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Opening address by Father Robert F. Drinan, S.J., Dean, Boston College Law School at the Governor's Conference on Civil Rights held on June 4, 1958

Robert F. Drinan, S.J.
Boston College Law School

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The ancient Athenian jurist Solon was once asked how justice could best be secured. Solon replied that justice is assured "if those who are not injured feel as indignant as those who are."

A deep feeling of indignation at rights denied in this Commonwealth has brought this group together today.

Massachusetts has been one of the outstanding leaders in the post-war surge of interest in civil rights. The Commonwealth is among the one-third of our states which have the Fair Employment Practices Act, and among the few states which outlaw discrimination in private educational institutions. Massachusetts also has advanced legislation on discriminatory practices in public and publicly assisted housing and all of these laws are administered by a progressive and very efficient Commission against discrimination (MCAD), a body blessed with excellent leadership.

Problems remain, however, and not everyone in this state is able to obtain the place in the sun to which his talent and education entitle him. This is especially true of the growing number of negroes in Massachusetts and it is particularly true
for them in connection with private housing.

The 1950 census reported that there were 73,577 negroes in this Commonwealth. Reliable estimates put this number today at 85,000 and at about 100,000 in the near but not immediate future. The vast majority of these Negroes dwell in urban areas clearly separated on a "checkerboard" pattern from the community. Whether the Negro ghetto is self-imposed or whether it is the result of social pressures is a question on which not all sociologists agree. But what is certain is that many able Negro families feel that their "right" to better housing is not being observed.

What is the nature of this "right" and what is the relation of law to its implementation? Let us seek to clarify this right by discussing the triple hierarchy of rights -- human, legal and civil rights.

HUMAN RIGHTS

Basic to each individual human being are certain inalienable, imprescriptible rights. These rights flow from human nature itself; they inhere in man as an image of his Creator. The protection of these human rights is the main task of Anglo-American criminal law which imposes a severely sanctioned duty
on every citizen to respect the right of every other person to be physically unmolested in his personal life and to have his property unharmed.

Not everyone would agree on the limits of fundamental human rights but the Universal Declaration of Human Rights subscribed to a decade ago by all the major nations of the world (including the United States) is an amazingly broad commitment to a whole series of interrelated rights.

**LEGAL RIGHTS**

When some of the thirteen colonies refused to ratify the Constitution unless a Bill of Rights were included they confessed their misgivings concerning the depth of American agreement on the extent of the inalienable rights mentioned in the Declaration of Independence. The Bill of Rights of the Federal Constitution consequently guaranteed certain privileges which we have come to call civil liberties or constitutional or legal rights. A small number of these rights have been deemed so fundamental that they have been transmitted to the states by way of the Fourteenth Amendment. One can confidently expect that the United States Supreme Court will continue to extend the beachheads of such rights as freedom of speech, freedom of religion and the privilege not to incriminate oneself.
Beyond the area of constitutionally protected civil liberties there are certain desirable privileges which up to now are not legally guaranteed. These privileges can be called - though not everyone perhaps would concur in the definition - "civil" rights or "social" rights. These rights are infringed by social pressures and collective emotional bias. The violation of these rights has not yet been judicially defined as a breach of the "equal protection" clause but the denial of social or civil rights is clearly contrary to the spirit of equal protection.

Any form of Federal or state legislative, executive or judicial action which is predicated on race has consistently been outlawed. But the problem of non-state or private action predicated on race still presents a problem. Exclusion of citizens from employment and housing because of their race is the social evil on which the law has been called to act. The law has been much more successful in outlawing discrimination in employment than it has in eliminating racial patterns in private housing. It can be stated without hesitation that racial discrimination in housing practiced by private individuals is the greatest single problem in intergroup relations in America.

Does the law have a way to eliminate the ghettos of America?
The task of the law, Roscoe Pound frequently wrote, is the harmonization of conflicting interests. Can the law harmonize the desire of private property owners not to have their real estate depreciate in value because of new ethnic groups moving into the area with the equally intense desire of Negroes and other minority groups to upgrade their economic status by moving into areas where better housing is available? In every major northern city the presence of large Negro ghettos is a challenge to society and to the law. The social or civil rights of the nation's 17 million Negroes to possess the housing to which they would have title if they were not colored have at the moment no legal recognition.

New York City has enacted the first and only American law to prevent discrimination by private individuals in certain real estate transactions. Massachusetts - with the largest Negro population of any New England state - should pioneer along with New York City in an attempt to reconcile and harmonize the interests of private property owners and the desires of the members of minority groups to obtain better housing for themselves and their families.

By a strange twist of fate Chief Justice Shaw of the Supreme Judicial Court of Massachusetts almost a century ago coined and sanctioned "separate but equal" facilities as constitutionally permissible. This legal precedent in this Commonwealth
allowing "separate but equal" facilities was instrumental in allowing that awful doctrine to reign as American law from 1896 until 1954 in which year the U. S. Supreme Court unanimously said that separate facilities are inherently unequal. Let us hope that Massachusetts, in retribution for its error authorizing segregated facilities, may frame and enact a model law against discrimination in private housing which would be so acceptable to all interested parties that it would be adopted by all our sister states within a short period. The task is not easy; the problems and interests involved are complex. But no one may be silent or inactive so long as minority groups do not have effective means to obtain that type of housing to which they are entitled. Justice will not be done unless "those who are not injured feel as indignant as those who are." Let us hope that this Governor's Conference on Civil Rights will be the beginning of the end of all Negro and minority ghettos in Massachusetts.