owned a home it was likely to be in the upper Druid Hill Avenue district, which still was "the best that Negroes could get in the city proper."¹⁸⁹ Yet the neighborhood was in some respects unsatisfactory: it was noisy as a result of street cars, lacked recreational facilities, was removed from shopping facilities, and had areas of improper sanitation. Moreover, it was undergoing change. The neighborhood had been encroached upon by brothels and saloons. Landlords were outbidding individuals for some of its large houses with a view toward creation of tenements. Black homeowners attempting to escape these problems had no place to go.¹⁹⁰

Those Negroes attempting to buy their first house were similarly

184. *Id.*

185. S. OLSON, *supra* note 8, at 325.

186. *Meade v. Dennistone*, 173 Md. 295, 301, 196 A. 330, 333 (1938).

187. S. OLSON, *supra* note 8, at 325.

188. U.S. COMM'N ON CIVIL RIGHTS, UNDERSTANDING FAIR HOUSING 4-5 (Clearing-house Pub. No. 42, 1973).

189. Reid, *supra* note 171, at 33.

190. *Id.* at 33-34.

frustrated. The housing boom of the mid-20's had been for whites only. The economic depression had brought the housing industry to a standstill — during 1934 only 119 houses were built in Baltimore.¹⁹¹ The only recent development for blacks had been Morgan Park, for the faculty of Morgan College next to its new campus. Conventional financing likewise was nonexistent. One nonconventional response was known as the Homemakers' Building and Loan Association. It was a cooperative organized in the 1930's by the Interracial Commission with power to buy, sell, lease, manage, and build. It invested \$35,000 converting one house into modern apartments and selling other houses to stockholders before disappearing from the pages of history.¹⁹² But by-in-large, the plan for segregation denied the black bourgeoisie a spacious house on a quiet street.

Hence, once the plan for segregation was in effect, Baltimore's housing market had achieved a dynamic equilibrium of two markets — one white and the other black. "Respectable" real estate dealers and financing institutions were active only in the white market.¹⁹³ Baltimore was among the nation's leaders in white ownership. The black market (except for the 300 houses built in Morgan Park) was second-hand houses. Negro houses were in the older portion of the city in "blighted districts." The city from time to time demolished black slums if they became a nuisance. It proposed construction of public housing for the poor, but never carried through with the proposals.¹⁹⁴

Baltimore's housing market was to retain most of these characteristics for the next 30 years. But one inexorable force for change remained: between 1930 and 1960 Baltimore's black population grew from 142,000 to 326,000.¹⁹⁵ The market described above made no allowance for increasing the number of black housing units. This gap was widened by actions of the city government. Between 1930 and 1960 programs of school building, slum clearance, urban renewal, and expressway construction displaced large numbers of households.¹⁹⁶ Between 1951 and 1971 alone, 75,000 people were removed, and eighty to ninety percent of them were Negroes. During this same period the city had various public housing programs, but by 1976 only 15,000 public

191. S. OLSON, *supra* note 8, at 303.

192. Reid, *supra* note 171, at 34.

193. See S. OLSON, *supra* note 8, at 325.

194. *Id.* at 326.

195. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, ABSTRACT OF THE FIFTEENTH CENSUS OF THE UNITED STATES 104 (1933 ed. reprint 1976); BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CENSUS OF POPULATION: 1960, PART 22, MARYLAND 178 (1961).

196. S. OLSON, *supra* note 8, at 377.

housing units were available.¹⁹⁷ Hence, the city exaggerated the shortage by demolishing many more houses than it created.

