CAN THE FEPC WORK?

BY *JOHN H. BURMA*

AFTER 75 years, the dynamics of race relations in America are changing. For Negroes, Jews and others striving to improve their status, the historic approach has been one of good will, of "understanding," of emphasis on education and conciliation. Today the pattern has changed to the direct, frontal attack — through legislation and the courts. More such legislation of real significance has been passed in the last ten years than in the whole period of our nation's existence, and more anti-discriminatory bills (over 150) were introduced in state legislatures in 1949 than in any previous year. Just as 1875–1885 was the decade in which legislation was used as the major tool in enforcing inequality, 1945–1955 will probably be the decade in which legislation will be used as the major tool in enforcing equality.

The reason behind minority group desire for anti-discriminatory legislation is simple: there have been no cases where legislation against a type of behavior did not bring a decline in that behavior. No law has ever wiped out the act against which it was directed — witness our laws against murder, arson, confidence games and bigamy — but it does cause a decline in such acts. The same has been true for New York's fair employment practices act, Florida's anti-defamation statute, and Minnesota's law to prohibit discrimination in places of public accommodation. According to official reports, each has caused a decrease in the acts it was set up to combat.

Take the case of fair employment practices laws (called FEPC's): no such laws existed in any state before 1941, but since then, FEPC laws of varying strictness have been enacted by ten states (Connecticut, Massachusetts, New Jersey, Indiana, New Mexico, New York, Oregon, Wisconsin, Rhode Island, and Washington). Five cities have passed such laws: Chicago, Philadelphia, Milwaukee, Cleveland, and Minneapolis. In 1949, fifteen other state legislatures considered such bills but did not pass

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them. It is an interesting commentary on the American voter that these bills were opposed, vocally at least, largely by an irrelevancy — that prejudice is not subject to legislation. While the proponents of anti-discriminatory legislation would not mind removing prejudice, this has not been the aim of such laws, as a reading of any of them clearly shows. Just as the laws against murder, mayhem, and assault do not attempt to remove the criminal's dislike of his victim, but only to prevent his overt behavior, so do FEPC's (and the recent abolition of segregation in several National Guards) attempt only to control overt behavior.

Much present labor legislation is a direct parallel. Some employers were very prejudiced against unions and union-organizing employees, and discriminated severely against them. The coming of labor relations legislation has left the prejudice untouched, but it has prevented most overt acts of discrimination. A 1949 New York law prohibits questions concerning race or religion on college application blanks, but makes no attempt to cause either faculty or students to love Negroes or Jews; it merely seeks to prevent any youth from being barred from college solely because of his race or religion. It is doubtful that in a democracy any man has the right to translate his prejudices into actions which infringe on the rights and liberties of others.

It is certainly significant that anti-discriminatory legislation exists mostly in the North. Such a situation has been explained by saying that Southern discriminatory legislation represents custom, *mores*, and mass behavior; that it is part of the "social framework" of the South, and hence is relatively inviolable. This is true — up to a point. Segregated transportation facilities are defended by saying, "We don't want to sit by colored people." This is true; but Negroes point out that the segregated section is in the undesirable rear (in airplanes it is in the undesirable front), that the sections are by no means equal in size, and that whites show little reluctance to usurp vacant "colored" seats if their own are filled. Segregated education is defended on the "social" grounds that "We don't want our children to go to school with colored children." This, again, is true. What is glossed over is the real, direct, measurable financial gain as the result of such a practice. School funds are divided as unequally as eight to one; the new Texas State University for Negroes, forced by Supreme Court decision, is costing 10 million dollars and may well cost 5 million more in a decade. Oklahoma's segregated law school cost as high as $30,000 per student at one time. The payment of

equal salaries to Negro teachers, forced by Supreme Court decision, is just getting under way and already costs the South an additional million dollars a year. All of this, and it adds up to a tidy sum indeed, was either saved or diverted under the old system, which was supposedly enforced for "social" reasons only.

One of the strongest elements in the legislative and judicial technique of minority groups and their friends is the Supreme Court's interpretation of the Constitution. No question seems to exist as to the general constitutionality of anti-discriminatory legislation. The Supreme Court has upheld the right to damages of native-born Japanese-Americans who were sent to relocation centers. Since 1941, anti-defamation laws have been passed by California, Florida, Illinois, Indiana, Massachusetts, and Oregon, which prohibit written or spoken material advocating hatred. None has been ruled unconstitutional, but the exclusion of Negroes from juries has been so ruled.

Twenty states now have laws prohibiting segregation in education, none of which has been ruled invalid, but the Supreme Court and other Federal courts have repeatedly ruled that discrimination causing unequal educational facilities is unconstitutional; and the Supreme Court has on its docket a case to determine whether segregation itself is not illegal discrimination. Not one of the FEPC laws in effect has been held unconstitutional, nor have any of the fifteen state laws which require equality in the hiring of public or state employees. On the other hand, the Supreme Court has held racial discrimination on the part of unions to be illegal and has ruled that teachers' salaries must be equal, regardless of race. Lower Federal courts have ruled that any dual pay scales are illegal.

