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the individual, not the least of which is the freedom of the market place.[31] This may be indicative of the end of an unpopular era during which such statutes have been upheld.[32]

Less than two months after the decision in the present case, the Florida Legislature enacted another Fair Trade Act.[33] This Act incorporates verbatim most of the Fair Trade Law of 1939.[34] However, it embodies a legislative finding of fact that permissive ". . . resale price maintenance of trademarked, branded and named commodities . . ." is imperative ". . . at all times, including periods of deflation or inflation, . . ." to the general welfare of Florida and its citizens. This finding is exactly opposite to the holdings in the present case. It is submitted that, in view of the instant case, the legislative findings will be entirely inoperative.

CONSTITUTIONAL LAW—EQUAL PROTECTION OF THE LAWS—RACIAL DISCRIMINATION IN HOUSING PROJECTS

Plaintiffs, Negroes, sought to enjoin the Metropolitan Life Insurance Company and its subsidiary, Stuyvesant Town Corporation, from denying to any persons because of race or color, accommodations and facilities in their housing project contending that such discrimination violated the equal protection clause of the Federal [1] and State [2] Constitutions. The Stuyvesant Town project was built pursuant to a contract between the City of New York, the Metropolitan Life Insurance Company, and its subsidiary, under the authority of the state Redevelopment Companies Law.[3] This statute, after reciting the need for low cost housing, provides for the exercise of various governmental powers as an incentive to private redevelopment companies in effecting the clearance and rehabilitation of the slum and blighted areas of the city. *Held,* since Stuyvesant Town is a private corporation, its action in denying accommodations to Negroes is not state action, but individual action, to which the equal protection clause of the Fourteenth Amendment does not apply; the decree denying the injunction affirmed. *Dorsey v. Stuyvesant Town Corporation,* 87 N. E.2d 541 (N. Y. 1949).

31. See Holman, *Our American Heritage,* 22 FLA. L. J. 153 (1949).
32. Four times in the past six months price fixing statutes have been successfully attacked in the state courts. Time, October 3, 1949, p. 68.
33. Fla. Laws 1949, c. 25204.
34. See note 1 *supra.*

1. U. S. CONST. AMEND. XIV, § 1 ("No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.")
2. N. Y. CONST. Art. I, § 11 ("No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.")
3. N. Y. McK. UNCONSOL. LAWS §§ 3401-3426 (1942), as amend. c. 234 (1943) and c. 840 (1947).

The equal protection clause of the Fourteenth Amendment to the Federal Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." [4] The primary object of this constitutional provision was to secure to the colored race, then recently emancipated, the full enjoyment of its freedom[5] by constituting a safeguard against acts of the state only, and not against the conduct of private individuals or persons, however discriminatory or wrongful.[6]

But it is clear that the constitutional restraint is not confined to the affirmative action of the state through its three departments,[7] the legislative,[8] the executive,[9] and the judicial.[10] The concept of state action has been vitalized and expanded to include all officers and agencies of the state,[11] every person, whether natural or juridical, who is the repository of state power.[12] It refers to exertions of state power in all forms.[13] Thus, discriminatory state action may be exerted through private individuals and corporations where they act under the constraint of state law;[14] thus it was held to be prohibited discrimination for the state political party's executive committee to adopt a resolution, under a state statute, denying Negroes membership in the party, thereby excluding them from voting in the primary elections.[15] Similarly, where a private employer discharged an alien pursuant to a statute limiting aliens to a stated percentage of the working force,[16] it was held to be a prohibited act of discrimination.

Even without the authority of a state statute, where a private group performs functions of a governmental character in matters of great public interest, they have been held subject to the prohibition of the Fourteenth

