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Courting Racial Justice

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BOOK REVIEWS

Courting Racial Justice

John Atlas and Peter Dreier

Our Town: Race, Housing, and the Soul of Suburbia, by David L. Kirp, John P. Dwyer, and Larry Rosenthal. Rutgers University Press, 1996. 267 pp. \$29.95. *Suburbs Under Siege*, by Charles M. Haar. Princeton University Press, 1996. 256 pp. \$29.95.

Since the 1960s, how Americans talk, write, and think about race relations has changed immensely. At a 1957 press conference, for example, President Eisenhower expressed his sympathy for the fears of Southern whites whom, he said, "see a picture of the mongrelization of the race." Today, no president would dare utter such sentiments in public.

Thanks to the civil rights revolution, we've witnessed the growth of the African-American middle class, the emergence of Black political leadership supported by both whites and Blacks, and a dramatic decline in the overt daily terror imposed on Black Americans. Several large, predominantly white cities—Minneapolis, Seattle, and Los Angeles among them—have elected Black mayors.

Nevertheless, race remains a divisive issue. And perhaps nothing better reflects the unresolved American dilemma than the persistence of residential segregation. Recent studies document that minorities experience discrimination regardless of income. Poor Blacks, but not poor whites, tend to live in ghettos or barrios with high concentrations of the poor. Middle-class Blacks tend to live in mostly Black neighborhoods. Even when they move to the suburbs, they find themselves living in segregated areas. Only a small fraction of this reality can be attributed to voluntary self-segregation.

Faced with such realities, activists

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have often resorted to litigation to achieve their goals. One of the key cases involved a group of low-income Black residents in Mount Laurel, New Jersey, a fast-growing suburb located ten miles from Camden, one of the nation's poorest cities. In 1970, they successfully sued the township for its failure to provide affordable housing to residents like themselves.

Two new books about these efforts and their legacy, *Our Town* and *Suburbs Under Siege*, demonstrate the limits and opportunities of using the courts as a tool for social reform. Both books describe how housing activists and their lawyers relied almost exclusively on the New Jersey Supreme Court to force the construction of low-income housing in the suburbs. Both books do a good job of describing the litigation process, the personalities, the legal strategies, and the modest outcome of the *Mount Laurel* cases. Did the litigation strategy work? Charles M. Haar in *Suburbs Under Siege* says it did. David L. Kirp, John P. Dwyer, and Larry Rosenthal in *Our Town* are not so sure.

Our Town is a moving and dramatic account of the events featuring several resourceful and tenacious lawyers, judges, and local Black leaders. The authors tell of Ethel Lawrence, who lent her name to the case and faithfully stayed the course for more than twenty years of victory and disappointment. And they describe public interest attorneys Peter O'Connor and Carl Biscaier, who combined a creative commitment to justice with the expertise of real estate entrepreneurs. *Suburbs Under Siege* argues that only the courts can overcome the prejudices of the nation's white majority toward poor and Black Americans.

The goal of the attorneys was not simply to end "snob zoning." They wanted to end New Jersey's housing crisis and stop de facto racial segregation. The *Mount Laurel* decision didn't come close to solving these prob-

lems. There is still a huge gap between the number of housing units needed and the number provided by the court order. In particular, few *Mount Laurel*-sponsored housing units have been built in affluent suburban communities. And most of the housing that has been built has been targeted for lower-middle-class families and the elderly, not the poor.

The authors of these two books try to explain why *Mount Laurel's* legacy is so limited, but their conclusions reflect the political myopia of activists who rely on the courts.

Repeatedly frustrated in their efforts to secure better quality housing, a group led by Ethel Lawrence sued the township in 1970. Four years later, the New Jersey Supreme Court struck down the use of zoning to exclude low-income housing. It ruled that it was illegal for towns to use their zoning powers in a way that inflated residential prices and thus excluded the poor and the Black. *Mount Laurel* and virtually all other New Jersey suburbs evaded the court's ruling; so, in 1983, the state Supreme Court decided the second *Mount Laurel* case. In his ruling, Chief Justice Robert Wilentz made clear that, "This court is more firmly committed to the original *Mount Laurel* doctrine than ever, and we are determined... to make it work." Wilentz's brilliantly crafted decision went beyond outlawing exclusionary zoning. It mandated the construction of affordable housing in suburbs that lacked their "fair share" of low-income people.

Once it became clear that "*Mount Laurel 2*" was beginning to work, political opportunists seized the chance to inflame racial fears. Some New Jersey politicians imitated George Wallace's defiant stand against school integration in the 1960s. Politicians complained that their constituents worked hard to get their suburban homes and now the government was going to destroy their communities and property values. (Of course, they ignored the government tax breaks, in-

sured mortgage loans, and grants for sewers, roads, and highways that subsidized suburban homeowners.) In response to the growing resistance, the state legislature passed a law that undercut the Supreme Court's decision.

New Jersey's judicial activism did lead to the building of about 15,000 units of affordable housing. But most of these units were produced without any direct public subsidy. *Mount Laurel* helped dramatize the state's housing crisis and demonstrated how cities and towns can use government regulation—such as inclusionary zoning and the use of resale controls (which limit rising costs)—to build low- and moderate-income housing.