“Blockbusting” was the answer. Economists have commented upon the difficulty of enforcing multi-party agreements in restraint of trade. The problem is simple: “The temptation of members to cheat is strong . . . because the returns from cheating are substantial”¹⁹⁸ This certainly proved to be true in Baltimore’s housing industry. The treaty between white homeowners, the real estate industry, financiers, and the Federal Housing Administration had left unmet the demand for black housing. A house could be sold at a premium to a black buyer by a seller willing to violate the treaty. Moreover, this premium could be multiplied by real estate speculators who capitalized on the panic in white neighborhoods that had begun to change in racial make-up. Brokers bought whole blocks at a distress price from nervous white sellers, and sold at a premium to housing-hungry black buyers.¹⁹⁹

Later, speculators broadened their market. They used their credit to borrow money from financial institutions. Turned-over houses were then sold on easy terms to low-income, high-risk black buyers pursuant to “buy-like-rent” contracts. The sales were often illusory; foreclosure was the rule rather than the exception. The speculator would sell and resell the same house to a series of buyers. By this technique the blockbusters took a profit from the under-class as well as the middle-class Negroes. Blockbusting transferred tens of thousands of houses from the white market to the black market.²⁰⁰

Blockbusting poses an ethical enigma. Its practitioners were outlaws, violating the real estate industry’s code of ethics and cheating on the cartel between white homeowners, real estate dealers, mortgage lenders, city government, and the FHA, which restrained the sale or rental of housing to blacks in white neighborhoods. Speculators employed a psychology designed to scare white homeowners out of their accumulated equities. They sold to black purchasers for whatever the market would bear, sometimes exacting exorbitant profits. Conversely, its practitioners were providing housing opportunities otherwise unavailable to Negroes. And the “ethical” precept which they violated was part of a racist conspiracy. Speculators provided financing and housing when mortgage lenders and “ethical” real estate brokers re-

197. *Id.* at 53-54.

198. R. POSNER, *ECONOMIC ANALYSIS OF LAW* 115 (1972).

199. Douglas Connah, Jr., *Run Baby, Run: Study of Blockbusting in Baltimore* (Nov. 22, 1968) (unpublished manuscript).

200. *See* S. OLSON, *supra* note 8, at 378-79 (discussing career of Morris Goldseker).

fused to do so. The unsavory blockbuster or the respectable conspirators: Who is to blame?

Although apartheid, Baltimore style, was doomed to failure, the white body politic refused to accept defeat gracefully. It fought for the city's territory district-by-district, neighborhood-by-neighborhood, and block-by-block. In an effort to maintain de facto segregation in housing, it used the whole bag of tricks: Negro removal through slum clearance, public works projects, and urban renewal; restrictive covenants denying blacks access to "exclusive" white neighborhoods; refusal of financing for black or integrated housing; and professional sanctions against real estate brokers dealing with blacks in white neighborhoods. But unrelenting demographic forces were increasing the black population of Baltimore from fifteen to seventy percent. Over the long term the dwindling white majority lacked both the political and economic power to keep a restrictive cordon around the black community.

Once again it was the United States Supreme Court that cut the knot. In 1948 the Court took the first step in *Shelley v. Kraemer*.²⁰¹ It ruled that the legal enforcement of private, racially restrictive covenants was unconstitutional under the equal protection clause of the fourteenth amendment. The Court conceded that the amendment was directed only against state action and not private conduct, but found that state judicial enforcement of private agreements brought them within the amendment's purview.

Shelley was a setback for segregated housing, but for twenty years the conspirators fought on, using the other tools of de facto segregation — peer pressure, "redlining" of mortgages, and professional sanctions. Finally, in 1968, the Supreme Court decided in *Jones v. Mayer*²⁰² that the 1866 Civil Rights law passed pursuant to the thirteenth amendment bars all housing discrimination, private as well as public. This decision, taken along with the 1968 Federal Housing Law²⁰³ — which prohibited discriminatory practices by real estate brokers, builders, and lenders — dismantled the dual housing market. In Baltimore and in the other urban areas that share much of this housing history, the white market and the black market merged into one housing market.

Disappearance of the dual housing market does not mean that housing is desegregated, that racial discrimination has been eliminated, or that good housing is available for the poor. Residential housing in Baltimore remains by-in-large segregated. In part this segregation is a

201. 334 U.S. 1 (1948).

202. 392 U.S. 409 (1968).