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4. *See* Strauder v. West Virginia, 100 U. S. 303, 307 (1879).
5. Nixon v. Herndon, 273 U. S. 536 (1927); Buchanan v. Warley, 245 U. S. 60 (1917); Maxwell v. Dow, 176 U. S. 581 (1900); Slaughter-House Cases, 16 Wall. 36 (U. S. 1872).
6. Truax v. Corrigan, 257 U. S. 312 (1921); Civil Rights Cases, 109 U. S. 3 (1883); *Ex parte* Virginia, 100 U. S. 339 (1880); Corrigan v. Buckley, 271 U. S. 323 (1926); Iowa-Des Moines National Bank v. Bennett, 284 U. S. 239 (1931); *see* Virginia v. Rives, 100 U. S. 313, 318 (1880); Shelley v. Kraemer, 334 U. S. 1, 13 (1948).
7. Scott v. McNeal, 154 U. S. 34 (1894).
8. Buchanan v. Warley, *supra;* Strauder v. West Virginia, *supra;* Truax v. Corrigan, *supra.*
9. Home Tel. and Tel. Co. v. Los Angeles, 227 U. S. 278 (1913); Raymond v. Chicago Union Traction Co., 207 U. S. 20 (1907); Hamilton v. Regents, University of California, 293 U. S. 245 (1934); *Ex parte* Virginia, *supra;* Screws v. United States, 325 U. S. 91 (1945).
10. Shelley v. Kraemer, *supra;* A. F. of L. v. Swing, 312 U. S. 321 (1941).
11. Home Tel. and Tel. Co. v. Los Angeles, *supra;* West Virginia State Board of Education v. Barnette, 319 U. S. 624 (1943).
12. Home Tel. and Tel. Co. v. Los Angeles, *supra;* Screws v. United States, *supra.*
13. *See* Shelley v. Kraemer, *supra* at 20.
14. Buchanan v. Warley, *supra;* Nixon v. Herndon, *supra;* Truax v. Raich, 239 U. S. 33 (1915).
15. Nixon v. Condon, 286 U. S. 73 (1932).
16. Truax v. Raich, *supra.*

Amendment.[17] A labor union, a private association exercising its powers as sole bargaining agent, powers not unlike that of a legislature, could not discriminate against certain Negroes who were members of the craft;[18] and the unaided action of a private political party in excluding Negroes from membership was held to deny equal protection to the Negro, even though the state had repealed all election laws.[19] So also, discrimination by private trustees of a privately-founded, state supported and state controlled library was held tantamount to state action, since it would be unrealistic to speak of the library as a corporation entirely devoid of governmental character.[20]

As long as there is present an exertion of governmental power in some form, something more than purely private conduct, the inhibitions of the Fourteenth Amendment apply;[21] it prohibits discrimination by private persons or agencies if such action can fairly be said to be that of the state.[22] Private discriminatory conduct of excluding Negroes from property rights by restrictive covenants, freely and voluntarily initiated by private individuals, has been declared to violate the equal protection clause when facilitated or rendered effective by an assertion of state power.[23] The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it.[24] Thus, a conviction of a Jehovah's Witness for trespassing, while distributing religious literature in the streets of a company town completely owned by a private corporation was held offensive to the Fourteenth Amendment.[25] Speaking for the Court in *Nixon v. Condon*,[26] Mr. Justice Cardozo said in effect that when private individuals move beyond matters of merely private concern and act in matters of high public interest, the test is not whether they are representatives of the state in a strict agency sense, but whether they are to be classified as representatives of the state to such an extent and in such a sense that the great restraints of the Constitution set limits to their action.[27]

The instant case is distinguished by the court from those cases where

17. Smith v. Allwright, 321 U. S. 649 (1944); Rice v. Elmore, 165 F.2d 387 (C. C. A. 4th 1947), *cert. denied* 333 U. S. 875 (1948); Kerr v. Enoch Pratt Free Library, 149 F.2d 212 (C. C. A. 4th 1945), *cert. denied*, 326 U. S. 721 (1945).
18. Steele v. Louisville and Nashville R. R. Co., 323 U. S. 192 (1944).
19. Rice v. Elmore, *supra*.
20. Kerr v. Enoch Pratt Free Library, *supra*.
21. *See* Shelley v. Kraemer, *supra* at 13. *But see* Madden v. Queens County Jockey Club, 296 N. Y. 294 (1945).
22. *Ibid.*
23. Shelley v. Kraemer, *supra*.
24. *See* Marsh v. Alabama, 326 U. S. 501, 506 (1946).
25. Marsh v. Alabama, *supra*. *But cf.* Watchtower Bible and Tract Society v. Metropolitan Life Insurance Co., 297 N. Y. 339 (1948).
26. 286 U. S. 73 (1932). *But see* Trustees of Dartmouth College v. Woodward, 4 Wheat. 518, 634-638 (1819) (holding that the fact that a private corporation serves a public purpose does not change its private character or make it a public institution or representative of the state).
27. Nixon v. Condon, *supra* at 89.

the state has lent its power in support of the actions of private individuals. They determined that neither the exertion of state power directly in aid of discrimination,[28] nor the action of a private group exercising a governmental function,[29] is here present, and that Stuyvesant has the right of any private landlord to select its own tenants.[30] In reaching this conclusion, the court necessarily considered that the project was constructed in accordance with plans approved by the city pursuant to the Redevelopment statute, that the city condemned the land by eminent domain and conveyed title thereto to the defendant corporation, closed and transferred public streets, and granted a tax exemption for the period of twenty-five years. The city also fixed and controlled the rents and profits, limited the financing and mortgaging of the property, restricted the sale and disposition of the property, as well as the right to alter the features and structures of the project. Then too, the immensity of the project,[31] consisting of many multiple dwellings covering a large portion of the municipal area and housing a wide segment of the population, a virtual community was brought before the surveillance of the court. In addition, it is significant that the city approved the contract for construction fully aware of Stuyvesant's intended discrimination, and when the city did prohibit discrimination in tax-aided projects, it created an exception applicable only to Stuyvesant Town.