Since 1941, Connecticut, Massachusetts, Minnesota, New York, Pennsylvania, and Wisconsin have passed laws prohibiting discrimination in public housing, and New York City in 1949 prohibited discrimination in private housing, too. No significant disturbance over public housing has occurred in any of the above states since such laws were passed. Yet Illinois and Michigan do not have such laws, and in both Chicago and Detroit truly serious racial disturbances are currently occurring, with the allocation of segregated public housing as the immediate causal irritant, just as it was in the Detroit riot of 1943. None of these new housing laws has been attacked, while at the same time the Supreme Court has ruled that racial zoning is illegal and that restrictive covenants are legally unenforceable. This has caused the FHA to refuse, from 1950, to make

loans on property covered by restrictive covenants.

Some 25 states have civil rights statutes, none of them adversely ruled against, but both the Texas white primary and Alabama's requirement that Negro voters "satisfactorily interpret" the Constitution have been held illegal. It is evident that, as presently interpreted, the Constitution is color blind.

II

The chief basis for asserting that the legislative technique is a meritorious line of approach is that most of its early experiments have been successful. Anti-discrimination legislation definitely decreases the acts against which it is leveled. The national FEPC, in the first eighteen months of its existence (during the recent war), persuaded Southern shipyards to use Negro welders, aircraft plants to upgrade Mexican-Americans, white workers to coöperate with colored workers on the same production lines. Reluctant Eastern manufacturers of highly involved war mechanisms discarded, through experience, their belief that Negro workers could not acquire the requisite skills. Trade unions policed their own nondiscrimination policy in the cases of recalcitrant locals. In some forty war plants where racial disputes led to work stoppages, the strikers were persuaded to go back to work; having done so, they paved the way for the removal of the causes of friction. In this short period the FEPC reported it had removed from the field of active disputes all but the most stubborn situations. Under the New York law it is reported by the commission that racial or religious employment references have declined to one-sixth or one-eighth of their previous level, while almost all such references have disappeared from college application blanks; they further report that the employment of Negroes in clerical and white collar jobs has increased as much as 300 per cent.

That FEPC's do work is the testimony of Henry R. Luce; Eric Johnston; Herbert Bayard Swope; Spyros P. Skouras; William L. Bott, president of SKF Industries; Charles Wilson, president of General Electric Co.; Wroe Alderson, president of the American Marketing Association; J. Robert James, vice-president and treasurer of James G. Biddle Co.; Charles Luckman, president of Lever Brothers Co.; and scores of other business leaders. As the New York commission reported recently: "The area of compliance grows steadily in extent and depth, fears give way to confidence . . . scores of new occupations and thousands of new jobs are being opened to minority groups."

It must be remembered in this con-

nection that a successful law is not one which stamps out a particular type of behavior, but one which successfully decreases and holds partially in check the behavior against which it is directed. Success is always relative in law. We have strong laws against rape — in some states it may carry a death penalty; yet rape cases have been slowly increasing, reports the FBI, for the past twenty years. Because of this increase there is reason for concern. But we do not say: "We should not have passed such a law because some people are not yet ready to obey it. Let us not enforce the law against rape until everyone agrees that rape is a bad thing, for the law obviously won't work until people are ready to accept it. After all, you can't keep men from wanting women!" The situation is analagous with civil rights legislation: laws are meant to prevent abuses which will otherwise occur; laws are not mere statements of what is already universal practice. The more "popular" the law, the easier its enforcement; but conversely, the less the need for such a law in the first place.

It is a serious error, particularly in these days of pressure politics, to assume that all laws rest on a base of broad public agreement and were the outgrowth of mass concern. Such an attitude — that virtually complete popular support must first be assured — looks upon law as an inert codification of past practice and custom, rather than a dynamic element of pressure and control for the present and future, which is how it is seen by jurists, statesmen, and social scientists.

In fact, the chief difficulty in the practical administration of anti-discrimination legislation has not been the "people don't like it" problem, but a basic factor which would hinder the operation of any law — the character of the victim. The victim in a civil rights case is usually a person with little prestige in his own community; his economic resources are usually limited, and his social standing at a minimum. He cannot afford a good lawyer, if any at all, and he rarely has any organized backing. Such a person is at a serious disadvantage in *any* civil or criminal case, not just those which involve discrimination.

It may be of some analytic value that the major "success story" in anti-discriminatory law concerns the powerful, fair employment practices act of New York state, the oldest of such acts. The decline in discrimination in its few years of operation continues to be remarkable. A decline, of course, is all that can be expected; it is all that laws against assault, narcotics, or embezzlement have ever been able to achieve.

