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avoidance of the constitutional question as a purely dilatory strategem, even though perhaps such action is dictated by compelling political considerations, does little for the Court's prestige. Both lawyer and layman are dissatisfied. It would seem that decision of an issue fairly presented is more consistent with the judicial function.

William V. Burrow.

Constitutional Law—Judicial Enforcement of Racial Restrictive Agreements

In the Racial Restrictive Agreement Cases\(^1\) the Supreme Court of the United States decided that state and federal courts cannot enforce by injunction agreements which exclude persons of a designated race or color\(^2\) from the ownership or occupancy of real property. Although the

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1. See, e.g., Editorial, N. Y. Times, June 26, 1948, p. 16, col. 2 ("Hard cases make bad law"); President Philip Murray in The CIO News, June 28, 1948, p. 3, col. 1 ("We regret that a majority of the Court did not deem it appropriate to rule at this time on the constitutionality of the entire political expenditures clause of the Act.").


1. Shelley v. Kraemer, 68 Sup. Ct. 836 (1948), reversing 355 Mo. 814, 193 S. W. 2d 679 (1946) (recorded agreement restricting property to use and occupancy for fifty years to Caucasians only; specifically excluding Negroes or Mongolians); McGhee v. Sipes, 68 Sup. Ct. 836 (1948), reversing 316 Mich. 614, 25 N. W. 2d 638 (1947) (agreement that property "... shall not be used or occupied by any person ..., except of the Caucasian race ...," to remain in effect until Jan. 1, 1960; 80% of designated property owners must sign); Hurd v. Hodge, Uricolo v. Same, 68 Sup. Ct. 847 (1948), reversing 162 F. 2d 233 (App. D. C. 1947) (covenant "... that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person, under penalty $2,000 ...," lien against the land ..." No time limit). Unanimous opinions written by Chief Justice Vinson. See Arthur Krock, The Chief Justice Closes a Loophole, N. Y. Times, May 4, 1948, p. 24, col. 5 ("In these two rulings Chief Justice Vinson revealed his legal and political trend of mind."). Six justices participated; Reed, Jackson and Rutledge took no part. "The assumption around the Court was that one or more of them might have owned or were interested in property restricted by covenants." N. Y. Times, May 4, 1948, p. 1, col. 6. The decision in Shelley v. Kraemer, supra, governed three orders handed down by the Court one week later, Trustees of Monroe Ave. Church of Christ v. Perkins, 68 Sup. Ct. 1069 (1) (1948), reversing 147 Ohio St. 537, 72 N. E. 2d 97 (1947); Amer v. Superior Court of Calif. in and for County of Los Angeles, 68 Sup. Ct. 1069 (2) (1948); Yin Kim v. Same, 68 Sup. Ct. 1069 (3) (1948) (remanded to Calif. court to consider its decision in light of Shelley v. Kraemer, supra.).

2. The Justice Department has said the rulings also apply to agreements directed toward religious groups, News and Observer (Raleigh, N. C.), May 5, 1948, p. 7, col. 3. No cases have been found with restrictions against Catholics, Protestants, Democrats, or Republicans; although one case suggested the dangers of residential segregation, it did not mention these groups, State v. Darnell, 166 N. C. 300, 302, 81 S. E. 338, 339 (1914) (validity of a municipal zoning ordinance). The four cases before the Supreme Court involved Negroes. Court noted that
agreements themselves are valid, enforcement by the state court denies the excluded person the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution. Enforcement by the federal court is an act of the state. The courts have uniformly rejected the contention. Note, State Action: There is nothing new in holding that judgment of the state court is an act of the state. E.g., cases collected in Shelley v. Kraemer, 68 Sup. Ct. 836, 843 n. 14 (1948). This is the first time the doctrine has been applied to enforcement of racial restrictive agreements, although such agreements have been attacked as invalid because they are alleged to be unlawful discrimination within prohibitions of the Federal Constitution. The courts have uniformly rejected the objection. Note, 162 A. L. R. 180, 184 (1946) (cases collected). The Supreme Court here calls the agreements valid, Shelley v. Kraemer, supra at 842. The only decision contrary is Gandofolo v. Hartman, 49 Fed. 181 (C. C. Calif. 1892). Corrigan v. Buckley, 271 U. S. 323 (1926) has been consistently cited to support both the validity and the enforceability of racial restrictive agreements. Cases collected in Mangum, op. cit., supra note 2, at 147; Rotaschaefer, Constitutional Law 526 (1939); Note, The Negro Citizen in the Supreme Court, 52 Harv. L. Rev. 823, 831 (1939). But the standing of Corrigan v. Buckley had been challenged, arguing that although it declared the agreements valid it decided nothing as to their enforceability in federal courts (the case arose in the District of Columbia), and most certainly nothing as to enforceability in state courts. See McGovney, supra note 2, at 15-25; Kahan, Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem, 12 U. of Chi. L. Rev. 198, 202 (1945); Taylor, The Racial Restrictive Covenant in the Light of the Equal Protection Clause, 14 Brooklyn L. Rev. 80, 88 (1947). But see 45 Mich. L. Rev. 733, 740 (1947). The racial restrictive agreements cases settle that issue in favor of Messrs. McGovney, Kahan, and Taylor, making a technically correct but unrealistic distinction of Corrigan v. Buckley. Frank, The United States Supreme Court: 1947-1948, 16 U. of Chi. L. Rev. 1, 23 (1948). See 46 Mich. L. Rev. 978 (1948) (arguing that the principal cases open up new fields of litigation); accord, Editorial, A Blow to Southern Customs, Charlotte (N. C.) News, May 5, 1948, p. 4-A, col. 1; Frank, supra at 23 ("Assume that the doctrine of the ... cases is that a state court may not by its decree achieve a discriminatory result which a state could not order by direct legislative action. It would then follow that whatever would be a violation of constitutional rights if done by statute is also a violation of constitutional rights if done by decree ... it can reasonably follow that the entire realm of common law interpretation by a state will be subject to federal judicial review. It is doubtful that the Court meant to go so far. ... ").