203. Civil Rights Act of 1968, Title VIII, §§ 801-819, 42 U.S.C. §§ 3601-3619 (1976) (as amended).

result of preference: Blacks and whites alike may prefer to live in their old neighborhoods that developed in the days of de facto segregation. Segregation also results from economics: The median black family income is lower than that of whites, creating an economic barrier to entry into more affluent areas. But the notion that blacks need only a larger income to gain an equal choice of housing is inaccurate. Old practices die hard; muted voices of discrimination persist in the real estate and financing fields. Black buyers are steered to black neighborhoods, and mortgage money is more readily available to whites. Studies show that black families have less access to suburban housing than do white families of equivalent income.²⁰⁴

Moreover, the power of local governments to select the site for public projects may be used to perpetuate racial segregation. In the 1960's, expressways in Baltimore sought out the routes of least resistance — black ghettos. When the roads were built, displaced residents lacked reasonable relocation opportunities; when the roads were not built, whole neighborhoods, such as Rosemont, were left desolate and abandoned. In one instance the city took the houses in what had been a working-class black neighborhood, condemned them for a highway which was never built, and then created the fashionable Otterbein district for the affluent professionals returning to reside in the gentrified city. Class distinction, if not racial discrimination, influences the location of public projects.

Finally, elimination of the dual housing market has done little to improve the quality of housing available to low-income blacks. When Baltimore's plan for segregation was first conceived, the building industry was providing low-income housing. Commercial builders catered to the dollar-a-day man. Tenements and flats were profitable speculative ventures.²⁰⁵ Negroes were excluded from these buildings on racial grounds. Today the free market no longer produces low- and moderate-income housing. Increased costs of energy, financing, and construction price housing beyond the reach of the poor and near-poor. Public and federally subsidized housing partially fill the void. But Baltimore's 15,000 public units, along with the various federally subsidized units, fall far short of meeting the demand. And it is impossible to locate a new subsidized low-income housing project without encountering outraged community opposition. Thus most of Baltimore's poor (both black and white) continue to live under slum conditions.

204. U.S. COMM'N ON CIVIL RIGHTS, UNDERSTANDING FAIR HOUSING 15 (Clearinghouse No. 42, 1973).

205. See *supra* note 41 and accompanying text.

CONCLUSION

Historian Samuel P. Hays has said: "Local history if purely factual and descriptive, advances knowledge only in a rudimentary fashion; but if local history can illuminate broad processes of social change concretely, then it adds a dimension unobtainable through an emphasis on top-level, nationwide personalities and events."²⁰⁶ The preceding account of the Baltimore segregation ordinances and their aftermath is intended to achieve the latter goal. Baltimore's experience with residential housing segregation is by no means unique; with only minor variation in scenario and cast it was played out in other cities that came of age in the early twentieth century.

If this article's objective is attained, the details of the Baltimore story will provide insight and lessons with broader implications. Indeed, several aspects of Baltimore's history of housing segregation challenge conventional explanations of not only housing segregation itself, but also, on a broader level, democracy, reform, and social change.

First, the facts and descriptions in this history call into question free-market economic analysis of the causes of racial segregation. Much of Baltimore's housing history follows the economist's script. Economic theory would have predicted the development of slums as a market response to the demand for inexpensive housing by a growing population of low-income city dwellers. Moreover, fear of crime and contagion predictably provided economic incentives for self-segregation by middle- and upper-income residents who responded with a willingness to pay a premium to locate in neighborhoods remote from slums. Finally, separation by income level naturally will tend to result in separation by race because blacks have lower average incomes than whites and spend less on housing.²⁰⁷

But some analyses go a step further and attempt to explain all residential segregation by race as individually motivated. For example, economist Richard Muth argues that segregation is the natural result of whites having a greater preference for segregation than blacks have for integration. To make his model work, Muth must assume that middle-class blacks are less averse to living in proximity to slums than middle-class whites;²⁰⁸ otherwise one would expect to find middle-class black families sprinkled throughout neighborhoods remote from slums. The details of this study belie his assumption. We have documented the

206. Hays, *Forward* to R. LUBOVE, *supra* note 41, at ix-x.

207. See R. MUTH, *URBAN ECONOMIC PROBLEMS* 86-110 (1975).

208. *Id.* at 87, 94-100.

efforts of the black bourgeoisie (e.g., George W.F. McMechen, the Morgan College faculty, the Baltimore Colored Law and Order League), to remove themselves from the vicinity of slums. In Baltimore, the aversion to crime and contagion knew no color line.