III

One major area of consideration yet remains: what are the effects on attitudes of such laws? One hears that the passage of this type of legislation causes and intensifies ill will; that with each "gain" through legislation comes a corresponding "loss" in good will and coöperation — the ultimate goals — and that anti-discrimination legislation, in the long run, defeats itself. At first glance, this argument is not illogical, but it is not supported by the facts. Experience under such laws has been uniform: ill feeling and misunderstanding have decreased, not increased.

Connecticut, Massachusetts, New Jersey and New York commissions all report smooth functioning and a minimum of friction. They do not claim to have eliminated prejudicial hiring, but they do claim that opportunities are more nearly equal. The Aluminum Company of America, which has plants in six FEPC states, reports it has had to make only minor changes in personnel policy; the Prudential Insurance Company reports it has run into no opposition from employees, and its management prerogatives have not been interfered with; the Elizabeth Iron works reports that management's normal rights have not been subjected to any serious pressures, and that the New Jersey law has not created any new problems. The Bridgeport Brass Co., the Hat Corporation of America, Allen Manufacturing Co., and Western Electric Co. make substantially the same reports. A recent comprehensive survey by *Business Week* showed that the present FEPC laws were workable, and had failed to cause the significant new problems predicted, such as personal friction, loss of previously employed workers, or interference with securing the best available persons for the jobs. Such laws, they reported, are getting voluntary acceptance by the vast majority of employers, employment agencies, and unions.

Conversely, the "attitudinal" effects of discriminatory legislation are easily observable. Segregation, for example, has the effect of creating an ever-widening gulf, for the lack of contact brings ignorance, suspicion, and distrust, and acts as a bar to understanding, coöperation, and the acquisition of common goals and values. It is significant that in the bloody race riot in Detroit in 1943, the rioting occurred only in areas of segregation; there was no rioting where Negroes and whites either worked together or lived together on an unsegregated basis.

Laws, of themselves, do not automatically end the abuses they are designed to correct, but laws do estab-

lish criteria by which actions can be judged. The passage of civil rights legislation, for example, does establish the fact that certain behavior has been judged to be inimical to public welfare and to public policy.

At present, it appears that the proponents of a Federal FEPC look upon the current Congressional battle as a preparatory phase to the passage of more desirable legislation. Most of the actual work is being done on the state level. They reason that there are a majority of persons in many states and cities who are now ready to accept such legislation. Therefore, such legislation should be passed as soon as possible, especially since each new state law opens up more immediate job opportunities in that particular area. Later on, as more states become accustomed to the use of such legislation, a more determined and finally successful battle will occur in Congress. The very rapid increase in anti-discriminatory legislation on the state level indicates that this reasoning is sound.

No minority group leader, and certainly no social scientist, genuinely believes that legislation is the one cure for the nation's ills, economic, social, educational, or racial. No problems with many aspects and many causes, with its roots deep in history, can be solved by any single technique or method of approach. Nothing short of a completely multiple, multilateral approach can result in success. The legislative technique, previously dormant, has now come into prominence as a major tactic. It would seem, at the mid-point of the important 1945–1955 decade, that the minority group leaders and their friends have made a wise and appropriate choice. The weight of evidence supports the report of the President's Committee on Civil Rights: "We have seen nothing to shake our conviction that the civil rights of the American people — all of them — can be strengthened quickly and effectively by the normal process of democratic government."

THE WOMAN AT THE WHEEL

A STORY

BY *WALLACE MACFARLANE*

THE minister never dared point out Ida Harbison by name, but when he spoke of women who chained themselves to the Wheel of the Machine, we knew who he meant. It was one of my favorite sermons, and until I was ten he had me thoroughly convinced the Mechanical Age was leading us zip down the road to perdition. Of course, when the opportunity offered, I was eager to go zip in person.

"Hello, youngster," said Ida Harbison one day as I was walking home from school, "want a ride?" She pulled her 1910 Stephens-Duryea to the curb, and while my eyes were popping, she fed it a little more gas. The great engine surged like a lion and drew back again.

"Yes, ma'am!"

I had a death grip on my books as we started off; my eyes began to sting in the wind. The speedometer swung up and up to 25, and when we climbed a hill and dropped away on the other side, my heart caught in my throat.

"Did you like it?" she asked when she let me out in front of my house. I couldn't answer so I gulped, and when she started laughing, I laughed with her.

Ida was the only child of K. C. Harbison, who held the city in the palm of his hand. They lived in the huge white house on top of the hill, next door to us. After that first ride I spent a lot of time at the Harbisons. An active ten year old can be useful at washing cars and saddle-soaping upholstery, and he makes a close-tongued *confidant*. He's learned the wisdom of presenting an egg-smooth facade to a prying world. Not that she told me any secrets; we talked about automobiles.

"What do you think of the Apperson Jackrabbit, Lafe?" she asked.

"Gee, they're guaranteed to go 75 miles an hour!"

"John Hartley has one, just like the Vanderbilt Racing car. If you want a ride, I'll make him take you out someday."

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