Equal Protection: Enforcement by state courts is a denial of the equal protection of the laws because "... freedom from discrimination by the States in the enjoyment of property rights was among the basic objectives sought to be effectuated by the framers of the Fourteenth Amendment. That such discrimination has occurred in these cases is clear. Because of the race or color of these petitioners they have been denied rights of ownership and occupancy enjoyed as a matter of course by other citizens of a different race or color." Shelley v. Kraemer, supra, at 845. On the question why racial segregation laws applicable to public education and public accommodations are constitutional, when racial
eral court is a violation of the Civil Rights Act of 1866 and is contrary to the public policy of the United States.5

Residential segregation based on race or color has developed with the extensive migration of Negroes from the southern to the northern and western regions of the nation,6 and with the pronounced shift

segregation is not permitted in residential areas by judicial enforcement of racial restrictive agreements or by state and municipal legislation [Buchanan v. Warley, 245 U. S. 60 (1917)] see McGovney, supra note 2, at 25-29; Taylor, supra, at 93; 46 Mich. L. Rev. 639 (1948); Prejudice and Property 45, 94 n. 26 (summary of brief for the United States as Amicus Curiae, Shelley v. Kraemer, Hurd v. Hodge, 68 Sup. Ct. 836, 847 (1948). In searching for an answer it was said, "The relevant point is that part [of the 14th Amendment] which says 'No State shall make or enforce any law...'. If the Court hews to the line of the 14th Amendment, it will inevitably follow that there can no longer be any State laws or enforcement of laws against Negroes'...participating in the community life on the basis of full social equality. Which is to say, in fact and in short, to subject the long standing customs of the South and the relations of both races in the South to a distortion which would crack both wide open.... We are very much afraid that the Court's decision confronts the people of the South, both white and colored, with the most critical questions." Editorial, A Blow to Southern Customs, supra. The decisions have been acclaimed as a "blow to segregation" by the National Association for the Advancement of Colored People, News and Observer (Raleigh, N. C.), May 4, 1948, p. 13, col. 3; and by other groups. N. Y. Times, May 4, 1948, p. 2, col. 3. This effect was recognized by Noel Yancey, N. C. Segregation Laws Under Attack, Charlotte (N. C.) News, May 5, 1948, p. 12-A, col. 1 ("...another segregation practice lost its props this week.").

4 14 Stat. 27 (1866), 8 U. S. C. §42 (1940), "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, hold, and convey real and personal property."

6 Enforcement of the agreements by a federal court would be contrary to the public policy of the United States because "We cannot presume that the public policy of the United States manifests a lesser concern for the protection of such basic rights against discriminatory action of federal courts than against such action taken by the courts of the States." Hurd v. Hodge, 68 Sup. Ct. 847, at 853 (1948). No court in the United States, with the possible exception of a Federal Circuit Court in California in the Gandolfo case, supra note 3, has held that racial restrictive agreements are void because contrary to the public policy of the United States. The Supreme Court has consistently refused to consider the argument. See Cornish v. O'Donoghue, 30 F. 2d 983 (App. D. C. 1929), cert. denied, 279 U. S. 871 (1929). The same argument was presented in the Racial Restrictive Agreement Cases, in the brief for the United States as Amicus Curiae, Prejudice and Property, op. cit. supra note 3, at 68-74. Compare Re Drummond Wren [1945] 4 D. L. R. 674 (Ont. H. C.), 59 Harv. L. Rev. 803 (1946) (using a worldwide concept of public policy to overcome local prejudices) with Re Noble and Wolfe [1948] O. R. 579 (restrictive agreement against Jews and Negroes, etc., not void as being contrary to public policy. "...Courts must not 'roam unchecked in the field occupied by that unruly horse, public policy.'").

In 1940 74.4% of all non-whites lived in the Southern States. By 1947 this had been reduced to 63.5%. In 1940 about 10 million Negroes lived in the South; in 1947 about 9 1/2 million lived there—a loss of 500,000 in seven years. Current Population Reports, Bureau of the Census, Series P-20, No. 9, Jan. 19, 1948. During the same period the Negro population in the San Francisco Bay Area increased 227%, with an estimated 64,000 Negroes living there in 1947. The Negro Handbook 27 (1946-1947). During the years 1935-1940 North Carolina suffered a net migration loss of 5,000 whites and 10,000 non-whites. Color and Sex of Migrants, Internal Migration 1935-1940, Special Reports, Bureau of the Census, Table 9, p. 19, Sixteenth Census of the United States; 1940. From 1940 to 1947 net migration loss of North Carolina was 400,000. Current Population Reports, Bureau of the Census, Series P-25, No. 2, Table 2, p. 6, Aug. 9, 1948.
among Negroes from the rural to the urban areas in the South. Fear of economic loss and racial prejudice caused the inhabitants of white neighborhoods to seek lawful means to prevent the invasion of their residential areas by Negroes.

Racial segregation ordinances were adopted in a number of cities, largely in the South;10 but were declared unconstitutional by the Supreme Court of the United States in 1917.31 Thus, the racial restrictive

7 Migration of non-whites within the South is not as extensive as non-white migration outside the area. Rapid urbanization of the Negro in the South is deterred by (1) lack of economic opportunity in industrial jobs, coupled with housing shortages, and (2) increasing opportunities in agriculture caused by the large white urbanization. Current Population Reports, Bureau of the Census, Series P-20, No. 14, April 15, 1948; Farms of Non-White Farm Operators, etc., Bureau of the Census, Series NA No. 14, March 4, 1948. North Carolina’s non-white farmers increased from 60,000 in 1940 to 74,000 in 1945; the value of buildings and land increased 67% during same period, or from $113,000,000 to $189,000,000. Ibid. Even in rural areas "... there is residential segregation, but it does not affect the housing conditions of Negroes as much as their prospects as farmers. ... In general only ‘acceptable’ Negroes are allowed to buy land, and there is great reluctance toward selling the more desirable property to any Negro." Sternen, The Negro’s Share 200 n. 11 (1943).

8 Invasion of white neighborhoods by Negroes is alleged to cause immediate depreciation in property values. Investigation of this allegation establishes the view that if the depreciation is immediate as it respects the white owners, it is also temporary. Kahen, supra note 3, at 202 n. 20. “Sacrifice sales” by the white owner may work for the benefit of the Negro, Sternen, op. cit. supra note 7, at 209; or may have the opposite result, Mangum, op. cit. supra note 2, at 139; U. S. News & World Report, May 14, 1948, p. 23, col. 3. Nevertheless, “Rightly or wrongly, the Negro has always been regarded as a menace to real estate values,” Sternen, op. cit. supra note 7, at 314; 2 Simes, Future Interests §459 (p. 301) (1936). See Brief for Appellants, p. 11, Vernon v. R. J. Reynolds Realty Co., 226 N. C. 58, 36 S. E. 2d 710 (1945) (“A large area of valuable real property in Winston-Salem is under the blight of a covenant that restricts against its ownership or occupancy by negroes. Because the area is surrounded by extensive areas exclusively occupied by negroes, every part of the restricted area is valueless except for use and occupancy by negroes.”) [Emphasis supplied.]