Muth also rejects the possibility that a conspiracy between home owners, real estate agents, mortgage lenders, and local government officials limited the availability of housing to blacks. The conspiracy argument cannot be taken "very seriously" he says, because each individual in the urban housing market would have a profit incentive not to join it: "[b]y not doing so he avoids his share of the costs of the conspiracy, but, having a negligible effect on the outcome, shares in its benefits."²⁰⁹ Notwithstanding Muth's rejection, our study shows that a dual housing market in fact was created. The white majority, first through the segregation ordinances and then through a publicly sponsored conspiracy, enforced racial segregation in the city. The shared incentives of the white majority (isolation of crime, quarantining of disease, and maintenance of property values at black-white boundaries) proved collectively powerful enough to support a loose treaty which stifled sales to blacks. This treaty was violated from time to time by outcast blockbusters willing to buy from white sellers and to sell to black buyers, but ironically these blockbusters became political partisans of the dual housing market because it afforded them an opportunity for profit-taking. Blockbusting vented the pressure and permitted the treaty to endure.

In rejecting the possibility of a conspiracy, Muth errs by assuming that behavior in the aggregate is nothing more than a summation of individual behaviors. Political economist Thomas C. Schelling provides a more sophisticated view in his book *Micromotives and Macrobehavior*.²¹⁰ Therein he opines that housing segregation is at once individually motivated, collectively enforced, and economically induced.²¹¹ Baltimore's history of residential segregation supports Schelling's thesis.

Second, the Baltimore segregation ordinances remind us of forgotten fears and false forecasts; they caution us of the perils of social planning. At the turn of the century the threat of contagion was a mortal concern. With the acceptance of the germ theory came the recognition

209. *Id.* at 96. Muth also thinks it problematic that racial segregation results in blacks paying markedly higher prices for housing of a given quality than do whites. But his questions are based on the assumption of a single housing market. Actually, Baltimore had a dual housing market in which a growing black population was crowded into a more-or-less fixed number of houses. If Muth were to accept the findings of this history, his model would also predict higher housing prices for blacks. *Id.* at 100-02.

210. T. SCHELLING, *MICROMOTIVES AND MACROBEHAVIOR* 137-66 (1978).

211. *Id.* at 139.

that the poor were carriers of tuberculosis, typhus, and other diseases (all of which poor blacks had in disproportionate numbers). The simplest single explanation for segregation is that it represented an effort by the healthy white majority to quarantine the unhealthy black minority.

When the segregation ordinances were conceived, racial Social Darwinism was in vogue. This false teaching made the quarantine seem an effective strategy. Blacks were viewed as a degenerating race with a high mortality rate, low birth rate, and no future. Left to themselves, the Social Darwinists argued, Negroes would die out and with them the threat of epidemic disease. Advances in public health, however, not racial quarantines, finally reduced the threat of contagion. The black population, rather than disappearing, came to outnumber whites in Baltimore City. The social engineers who propounded the segregation ordinances were on the wrong track moving in the wrong direction.

A third lesson we have gained from Baltimore's history of housing segregation is that we must discount the righteous rhetoric of reform. Since the early twentieth century the Progressive Reform Movement has advocated government intervention into the residential housing market. But, if we observe closely the motives of the self-appointed promoters of the public interest, the reformers plainly were not interested in improving the living conditions of those who suffered most from the industrializing, urbanizing society. Instead, the reformers supported housing segregation as a means for preventing contagion and civil disturbance as it affected the white community. Similarly, these reformers earnestly proposed and implemented slum clearance without providing substitute housing opportunities for those whose homes were destroyed. In their efforts to impose a quarantine on disease and crime, and to protect the value of their property, reformers conveniently overlooked the devastating effect slum clearance and racial segregation had on black housing opportunities. Instead, reformers salved their guilt by "blaming the victims" for the slum conditions in which they lived.