But the advocates and judges overestimated the power and reach of any court's ability to bring about change. Most people moving into the new *Mount Laurel* housing are young, working class, and white—or they are elderly. This has suited developers, politicians, and most suburban residents themselves. But New Jersey's Department of Community Affairs estimates that more than 600,000 families need affordable places to live.

Why didn't the *Mount Laurel* cases accomplish more? Clearly, both institutional and individual racism have played a role. Lenders, landlords, and realtors still discriminate based on race, steering homebuyers into segregated neighborhoods. Blaming racism, however, is insufficient. Racists do not always act on their beliefs. Economic and social conditions often influence their behavior. We know, for example, that during the half-century after the Civil War, lynchings increased whenever the price of cotton (and thus the health of the Southern economy) declined. And contemporary Americans are more accepting of immigrants when there is close to full employment.

Political leadership and social movements can also encourage racial competition or cooperation. Republicans have sought to exploit issues such as school busing and affirmative action to drive a wedge between white ethnic voters and Blacks. Simultaneously, Democratic leaders became vulnerable by focusing on social issues rather than progressive economic concerns. *Mount Laurel* was New Jersey's Willie Horton. Moreover, as the civil rights movement waned, a number of urban African-American leaders viewed racial integration of suburbia as a threat to their political base.

New Jersey's interracial housing ac-

tivists were also at fault. Relying almost solely on lawsuits, they struggled with a tiny political base. They were unable to connect their noble purposes to the concerns of average white citizens who, as New Jersey's economy began to suffer from declining wages, job losses, and deindustrialization, tried to hold onto whatever social and economic security they could. These were not closet Klan members, but working-class Americans worried about their kids' schools, rising crime, and stagnating property values. So when vote-hungry politicians warned them that *Mount Laurel's* "forced integration" would threaten their hold on the American Dream, they understood the code words.

The authors of *Our Town* mistakenly compare Ethel Lawrence with Rosa Parks. Parks had spent time at the Highlander Folk Center's training sessions for civil rights and labor activists. She was actively involved with her church and was part of a tightly knit Black community. When she refused to move from the front of the bus in Montgomery, the incident mobilized tens of thousands of Black citizens to participate in the bus boycott and other activities designed to win concessions from the white business and political establishment. When they won, the victory belonged to the people, not the lawyers, and became a stepping stone to other stages of the civil rights struggle. At its peak, the civil rights movement viewed litigation as just one of many tools in its strategic arsenal. "Whenever possible," King told reporters in early 1957, "we want to avoid court cases in this integration struggle."

Unlike Parks, Lawrence was not part of an organized movement. She came to rely on housing lawyers, self-perpetuating non-profit advocates who were remote from the average citizen. Nothing dramatized this more than the ease with which New Jersey's current Governor, Christine Todd Whitman, dismantled the Office of the Public Advocate, a government agency set up in the 1970s, which championed the *Mount Laurel* cause.

It should be obvious, especially to non-lawyers, that a top-down strategy like litigation cannot extend economic rights when it undermines local community institutions, fails to empower the poor, or to build coalitions with the middle class.

The *Mount Laurel* lawyers did not realize that it is impossible for courts to

produce basic changes when they lack strong political support and face serious resistance to their decisions. Courts lack implementation powers. As Gerald N. Rosenberg documents in his recent book, *The Hollow Hope*, segregation declined only when the Congress and President were pushed to act by the civil rights movement.

Like many liberals confronting white prejudice, the *Mount Laurel* advocates had little patience for, or skill in, grass-roots organizing. Instead, they resorted to the quick fix of litigation, hoping that if the courts mandated a change in white Americans' behavior, their hearts would (someday) follow. Neither book about *Mount Laurel* addresses the question of resources. In the real world of limited resources, strategic decisions have costs as well as benefits. Exaggerating the importance of litigation leads activists to overemphasize the leadership role of lawyers, to translate their goals into legalistic formulas, and to ignore the need to build widespread political support. It's as if a committee of concerned citizens raised millions of dollars of government and foundation money to help the poor gain opportunities and power and then hired only lawyers. Why not invest in people—organizers, researchers, public relations specialists, and others—who work to empower the poor by building on their church and community organizations?

Using the courts to go over the heads of the public ignores Americans' great capacity to rise to the challenges of their time. Fair-housing struggles can succeed, but only in the context of a grass-roots movement that brings the poor and middle class together.

Efforts to open up the suburbs are most likely to succeed when housing is part of a broader political organizing agenda to build urban-suburban bridges. For example, Myron Orfield, a Minnesota state legislator, has spearheaded a formidable effort to build a progressive metropolitan coalition. He has sponsored a plan to reduce property-tax disparities among municipalities in his region so that inner-ring suburbs and the two major cities (Minneapolis and St. Paul) have a stake in regional cooperation plans. His legislation also created an elected metropolitan council with the authority to establish "fair share" housing goals for each municipality. Orfield recognizes that race relations cannot be improved simply by the stroke of a judge's pen. □