9 Mangum, op. cit. supra note 2, at 138 (aversion of white people toward living in close proximity to Negroes); 2 Simes, Future Interests 460 (1936) (there is a strong desire to prevent the inroads of members of certain races in particular residential areas); Sternen, op. cit. supra note 7, at 201 n. 12, concerning poll taken by Fortune Magazine where from 77% to 87% of the informants in various sections of the country were in favor of residential segregation of Negroes, based either on legal provisions or on social pressure—only 10% to 19% were against racial residential segregation; Kahen, supra note 3, at 202; 46 MICH. L. REV. 654, 661 (1948) (“... the courts seem to feel that the element of prejudice predominates.”); Sternen, id. at 202 (It should be noted “... that housing segregation, unlike other segregated practices, is as prevalent in northern communities having a heavy Negro population as in the South. Northern communities which boast of the fact that they have no legal segregation actually may have at least partial segregation in regard to schools, hospitals, and other similar institutions as a consequence of their housing segregation.”). The current housing shortage has made the problem acute, Taylor, supra note 3, at 83.

10 The evolution of the racial restrictive zoning legislation is traced in: Johnson, Patterns of Negro Segregation 173-176 (1943); Sternen, op. cit. supra note 7, at 206-209; probably the most thorough discussion can be found in Mangum, op. cit. supra note 2, at 138-147.

agreement which had been developing as a subsidiary legal device was selected as best suited for carrying out racial residential segregation.

The state and federal courts generally held such agreements valid and enforceable. In some jurisdictions a distinction was made between restrictions against the conveyance of the legal title to and restrictions against the use or occupancy by a member of the excluded class. Constitutional questions were usually dismissed with a state-

Court declared it unconstitutional in Clinard v. Winston-Salem, 217 N. C. 119, 6 S. E. 2d 867 (1940). This was Winston's second attempt. In 1912 the Board of Aldermen of Winston, N. C. (now Winston-Salem), adopted a racial segregation ordinance. The North Carolina Supreme Court declared it void because the general public policy of the state was to discourage emigration of Negro labor, and the ordinance would have the opposite result. State v. Darnell, 166 N. C. 300, 81 S. E. 338 (1914).

In form the agreements restrict the conveyance of the legal title to a member of the excluded group, or the use or occupancy by such a person, or both ownership and occupancy. The restriction is found in deeds or written agreements. It may be cast as a covenant or a condition subsequent, or a combination of the two. Some agreements are limited in time, others are not. For classes of person excluded see note 2 supra. The principal cases are illustrative of the various types of agreements, see note 1 supra; Note, 162 A. L. R. 180 (1946) (cases collected on various types and the distinctions indulged in by the courts); PREJUDICE AND PROPERTY, op. cit. supra note 3, at 11.

E.g., illustrative uses of the restrictive agreements prior to Buchanan v. Warley, 245 U. S. 60 (1917): Hurd v. Hodge, 68 Sup. Ct. 847 (1948) (deed executed in 1906 in the District of Columbia); in St. Louis, Mo., home of petitioner in Shelley v. Kraemer, 68 Sup. Ct. 836 (1948), the use of the agreements began about 1910, LONG AND JOHNSON, PEOPLE vs. PROPERTY 12 (1947). The agreement in Shelley v. Kraemer, supra, at 838 was signed Feb. 16, 1911; Koehler v. Rowland, 275 Mo. 573, 205 S. W. 217 (1918) (deed executed in 1905); widespread use of the racial restrictive agreement did not develop until the 1920's, LONG AND JOHNSON, op. cit. supra, at 13. Taylor, supra note 3, at 83 ("Today [1947] the restrictive covenant has flourished like the greenbay tree in a soil made fertile by fear of economic loss, irrational race hatred and the current housing shortage.").

E.g., cases collected in Notes, 162 A. L. R. 180 (1946) supplementing 114 A. L. R. 1237 (138), 66 A. L. R. 531 (1930) and 9 A. L. R. 120 (1920); McGovney, supra note 2, at 5; Kahan, supra note 3, at 198; Taylor, supra note 3, at 80; PREJUDICE AND PROPERTY, op. cit. supra note 3; Brief of the American Congress as Amicus Curiae, Shelley v. Kraemer, Hurd v. Hodge, 68 Sup. Ct. 836, 847 (1948).

Holding a restriction against sale or lease illegal: Foster v. Stewart, 134 Cal. App. 482, 25 P. 2d 497 (1933); Porter v. Barrett, 233 Mich. 373, 266 N. W. 532 (1925); White v. White, 108 W. Va. 128, 150 S. E. 531 (1929); Williams v. Commercial Land Co., 34 Ohio L. Rep. 559 (1929). But California, Michigan and West Virginia hold that a restriction against use or occupancy is a legal restraint: Stone v. Jones, 66 Cal. App. 2d 264, 152 P. 2d 19 (1944); Shulte v. Starks, 238 Mich. 102, 213 N. W. 102 (1927); White v. White, supra (dictum). Such a distinction has been criticized by McGovney, supra note 2, at 8 n. 17, where he contends that covenants against ownership or occupancy are technical restraints on alienation, and that the courts must determine that the restraint is so substantial as to be an illegal restraint. He criticizes Professors Tiffany and Simes for accepting the fallacious assumption that technically the covenant is not a restraint on alienation, see 5 TIFFANY, REAL PROPERTY §1345 (3d ed. 1939); 2 SIMES, FUTURE INTERESTS §460 (1936). North Carolina does not make such a distinction. Phillips v. Wearn, 226 N. C. 290, 295, 37 S. E. 2d 895, 897 (1946) ("Therefore, not by virtue of a general plan or scheme, but by the agreement, the parties hereto have created a restrictive covenant [against ownership or occupancy by Negroes] which is valid and enforceable between the parties."); other North Carolina cases on racial restrictive agreements: Vernon v. R. J.
ment that the prohibitions of the Fifth and Fourteenth Amendments refer only to federal and state action and not to agreements of private individuals. And so they do, but it is the court enforcement of the private agreements that is now banned as government action.

The creators of the unconstitutional racial zoning ordinances and the unenforceable racial restrictive agreements are today searching for new plans that will keep certain neighborhoods "exclusive and restricted."

The Supreme Court's "valid but not enforceable" doctrine does not settle the questions of court enforcement of cash deposits or bonds given to secure the performance of agreements not to transfer the restricted property to one of the excluded persons. It is certain that

Reynolds Realty Co., 226 N. C. 58, 36 S. E. 2d 710, (1946); Eason v. Buffaloe, 198 N. C. 520, 152 S. E. 496 (1930). That such agreements are, however, common in North Carolina is public knowledge. News and Observer (Raleigh, N. C.), May 4, 1948, p. 1, col. 6. Such agreements are frequently found in the North Carolina reports in cases on covenants in general.

