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## **Fair-Housing Fascism**

**by George C. Leef**

In his recent book, *Liberal Fascism*, Jonah Goldberg argues that most of the “liberal” political agenda is fascistic, in the true meaning of the word. Fascism is a system based on the use of governmental directives to control private property. Whereas communists simply confiscate private property — particularly what they call “the means of production” — fascists let the owners keep title, but bring their property under increasing government domination through rules and regulations. Goldberg’s indisputable argument is that the same thing is going on in the United States.

Liberals hate being called fascists because “fascist” is the epithet they often hurl at those who oppose their authoritarian ideas. Too bad. Let’s be adults and call things by their proper names. Ever since the New Deal, much of U.S. law has been intended to take freedom away from property owners and, in pursuit of notions such as “social justice,” make them subject to numerous political and bureaucratic dictates. Goldberg is right. It’s fascism.

One of the areas where this has occurred is in housing. Anyone who sells or rents housing has to obey a host of regulations, including so-called fair-housing statutes, which make it illegal to do anything that could be construed as “discrimination.” If a seller or lessor has any preferences with regard to buyers or tenants, he had better not act on them, or else face serious penalties.

I happen to be one of the members of the North Carolina Advisory Commission on Civil Rights, and recently the issue of fair-housing law enforcement came up. The commission was reviewing a report on the relative merits of enforcement by the federal government’s Department of Housing and Urban Development (HUD) and local fair-housing agencies. To the astonishment of at least one other member of the commission, I said that I was philosophically opposed to fair-housing laws, but saw no harm in going ahead with the comparative analysis. That commission member’s astonishment manifested itself in an immediate reply by email in which he likened me to some of history’s most unsavory characters. That was written prior to my explanation why I was opposed. Shoot first, ask questions later — if at all.

So what is wrong with fair-housing legislation? Isn't it bad to deny a house or apartment to someone just because of his race or some other characteristic over which he may have no control? How can members of minority groups find decent housing and improve their lives if property owners are free to say, "Your kind ain't welcome" and turn them away?

Like so many other fascist controls, this one is based on both bad philosophy and bad economics. I'll start with the philosophy.

### **Morality and freedom**

Many of the worst injustices of history have stemmed from the proclivity of governments to treat some of their citizens differently than they treat others. In medieval times, the trouble was that a very small number of people (the nobility) had rights and privileges no one else had. In modern times, it's mostly the opposite — certain small groups are treated much worse than everyone else. In the United States, that meant that blacks and Indians were not accorded the same rights as other citizens.

The guiding star of the "civil-rights" movement going back to the 1920s was that the government should stop playing favorites and respect the equal rights of all. With that idea, I completely concur. All persons have the same set of rights revolving around the fundamental rights of life, liberty, and property. What it boils down to is that each person is entitled to live his life as he chooses, so long as he doesn't infringe on the equal rights of others. That is why the infamous Jim Crow laws were wrong. They coercively interfered with the rights of blacks and whites alike.

Consider the Louisiana law challenged in *Plessy v. Ferguson*. It required railroad companies to seat black customers only in segregated coaches. That was a violation of the rights of black citizens, who were denied the right to freely contract with another party for accommodations, and also a violation of the rights of railroad owners, who were deprived of freedom of contract regarding their property. Finally, it violated the rights of freedom of association of white customers who may have wanted to ride with blacks. This was fascism predating Mussolini by decades.

The element of race was incidental to the moral wrong. Some people were deprived of rights and treated differently by law. It's wrong to do that on the basis of race, but just as wrong for any other reason. Fair-housing laws suffer from the same defect as Jim Crow. Here's why.

Among the rights everyone has is the right to liberty of contract. Because a contract requires mutual consent, everyone has the right to seek to enter into a contract with another, but it also means that everyone has the right to either accept or reject contractual offers. It doesn't matter who the person is or what the contract might be about. Equality under the law means that *everyone* is free to make offers and either accept or reject offers made to him.

What this implies is that people are (or at least should be) free to act in accordance with their preferences. If you like a certain performer's work, you're free to buy as much of it as you want. If you don't like a performer's work, you're free to act on that preference and decline to buy any of it. You can, to use a demonized word, *discriminate*. You can do so with all sorts of products and services, and with people. A contrary rule would destroy the symmetry of the law, saying that some people are free to contract with regard to their preferences, but others are not.

Under fair-housing laws, prospective *buyers and renters* are perfectly free to act in accordance with their preferences. Those who are looking to buy or rent can and do discriminate. They usually look at many offerings on the market and reject most of them. They're free to decline to offer to contract, and whether their reasons might be regarded as good or bad doesn't matter in the slightest.

But under the law things are different for housing *sellers*. They are no longer free to act in accordance with their preferences. They're subject to punishment if they say "no" to a prospective buyer or renter for what the government deems a bad reason. They're allowed to discriminate on some grounds ("that's too low an offering price"), but not others ("that's not the sort of person we want in our community").

I'm not saying that all reasons for action or inaction are morally equal. I think it's repugnant for a seller to say, for example, "I won't rent to you because you're black" and equally repugnant for a buyer to say, "Let's not look in that area because it's full of Jews." But freedom and legal equality demand that government respect the rights of all people to act peacefully. The law should no more be used to violate the rights of white housing sellers than to violate the rights of black buyers.

### **Economics and discrimination**

As to the bad economics of fair housing, the case can be stated more simply. Few people in any market are willing to give up sales because of their personal preferences. It's costly to turn away business. Few sellers of anything prefer prejudice to profit. Therefore, we would not expect much discrimination in the housing or any other market. While it is not inconceivable that a person with money to buy or rent would be turned down because of his race, religion, or some other characteristic, it would be rare. If it happened once, it probably would not happen a second time. Discrimination by sellers is unusual, but if you run into it, the sensible thing to do is to try somewhere else. In all likelihood, you'll find one of the great majority of sellers who just want to maximize profits and are glad to have your business.

And that brings us back to the report on fair-housing law enforcement. It included some data from a study done by HUD showing that while some 15 percent of people in the housing market thought they had been discriminated against (an amazingly high number that probably demonstrates only that you can get whatever answer you want if you word your questions the

right way), fewer than 1 percent of those people ever filed a complaint. Why would that be? The obvious answer is that they quickly found housing elsewhere and had no interest in legalistic procedures to extract a pound of flesh from the seller who said “no.”

Some of my fellow commission members favor the “let’s teach them a lesson!” approach. They spoke fondly of cases where they had separated an alleged housing discriminator from a lot of his money to make an example. Instead of using coercion against sellers who may discriminate, however, it would be far better if private people just helped people who are having trouble finding housing by putting them in contact with sellers who don’t discriminate. That is the nonfascistic way to solve this supposed problem.

If the fair-housing laws were repealed, the only people who’d be upset would be a small number of lawyers, bureaucrats, and activists who thrive on the creation of artificial legal conflict.

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**This article was originally published in the November 2008 edition of *Freedom Daily*.**