

Housing

*Buchanan v. Warley*¹⁶⁹⁸ invalidated an ordinance that prohibited blacks from occupying houses in blocks where the greater number of houses were occupied by whites and that prohibited whites from doing so where the greater number of houses were occupied by blacks. Although racially restrictive covenants do not themselves violate the Equal Protection Clause, the judicial enforcement of them, either by injunctive relief or through entertaining damage actions, does.¹⁶⁹⁹ Referendum passage of a constitutional amendment repealing a “fair housing” law and prohibiting further state or local action in that direction was held unconstitutional in *Reitman v. Mulkey*,¹⁷⁰⁰ though on somewhat ambiguous grounds, whereas a state constitutional requirement that decisions of local authorities to build low-rent housing projects in an area must first be submitted to referendum, although other similar decisions were not so limited, was found not to violate the Equal Protection Clause.¹⁷⁰¹ Private racial discrimination in the sale or rental of housing is subject to two federal laws prohibiting most such discrimination.¹⁷⁰² Provision of publicly assisted housing, of course, must be on a non-discriminatory basis.¹⁷⁰³

Other Areas of Discrimination

Transportation.—The “separate but equal” doctrine won Supreme Court endorsement in the transportation context,¹⁷⁰⁴ and its passing in the education field did not long predate its demise in transportation as well.¹⁷⁰⁵ During the interval, the Court held invalid a state statute that permitted carriers to provide sleeping and dining cars for white persons only,¹⁷⁰⁶ held that a carrier’s provision of unequal, or nonexistent, first class accommodations to African-

¹⁶⁹⁸ 245 U.S. 60 (1917). See also *Harmon v. Tyler*, 273 U.S. 668 (1927); *Richmond v. Deans*, 281 U.S. 704 (1930).

¹⁶⁹⁹ *Shelley v. Kraemer*, 334 U.S. 1 (1948); *Hurd v. Hodge*, 334 U.S. 24 (1948); *Barrows v. Jackson*, 346 U.S. 249 (1953). Cf. *Corrigan v. Buckley*, 271 U.S. 323 (1926).

¹⁷⁰⁰ 387 U.S. 369 (1967).

¹⁷⁰¹ *James v. Valtierra*, 402 U.S. 137 (1971). The Court did not perceive that either on its face or as applied the provision was other than racially neutral. Justices Marshall, Brennan, and Blackmun dissented. *Id.* at 143.

¹⁷⁰² Civil Rights Act of 1866, 14 Stat. 27, 42 U.S.C. § 1982, see *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), and Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), 82 Stat. 73, 42 U.S.C. §§ 3601 *et seq.*

¹⁷⁰³ See *Hills v. Gautreaux*, 425 U.S. 284 (1976).

¹⁷⁰⁴ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

¹⁷⁰⁵ *Gayle v. Browder*, 352 U.S. 903 (1956), *aff’d* 142 F. Supp. 707 (M.D. Ala.) (statute requiring segregation on buses is unconstitutional). “We have settled beyond question that no State may require racial segregation of interstate transportation facilities. . . . This question is no longer open; it is foreclosed as a litigable issue.” *Bailey v. Patterson*, 369 U.S. 31, 33 (1962).

¹⁷⁰⁶ *McCabe v. Atchison, T. & S.F. Ry.*, 235 U.S. 151 (1914).