The courts missed the point that it is not the validity of the agreement but the enforcement by state or federal court that is questioned. See note 3 supra.

See notes 10 and 11, supra.

18 U. S. News and World Report, May 14, 1948, p. 22, col. 1 et seq. It is interesting to read what real estate men in Greensboro, N. C., had to say about the decisions in the principal cases: "Little Effect Expected Here—Real Estate Agents Comment on Ruling. Most of the real estate dealers said present practices and customs in regard to white and Negro property sales will continue. . . . "For two or three years now we have been seeing a section in South Greensboro gradually purchased by Negroes. It was inevitable because the section was adjacent to Negro residential areas," a spokesman for the realtors said. . . ."

Evidently questioned as to whether or not there would be a mass movement of Negroes into white areas anytime soon, one answered, "It's a long way from us."

Another replied, "We're not likely to be bothered by requests from Negroes to buy property in sections like, say, Irving Park or Starmont. In the first place property owners hardly would sell to Negroes, and in the second place, the Negroes couldn't afford to buy such property." [Italics added.] Asked, perhaps, if he expected "trouble," one agent stated, "About the only trouble we could expect is not from present residents but from some out-of-town person who would try to make a 'test' case of the matter." Greensboro (N. C.) Daily News, May 4, 1948, p. 1, col. 4 and p. 3, col. 1.

While "valid but unenforceable" agreements are known in other fields of the law, e.g., in cases affected by Statutes of Fraud and Statutes of Limitations, they are believed to be distinguishable from the principal cases because of the objectives of their unenforceability and the lack of conflict between the agreements and social policy.

"Racial restrictive agreements still can be written into deeds, and signers can be required to deposit cash or give bond, as a guarantee that they will abide by its terms. . . . Thus, if the restrictive covenant is violated by one of the signers, he may be penalized through forfeiture of the cash he deposited when he signed the covenant. Whether the courts will uphold such a forfeiture, however, still is considered an open question. One other weakness of this plan, from a practical standpoint, is that many householders do not have money to deposit for such a purpose. Even where deposits are made, some signer may find it profitable to forfeit the cash he has put up, in order to take advantage of an exceptional offer from a member of a racial group barred under the covenant's terms." U. S. News & World Report, May 14, 1948, p. 22, col. 2. In Hurd v. Hodge, 68 Sup. Ct. 847 (1948) the covenant provided for forfeiture of $2,000 penalty on breach. The Supreme Court did not consider allowing recovery of the penalty. The case was reversed and not remanded. See 46 Mich. L. Rev. 978, 979 (1948).
courts will not be permitted to enjoin a breach of the racial restrictive agreement or to cancel a conveyance to a member of the excluded class, but is it possible to award damages for the breach of such an agreement?

Perhaps some state courts, in attempts indirectly to enforce racial restrictive agreements, will hold that a determinable fee, where the special limitation provides for the exclusion of unwanted groups, can be distinguished from the type of agreements in the principal cases.

"Enforcement of the restriction is usually by a neighboring landowner who is a party to such a recorded agreement, or who may assert an interest in the restriction under the rules normally governing covenants running with the land. Almost invariably the relief requested is the removal of the excluded occupant, or injunction against his entry, and, where sales restrictions have been violated, cancellation of the offending deeds." PREJUDICE AND PROPERTY, op. cit. supra note 3, at 12. Enforcement has been refused on equitable grounds when infiltration of the Negroes causes the landowners to seek equitable relief from a "white elephant." McGovney, supra note 2, at 12-14; Note, 162 A. L. R. 180, 187 (1946). In Vernon v. R. J. Reynolds Realty Co., 226 N. C. 58, 36 S. E. 2d 710 (1946) an action was brought for equitable relief against the "burden" of restrictive covenants in deeds to property in "Skyland," a residential section in Winston-Salem, N. C. Within recent years the whole surrounding area for a depth of a quarter-mile had been acquired by Negroes. The defendants' (white owners who wanted to keep the covenants) demurrer was sustained below; held affirmed, the changed conditions outside the development afford no grounds for relief.

The recovery of damages has not usually been the relief sought. See note 21 supra. But in Eason v. Buffaloe, 198 N. C. 520, 152 S. E. 496 (1930) the defendant, owner of a tract of land which he proposed to subdivide into residential lots, sold some of the lots to the plaintiff and contracted with him that all remaining lots, when sold, would be conveyed by deeds containing restrictions against the sale to or occupancy by any Negro. The plaintiff was held entitled to maintain an action for damages ($2,000 alleged) upon the defendant's subsequently conveying some of the lots to the State School for the Blind and Deaf by deeds not containing either of the promised restrictions. The School had announced its purpose to erect and maintain on the lots a school for Negroes. Now that the Supreme Court of the United States has ruled that such agreements are not enforceable by injunction, it seems probable that when presented with the question of damages for breach the Court will follow through. An option to purchase which does not conform to the time requirements of the Rule against Perpetuities cannot be enforced under the doctrine of specific performance. Damages for breach of the option contract are allowed, however, in England—not so in America, and rightly so, Note, 162 A. L. R. 581, 591 (1946); Simes, op. cit. supra note 9, §512. If the grantee is free to convey the property to whomever he pleases, but is subject to a suit for damages, or the threat of such a suit with the possibility of judgment rendered against him, then he is deterred from conveying because of the fear and/or the expense and trouble of defending such an action. In effect the threat of a suit for damages would lend the "full panoply of state power" to the practical effectiveness of the racial agreement. The Supreme Court should not allow an action in law for damages to accomplish for all practical purposes what it has ruled an action in equity for injunctive relief cannot accomplish.