In the instant case, it would seem that the court has too narrowly defined the concept of state action by requiring that the discrimination be either aided by the consciously exerted power of the state or by private individuals acting in a recognized governmental capacity. The defendant Stuyvesant Town's economic justification for the discrimination, that Negro occupancy will cause a diminution in the value of the property, is questionable in light of the housing shortage. One could not expect the courts to ignore an unconstitutional discrimination in order to maintain a property value. The decision appears to have limited a desirable and justifiable trend in a society in which private groups occupy fields traditionally governmental in nature. Furthermore, it may be said that the city had a duty to prohibit Stuyvesant from discriminating, and in failing in this obligation, has effectively done indirectly what could not have been done directly. Considering the degree of state aid and coöperation extended to Stuyvesant Town Corporation pursuant to the Redevelopment Companies Law, and that Stuyvesant Town is performing what is essentially a public function, acting in matters of high public interest, and exercising a power so analogous to state power, it may reason-

28. See note 15, *supra.*
29. See note 18, *supra.*
30. Alsberg v. Lucerne Hotel Co., 46 Misc. 617, 92 N. Y. Supp. 851 (Sup. Ct. 1905); Pratt v. LaGuardia, 182 Misc. 462, 47 N. Y. S.2d 359 (Sup. Ct. 1944), *aff'd, appeal dismissed,* 268 App. Div. 973 (1st Dept. 1944), *appeal dismissed,* 294 N. Y. 842 (1945).
31. Stuyvesant Town consists of 8,759 apartments covering an area of 18 city blocks, houses more than 25,000 people, and cost approximately $90,000,000 to build.

ably be suggested that the discrimination by Stuyvesant Town is well within the protection of the Fourteenth Amendment.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—EFFECT OF STATE LEGISLATION COINCIDENTAL WITH FEDERAL LEGISLATION ENACTED UNDER THE COMMERCE CLAUSE

Respondents operated a travel bureau in Los Angeles, and received commissions for arranging "share-expenses" passenger transportation in private automobiles. They were prosecuted under a California statute[1] which prohibits the sale or arrangement of any transportation over the public highways of the state if the transporting carrier has failed to obtain a permit from either the Public Utilities Commission of California or the Interstate Commerce Commission of the United States. Respondents demurred to the criminal complaint on the ground that since the Federal Motor Carrier Act [2] had substantially the same provision as the state statute, the state law entered an exclusive Congressional domain. The appellate court upheld the respondents contention and ordered the complaint dismissed. On writ of certiorari to the United States Supreme Court, *held*, that the statute of California is a lawful exercise of its police power, and since it does not conflict with the Federal Motor Carrier Act, it is constitutional. *People of State of California v. Zook*, 69 Sup. Ct. 841 (1949).

In *Cooley v. Board of Wardens*[3] the question was presented to the Court, whether the constitutional grant of power to Congress to regulate interstate and foreign commerce,[4] of itself, excluded all state regulation. It was held that the mere grant of power to Congress to regulate interstate and foreign commerce did not impliedly prohibit all state action.[5] The Supreme Court recognized that there are matters of local concern which might never be adequately dealt with by Congress, and of necessity must be regulated by the states even though their regulation unavoidably invoked some regulation of interstate commerce.[6] Thus, a state may, in the exercise of its police power, pass laws *incidentally* affecting interstate commerce.[7] They may not, however, regulate local matters in such a way as to burden,[8] or discriminate[9] against interstate commerce. Where the subject matter to be regulated is national in

1. CAL. PEN. CODE § 654.1, 654.3 (Deering's 1947 Supp.)
2. 54 STAT. 919, 49 U. S. C. § 301 (1946).
3. 12 How. 299 (U. S. 1851).
4. U. S. CONST. Art. 1, § 8.
5. *See* Cooley v. Board of Wardens, *supra* at 319.
6. *See* California v. Thompson, 313 U. S. 109, 113 (1941).
7. California v. Thompson, *supra*.
8. South Carolina State Highway Department v. Barnwell Bros. Inc., 303 U. S. 177 (1938).
9. Best v. Maxwell, 311 U. S. 454 (1940); Baldwin v. Seelig, 294 U. S. 511 (1935).