Finally, this history of residential segregation in Baltimore documents the racist propensity of democratic rule. In an opinion sustaining the constitutionality of a law that required a majority vote at a local referendum as a prerequisite to the siting of a low-income housing project, U.S. Supreme Court Justice Hugo Black said: "Provisions for referendums demonstrate devotion to democracy, not to bias, discrimination, or prejudice."²¹² Our history suggests that Black's dichot-

212. *James v. Valtierra*, 402 U.S. 137, 141 (1971).

omy is a false one. In Baltimore's housing market, democracy and discrimination were inclusive, not exclusive. Democratic institutions conceived, promoted, and implemented racial prejudice and bias. Justice Black's idealized notion of democracy presupposes that "government of the people, by the people, and for the people" promotes the welfare of *all* the people. More often under democratic rule, a majority of the people form a coalition that takes political, economic, and social advantage of a minority of the people.

While Baltimore's democratic institutions were unrelenting in their anti-black bias, the United States Supreme Court thrice intervened to abrogate discrimination in the housing market. *Buchanan v. Warley*,²¹³ decided in 1917, held de jure segregation of residential housing unconstitutional; *Shelley v. Kraemer*²¹⁴ decided in 1948, held judicial enforcement of private racial restrictions unconstitutional; and, *Jones v. Mayer*,²¹⁵ decided in 1968, found all public and private racial discrimination in housing unlawful on statutory grounds. In a grand sense the Court was living up to its role as a protector of minorities from majority oppression. Mr. Justice Jackson best described this need: "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts."²¹⁶ But in historic and legal context each of these decisions was a surprise. *Buchanan v. Warley* was soundly criticized in the law reviews of its day for the cavalier manner in which the opinion ignored precedents that had upheld de jure segregation in education and transportation.²¹⁷ Leading legal scholars have questioned whether in *Shelley v. Kraemer* "the state may have properly been charged with discrimination when it does no more than give effect to an agreement that the individual involved is, by hypothesis, entirely free to make."²¹⁸ And in *Jones v. Mayer* the Court breathed a new meaning into a statutory provision that had been construed for 100 years as applicable only to governmental action.²¹⁹ Taken together,

213. 245 U.S. 60 (1917).

214. 334 U.S. 1 (1948).

215. 392 U.S. 409 (1968).

216. *Bd. of Educ. v. Barnette*, 319 U.S. 624, 639 (1943).

217. *See supra* text accompanying note 150.

218. Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1, 29 (1959).

219. *See A. BICKEL, THE LEAST DANGEROUS BRANCH* 148-56 (1962) (discussing the concept of desuetude as it relates to an analogous situation in *Poe v. Ullman*, 376 U.S. 497 (1961): "The question is whether a statute that has never been enforced and that has not been obeyed for three quarters of a century may suddenly be resurrected and applied." A. BICKEL at 148).

these three cases support the hypothesis that racial restrictions on land use are peculiarly vulnerable to judicial challenge.

A realpolitik explanation suggests itself. Land use and politics make strange bedfellows. For example, in *Construction Industry Association v. City of Petaluma*,²²⁰ a 1975 federal case, the NAACP found itself sleeping with the builders and the brokers in opposing land use controls that curtailed the growth rate of a California town. This *menage à trois* favored growth as a means not only of expanding housing opportunity, but also of turning a profit. The plaintiffs alleged that limitations on growth violated both "personal" and "property" rights under the fourteenth amendment.

In Baltimore's history of housing segregation, the line-up of parties was not quite so anomalous. Most respectable bankers, builders, and brokers acquiesced in the creation of a dual real estate market. But others—property owners and brokers who found their holdings devalued by the segregation laws—yelled loud and hard. Significantly, in *Buchanan v. Warley* the court struck down the segregation ordinance because it deprived landowners of their property without due process of law, while in *Shelley v. Kraemer* the Court voided restrictive covenants because they deprived blacks of equal protection of the law. Hence, the ultimate rejection of housing segregation in *Jones v. Mayer* afforded the Court an opportunity to strike a blow for the sanctity of property and against racial discrimination, with a single stroke.

220. 522 F.2d 897 (9th Cir. 1975), *cert. denied*, 424 U.S. 934 (1976).