Technically such a distinction exists. In a fee on condition subsequent [one type of agreement found in deeds, see Shelley v. Kraemer, 68 Sup. Ct. 836 (1948) where a condition "attach(ing) to the land" was used] "... the words which provide for the termination of the estate on a contingency are not regarded as a part of the original limitation of the estate, but are considered to provide for the cutting off of the estate before its proper termination, in the case of an estate on special limitation [determinable fee] the words of the contingency are regarded as a part of the limitation itself, and so as not cutting off an estate previously limited, but as merely naming an alternative limit to the duration of
However, when a court is called upon to answer these questions it should declare that determinable fees with such a limitation, forfeiture of the land or the security, or the awarding of damages for breach of agreement are equally banned as state action.24

The effectiveness of other devices is dependent more on the private manipulations of the law of real property than on questions of constitutionality. Membership plans, either in corporations or clubs, are already in use.25 Requiring membership in such an organization as a condition precedent to the individual ownership of real property, where membership in the club or corporation is dependent upon the consent of other stockholders or members, is not a valid condition. It is probably an unlawful restraint on the transfer of property and void.26

Neighborhood approval agreements, where a majority of the five nearest neighbors must approve the new occupant before the residence can be sold or rented are in the same category as membership plans. They are probably void.27

the estate.1 TIFFANY, REAL PROPERTY §217 (p. 380) 3d ed. 1939). In the fee on condition subsequent the grantor retains a right of entry for condition broken; in the determinable fee he has a possibility of reverter. For other distinctions as to alienability of these rights, etc., see McCall, Estates on Condition and on Special Limitation in North Carolina, 19 N. C. L. REV. 334 (1941). This distinction would necessarily be made in any of the American jurisdictions [about 20] recognizing the fee determinable. See 1 SIMEs, FUTURE INTERESTS §178 n. 10 (1936); 1 TIFFANY, REAL PROPERTY §220 n. 85 (3d ed. 1939) and cases collected therein. Practically, of course, there is no appreciable difference. See Goldstein, Rights of Entry and Possibilities of Reverter as Devices to Restrict the Use of Land, 54 HARV. L. REV. 248 (1940).

24 See notes 20, 22 and 23 supra. The Court was explicit in its contempt for racial restrictive agreements. It is hardly possible that a firm stand against enforcement by injunction will be distinguished from enforcement by damage suits, etc. To hold otherwise would be "... to make a mockery of the rest of his [Vinson's] decision.” Lathrop, The Racial Covenant Cases, [1948] Wis. L. REV. 508, at 526, 527.

25 While the legality of such plans is open to question (see note 26 infra) it is reported that “Meanwhile, many real estate subdivisions probably will be platted and sold in connection with golf clubs, tennis clubs, gardening clubs, and a great variety of other clubs based on some common activity or interest.” U. S. News & World Report, May 14, 1948, p. 22, col. 3.

26 “In the United States, except in Kentucky ... a condition or limitation in a conveyance or devise in fee to the effect that the grantee or the devisee is not to alienate except with the consent of some other person is void.” SIMES, op. cit, supra note 9, §461; TIFFANY, op. cit, supra note 15, §1345. Accord as to directions not to alienate without consent of another: Schwren v. Falls, 170 N. C. 251, 87 S. E. 49 (1916). (consent of executor required before wife could dispose of property left to her by will of husband). If a real estate corporation, in developing a new subdivision, conveyed property to buyers with a provision that a neighborhood improvement association would be formed, and that said association would have the power to appoint subsequent purchasers of that property, it has been noted that this is no direct restraint on alienation. It is a purely collateral power. The original buyer can dispose of the property, as can the association, but the original buyer’s alienation is subject to the association’s appointment. See SIMES, op. cit. supra, §461. Of course, the original buyer would probably consider the power of appointment in the association as a dangerous possibility; but he may waive that danger because (1) he would be a member of the association and (2) neighborhood uniformity would be achieved.

27 The element of consent of another is the determinative point. See note 26 supra.
Plans whereby a corporation owns title to property and leases it to occupants, or where a “first-refusal” option plan is included in a neighborhood real estate “improvement” association are distinguishable from the membership-approval plans and should be valid if they meet certain requirements specified hereinafter.

Repurchase options, or “first-refusal” options, in favor of the grantor of real property, where the time for the exercise of the option is limited so as to conform to the requirements of the Rule against Perpetuities are probably valid and enforceable. A price should be set for the repurchase and included in the option, but where the price is so ridiculously low that to enforce the option would amount to an absolute restraint on alienation, the courts should favor the grantee and declare the provision void.

The long term lease with conditions against assignment, subleasing

28 When title remains in the corporation and property is leased to the occupant the lessor’s purpose is to protect his land and the law approves of that. Simes, op. cit. supra, note 9, §466. Such a transaction is subject to the laws on landlord and tenant. But when a fee simple estate, as distinguished from the above estate for years, is given with a restraint against alienation except with the consent of another, the grantor has no legally protected interest. In the lease plan the lessor does have a legally protected interest.

When the grantor of a fee simple has the option to repurchase the property from the grantee before he can sell to anyone else, the existence of the option is not an unlawful restraint on alienation. It does not prevent the grantee from selling, but rather aids the grantor in buying the property back. Simes, op. cit. supra, note 9, §462 (1936). This repurchase option plan could be successfully employed where the holder of the option was a neighborhood real estate association. One of the difficulties with the option plan is that generally the grantee desires to sell at a time that is not propitious for the grantor. The association would spread that burden. See Long and Johnson, op. cit. supra note 13, at 39-55 (1947) for the various types of “neighborhood improvement associations.”

29 Future interests must vest, if at all, within a life or lives in being plus twenty-one year and ten lunar months, American Trust Co. v. Williamson, 228 N. C. 458, 46 S. E. 2d 104 (1948); 27 N. C. L. Rev. 158 (1948); Simes, op. cit. supra, note 9, §§477-552.

30 In Hardy v. Galloway, ibid., the deed contained a provision whereby the grantors retained for themselves and their heirs and assigns, the right to repurchase the land “when sold.” Court held that the provision was void because (1) it fixed no price for the repurchase; (2) for uncertainty; (3) no time fixed for the performance of the provision; (4) it was an unlawful restraint on alienation. It appears that if the defects in (1), (2), and (3) were corrected the right to repurchase may have been sustained. Hardy v. Galloway, id. at 525, 15 S. E. at 890 (1892).

Re Rosher [1884] L. R. 26 Ch. Div. (Eng.) 801 (price set in will was £3,000—actual value at exercise of option was £15,000). This could be avoided by placing a provision for “fair market value” at time of the exercise of the option, rather than a stipulated price.

31 E.g., Henderson v. Virden Coal Co., 78 Ill. App. 437 (1897) (lease for 999 years); Todhunter v. Des Moines, I. & M. R. Co., 58 Iowa 205, 12 N. W. 267 (1882) (lease for 999 years); Banks v. Haskie, 45 Md. 207 (1876) (lease for
or alienation by the tenant and with a covenant for perpetual renewal is probably the most practicable legal device available for maintaining restricted neighborhoods, although in the past it has been used primarily for commercial purposes. But even here the would-be purchaser must balance the desirability of owning the property in fee simple absolute against that of retaining the desired uniformity.

Restrictions against objectionable uses of land have been sustained.

The longer the time the lease is to run the greater the restraint, and the reversioner's interest to be protected would be of less value; yet the courts have made no distinction as to the length of the term. 2 Simes, Future Interests §466 (1936); Gray, Rule Against Alienation §§101-103 (2d ed. 1895).

"If land is leased for a term of years, it is everywhere recognized that the landlord may insert a condition in the lease to the effect that, on the tenant's alienation or on his alienation without consent, his lease may be forfeited."

On covenants for perpetual renewal see 2 Simes, Future Interests §§511 (1936) (cases collected in note 75 at 375); Note, 3 A. L. R. 498 (1919) supplemented in 162 A. L. R. 1147 (1946); Thaw v. Gaffney, 75 W. Va. 229, 83 S. E. 983 (1914); 2 Tiffany, Real Property §§406, 410 (3d ed. 1939). On renewal provisions in leases and related subjects see Notes, 14 A. L. R. 948 (1921) (general provisions for renewal); 26 A. L. R. 1413 (1923) (what amounts to an option to renew); 39 A. L. R. 279 (1925) (when covenants to renew should be construed to be for perpetual renewal, an excellent annotation). Sometimes a notice provision is placed in the lease. Notes, 99 A. L. R. 1010 (1935), 1 A. L. R. 343 (1919).

Land is frequently leased for the production of oil and gas, e.g., cases collected in Note, 3 A. L. R. 378 (1919). The long term lease has been used extensively in residential development in Maryland as a part of the ground rent system. Robert Kratovil, Real Estate Law §389 (1946) ("The chief characteristics of the Maryland ground rent leases are: (1) the landowner leases the land to the lessee for a period of ninety-nine years; (2) with a provision for perpetual renewal of the lease from time to time as each ninety-nine year period draws to a close, upon payment of a small sum of money called a renewal fine; (3) the lessee agrees to pay a certain sum of money...as ground rent; (4) and the lease contains a provision that if the lessee make default in his ground rent payments, the lessor may declare the lease void and evict the lessee. The lessee also agrees to pay the taxes...and they are assessed to (him).... In practical economic effect, the relation of the lessee to the property is that of the owner of the land, subject to the payment of annual rent and taxes.... The technical relation between the owner of the rent and lesseeholder is that of landlord and tenant. Jones v. Magruder, 42 F. Supp. 193 [1941]."

By taking a long term lease the tenant secures the sole use and possible increase in value of the land for a long term of years, and, in some cases, forever, without putting up any cash consideration, except perhaps, a security deposit. He is thus enabled to place all his money in improvements or in his business. The lease throws upon the lessee practically all the burdens incident to ownership of the land, such as payment of taxes, and assumption of loss due to decline in land value, but confers on the lessee essentially all the benefits of ownership. [Emphasis supplied.]... A lessee does not acquire the legal title. His interest is...personal property. His wife...does not have dower in the leased premises." Robert Kratovil, Real Estate Law §388 (1946).

"A restriction against the use of residential property as a residence differs from a restriction against other uses such as that no intoxicants shall be sold on the property. While the latter is a restraint on alienation it does not diminish the vendability of the property sufficiently to be held an illegal restraint." McGovney, supra note 2, at 9 n. 17. However, a restriction against the sale of liquor made by the common grantor of lots, and providing for forfeiture to the grantor in case of any such sale, affects the property, unless removed or released,
It has been suggested that in keeping with these attempts to secure "high occupancy" standards a restriction against use or occupancy except by a college graduate might be given a try. Without arguing what practical benefit such a restriction would have on racial segregation, if any, it is most likely an unlawful restraint on alienation and void.

All of these plans are subject to practical difficulties. Repurchase options and long term leases attached to real property tend to restrict severely the alienability of the land. The title is rendered less marketable. As a result, problems related to the financing and mortgageability of the property increase. Questions of the effect on inheritance, wills, and trusts will deter many. On the other hand, such devices will have a retarding effect on the possible danger to vested real estate values created by the decisions in the principal cases. The plans can be used readily in new residential "subdivisions." Their worth in more fully developed residential areas is questionable.

The Supreme Court has narrowed the possible legal plans for restricting the use of land to certain classes of persons. Even those suggested here, the repurchase option and the long term lease, if used openly and notoriously as a subterfuge to carry out racial residential segregation, could be made unenforceable by separating the form from the substance and revealing the real motive behind their use.

Regardless of the efficacy of the legal devices, one may expect an increase in extra-legal programs dedicated to the maintenance of racially segregated residential areas. Through social and economic and constitutes an encumbrance entitling the purchaser who was to receive a merchantable title to refuse to take title. Genske v. Jensen, 188 Wis. 17, 205 N. W. 548 (1925). See Note, 51 A. L. R. 1460 (1927). Courts have held that a condition permitting alienation to anyone but a member of the testator's family is void. 2 SIMES, FUTURE INTERESTS §459 (1936). Cf. 2 SIMES, FUTURE INTERESTS §459 (p. 301) (1936) (suggesting in favor of a restraint against alienation to Negroes that "considering human prejudices as they are, it often renders a piece of land more readily alienable rather than less so").

The trend of whites moving from the older areas into the new residential subdivisions continues. During the past few years the racial restrictive agreement is reported to have accompanied the development of many of the new low-cost housing projects. See Greensboro (N. C.) Daily News, May 4, 1948, p. 1, col. 4; N. Y. Times, May 4, 1948, p. 2, col. 2 (over 75% of the new developments are "covered"). The Negroes are moving into the former "white" neighborhoods. Greensboro (N. C.) Daily News. Ibid. 46 MICH. L. Rev. 978, 979 (1948).

"Social forces" as used here expresses the accumulation of attitudes, fears, prejudices, customs and traditions, and the searches for better living conditions. A "snobbish" and "cool" attitude toward undesirable neighbors is a part of the pattern. Popular Government, June 1948, p. 11, col. 2 (Institute of Govt., Chapel Hill, N. C.). The "aversion" toward Negroes' living in close proximity with whites is another factor. MANGUM, op. cit. supra note 3, at 138 (1940). See STERNER, note 9 supra. As McGovney, supra note 2, at 21 put another problem, "The question is . . . purchase by a Negro from a willing seller . . . or occupancy
harassing forces the sale of property in white neighborhoods to Negroes will be retarded but not completely blocked. Such restraints will gradually yield.

by a Negro who has bought from a willing seller." In the "better" residential areas the "willing seller" is difficult to find. In the South there is a tacit understanding that such a thing "just isn't done." MANGUM, op. cit. supra note 3, at 147; STERNER, op. cit. supra, note 7, at 208; Wyatt v. Adair, 215 Ala. 363, 110 So. 801 (1926) (the custom recognized). See Greensboro (N. C.) Daily News, supra note 18 ("In the first place property owners hardly would sell to Negroes ... "). The attitudes of the Negro must be considered. STERNER, op. cit. supra note 7, at 201 reports that many Negroes may prefer to live in the Negro areas, even if they do not like to be forced to do so. See note 49, infra. No case found in North Carolina where a Negro has attempted to buy property from a white man, where property was covered by a restrictive covenant. See Brief for the Appellants, p. 3, Vernon v. R. J. Reynolds Realty Co., 226 N. C. 58, 36 S. E. 2d 710 (1945) ("Numerous negroes are désirous of purchasing lots in the development, but none will buy or offer to buy any lot until the restriction is annulled." [Emphasis supplied.] Suit to remove restrictive covenant against Negroes as cloud on title). Query: will the inclusion of these agreements in deeds continue to have the same effect?

46 Private lending institutions and real estate agents or associations, interested in preserving property values (see note 8 supra) exert pressure in "... blocking areas of expansion for additional housing for Negroes and other minorities ..."). playing a role that is "... finely drawn and enacted at a level of sophistication and professional respectability. It is a role which frequently is not discharged with race as a controlling, central objective ..." but nevertheless a "... significant and determining role." LONG AND JOHNSON, op. cit. supra note 13, at 56-72; STERNER, op. cit. supra note 7, at 209; Popular Government, June, 1948, p. 11, col. 2; U. S. News & World Report, May 14, 1948, p. 23, col. 2. The "... traditional real estate and financial practice of restricting Negroes and other racial minorities to sharply defined neighborhoods ..." was recognized in a statement by Raymond M. Foley, Administrator of the Housing and Home Finance Agency, appearing in PREJUDICE AND PROPERTY, op. cit. supra note 3, at 24. The housing policies of the Federal Government lent support to the residential segregation of Negroes. One of the recommended restrictions in the FHA Underwriting Manual (1938) par. 980 g. reads: "Prohibition of the occupancy of properties except by race for which they are intended." LONG AND JOHNSON, op. cit. supra note 13, at 69; STERNER, op. cit. supra note 7, at 310-323. Recent reports that the FHA is considering a regulation refusing insurance on loans made by private institutions where the conveyance to the property contains a racial restrictive agreement, U. S. News & World Report, May 14, 1948, p. 50, col. 3, have been confirmed but no definite action has yet been taken. The suggestions of FHA on this would carry great weight. FHA, Seventh Annual Report, p. 22 (Dec. 31, 1940).

46 "... violence and intimidation play a large role in keeping Negroes out of white-dominated areas. ... Bombings, racial propaganda, and mob violence have been widely, if sporadically reported." STERNER, op. cit. supra note 7, at 209 (1943). "From July 1, 1917, to July 27, 1919, there were 24 arson-bombings perpetrated against Negro homes in Chicago, while from May 1, 1944, to July 20, 1946, there were 46 such acts of violence." LONG AND JOHNSON, op. cit. supra note 13, at 73. On "Racial Tensions and Violence" in general, see id. at 73-85; MANGUM, op. cit. supra note 3, at 274-307; MYRDAL, AN AMERICAN DILEMMA 558-569 (1944). "I just want to say that the Supreme Court decision of yesterday [Racial Restrictive Agreement Cases, supra note 1] did more to bring about a revival of the Ku Klux Klan in the United States than anything else that has been done in the last 40 years." John Bell Williams, Congressman from Mississippi, 94 Cong. Rec. 5389 (May 4, 1948). In addition to these acts and threats of violence, harassment by police and other local authorities may be employed to maintain residential segregation. U. S. News & World Report, May 14, 1948, p. 23, col. 3. For a combination of these types of "applied force" read the story of the Sojourner Truth Housing Riots in Detroit during the spring of 1942. MYRDAL, op. cit. supra, at 568, 678, 1337 (1944); Life, March 16, 1942, pp. 40-41.

47 No segregation can be complete. With increased professionalizing of law
It is obvious that the Court's rulings will not eliminate either the attempts to continue racial residential segregation or the sociological problems thereby created. Nor will they cause any mass movement of Negroes into the white neighborhoods. Although the legal title to property now covered by a racial restrictive agreement is not affected, the marketable title has probably depreciated in value where invasion by Negroes is imminent. For constitutional law purposes the decisions are the most important of the year in terms of legal theory; for the Negro they remove another legal obstacle in his effort to secure the full benefits of his American citizenship.

The Racial Restrictive Agreement Cases must be accepted for what they are: policy-making decisions by the Court, though one may question the making of national policy as a function of the Supreme Court. Economic interests will overcome personal prejudices when offers from Negroes to white property owners are too tempting. "Social pressures" with their prejudices will gradually give way in the recognition of the Negro's position as an American citizen. "The broad social problem . . . is both serious and acute . . . its right solution in the general public interest calls for the best in statesmanship and the highest in patriotism . . . But . . . up to the present no law or public policy has been contrived or declared whereby to eradicate social or racial distinctions in the private affairs of individuals. And it should now be apparent that if ever the two races are to meet upon mutually satisfactory ground, it cannot be through legal coercion or through intimidation of factions, or the violence of partisans, but must be the result of a mutual appreciation of each other's problems, and a voluntary consent of individuals. And it is to this end that the wisest and best of each race should set their course."


The correlation between poor housing on one hand and crime, disease and social unrest on the other hand has been demonstrated so often by experts that no emphasis is needed here. E.g., Justice Edgerton dissenting in Hurd v. Hodge, 162 F. 2d at 244 (App. D. C. 1947), reversed, 68 Sup. Ct. 847 (1948) ; PREJUDICE AND PROPERTY, op. cit. supra note 3, at 12-17; E. H. Royster, op. cit. supra note 7, at 209. "Social pressures" with their prejudices will gradually give way in the recognition of the Negro's position as an American citizen. "The broad social problem . . . is both serious and acute . . . its right solution in the general public interest calls for the best in statesmanship and the highest in patriotism . . . But . . . up to the present no law or public policy has been contrived or declared whereby to eradicate social or racial distinctions in the private affairs of individuals. And it should now be apparent that if ever the two races are to meet upon mutually satisfactory ground, it cannot be through legal coercion or through intimidation of factions, or the violence of partisans, but must be the result of a mutual appreciation of each other's problems, and a voluntary consent of individuals. And it is to this end that the wisest and best of each race should set their course."


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Court of the United States. The Court has taken a step down the road to social progress that no state court, only one federal court, no state legislature, and not even the Congress of the United States has attempted. One may praise or condemn the Court for its boldness. Either view, however, must be reconciled with two hard facts: (1) judicial pronouncements will not alone eliminate prejudices against minority groups—only through the process of education is that poss-

E.g., Chief Justice Walter Clark, of the North Carolina Supreme Court, strongly argued that “policy” was the question to be determined by the people through their representative assemblies and not by the courts. Brooks, Walter Clark—Fighting Judge 192-205 (“Government by Judges”) (1944). It is interesting to note that the dedication of this book reads: “To the Supreme Court of the United States which now reflects the views of Walter Clark.” Today the Court appears to be most vitally concerned with at least one element of “public welfare”—that of civil rights—and it has accepted the task of interpreting the Constitution most favorably toward minority groups. Perhaps it is the “role” of the Court to formulate policy, especially when no other agency of government will undertake the challenge. See “The Role of the Supreme Court as a Guardian of Civil Rights,” Report of the President’s Committee on Civil Rights 112 (1947). Cf. Speech of Congressman John E. Rankin, of Mississippi, “Protecting the American People from the Supreme Court.” 94 Cong. Rec. 5388 (May 4, 1948) (after the decisions in principal cases).

See note 14 supra. As evidence of a public policy in favor of racial residential segregation see note 5 supra.

No state statutes have been found prohibiting the use of racial restrictive agreements in connection with the ownership or occupancy of real property. Recent attempts to have such agreements outlawed have failed in Illinois and Minnesota, Long and Johnson, op. cit. supra note 13, at 99-100; and in New York, Taylor, supra note 3, at 98.

The Congress is silent, or at least, was silent until the principal decisions. On May 4, 1948, two Congressmen from Mississippi (Rankin and Williams) stated their opinions on the Racial Restrictive Agreement Cases. 94 Cong. Rec. 5388 (May 4, 1948). Other references were made. Id. p. 5403, col. 2 (by Mr. Marcy, N. Y.); p. 5404, col. 1 (by Mr. Walter of Pa.); p. 5405, col. 2 (by Mr. Devitt of Minn.).

“The Supreme Court has handed down a momentous decision. . . . I think we have taken a big step forward in assuring democratic rights in this country.” Eleanor Roosevelt, My Day, News and Observer (Raleigh, N. C.), May 6, 1948, p. 4, col. 3. The decisions were “acclaimed” by leaders of Negro and Jewish groups. N. Y. Times, May 4, 1948, p. 2, col. 2. See note 3 supra.

In a one minute speech before the House of Representatives on May 4, 1948, on the topic, “Protecting the American People from the Supreme Court,” Mr. John E. Rankin, Congressman from Mississippi said: “Mr. Speaker, there must have been a celebration in Moscow last night; for the Communists won their greatest victory in the Supreme Court of the United States on yesterday, when the once august body proceeded to destroy the value of property owned by tens of thousands of loyal Americans in every State in the Union by their anti-covenants decision . . . [after referring to other acts of “destruction” by the Court]. . . . They now attempt to reverse the laws of nature by their own edict and destroy the peaceful relationships existing between different races in every State by outlawing the restrictive covenants that have existed for more than 100 years. [Cf. with note 13 supra.] Which all adds up to the fact that white Christian Americans seem to have no rights left which the present Supreme Court feels bound to respect. . . . Unless the Congress . . . turns back this tide of fanaticism then God save the country,” 94 Cong. Rec. 5388 (May 4, 1948). See Editorial, A Blow to Southern Customs, Charlotte (N. C.) News, May 5, 1948, p. 4-A, col. 1.

The decisions in the principal cases “. . . may be a contribution to the educational process by which the Emancipation Proclamation may in some distant era become a reality.” Frank, supra note 51, at 26.
Constitutional Law—Statutory Construction—Judicial Determination of End of War

Last June, in *Ludecke v. Watkins*, the United States Supreme Court interpreted the Alien Enemy Act. In 1946 the Attorney Gen-

A minority (including Dr. Frank P. Graham, President of the University of North Carolina) of the Committee favors the elimination of segregation as an ultimate goal but... opposes the imposition of a federal sanction. It believes that federal aid to states for education, health, research and other public benefits should be granted provided that the states do not discriminate in the distribution of the funds. It dissents, however, from the majority's recommendation that the abolition of segregation be made a requirement, until the people of the states involved have themselves abolished the provisions in their state constitutions and laws which now require segregation. Some members are against the non-segregation requirement in educational grants on the ground that it represents federal control over education. They feel, moreover, that the best way to ultimately end segregation is to raise the educational level of the people in the states affected; and to inculcate both the teachings of religion regarding human brotherhood and the ideals of our democracy regarding freedom and equality as a more solid basis for genuine and lasting acceptance by the peoples of the states. The Report of the President's Committee on Civil Rights (Washington, 1947). “While it is recognized that all barriers against the race cannot be eradicated overnight by executive fiat, court decree, or legislative action, the Negro people of America believe that it is the obligation of the government, of the labor movement, and of all true progressives to take a clear, consistent, and unequivocal line against racial discrimination and segregation. They believe that the objective of national policy should be full equality for all citizens. And they have been encouraged in this conviction by the report of the President's Committee on Civil Rights.” Henry Lee Moon (“The Ultimate Objective”), Balance of Power—The Negro Vote, p. 218 (1948).

One can only begin to grasp the scope of the issue raised by the Supreme Court of the United States in the *Racial Restrictive Agreement Cases* when these two statements are compared with excerpts from a speech made by Governor J. Strom Thurmond (S. C.) at the Dixiecrat Convention in Jackson, Miss., during the month of May, 1948: “All the laws of Washington and the bayonets of the Army cannot force the Negro into their (Southern) homes, their schools, their churches and their places of recreation and amusement.” Quoted in Editorial, Charlotte (N. C.) News, May 11, 1948, p. 4-A, col. 1; or with the following statement from David L. Cohn, Where I Was Born and Raised 294 (1948): “Since the deep-seated mores of a people cannot be changed by law, and since segregation is the most deep-seated and pervasive of the Southern white mores, it is evident that he who attempts to abolish it by law runs risks of incalculable gravity. There are nonetheless whites and Negroes who would break down segregation by Federal fiat. Let them beware. I have little doubt that in such a case the country would find itself nearing civil war.” And further, at page 294: “Yet whatever may be the disabilities worked upon Negroes and whites by segregation: whether the fears that provoke it are reasonable or unreasonable; whether it is antidemocratic, anti-constitutional or anti-Christian, there is little chance, in my opinion, that it will be obliterated in a foreseeable time. He who evades, beclouds or challenges the issue may do great harm to the whole American society.”