

**HOUSING AND THE LAW: LESSON 4: HANDOUT 2 SCAFFOLDED**

**OPINION: BUCHANAN V. WARLEY (1917)<sup>1</sup>**

Argued: April 10, 11, 1916  
Decided: November 5, 1917

Justice Day delivered the opinion.

**Primary Source Quote 1**

“The assignments of error in this court attack the ordinance upon the ground that it violates the Fourteenth Amendment of the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States to acquire and enjoy property, takes property without due process of law, and denies equal protection of the laws. The objection is made that this writ of error should be dismissed because the alleged denial of constitutional rights involves only the rights of colored persons, and the plaintiff in error is a white person. This court has frequently held that, while an unconstitutional act is no law, attacks upon the validity of laws can only be entertained when made by those whose rights are directly affected by the law or ordinance in question. Only such persons, it has been settled, can be heard to attack the constitutionality of the law or ordinance. But this case does not run counter to that principle.”

**Secondary Description**

Justice Day argues that Louisville’s ordinance is in violation of the **Fourteenth Amendment**. The Fourteenth Amendment guarantees all U.S. citizens equal protection under the law. The amendment passed during Reconstruction after the Civil War in effort to grant civil and legal rights for people who were formerly enslaved.

**In My Words**

Justice Day says...

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<sup>1</sup> Excerpts retrieved from <https://www.law.cornell.edu/supremecourt/text/245/60>.

**Primary Source Quote 2**

“The concrete question here is: may the occupancy, and, necessarily the purchase and sale of property of which occupancy is an incident, be inhibited by the States, or by one of its municipalities, solely because of the color of the proposed occupant of the premises? That one may dispose of his property, subject only to the control of lawful enactments curtailing that right in the public interest, must be conceded....

The effect of the ordinance under consideration was not merely to regulate a business or the like, but was to destroy the right of the individual to acquire, enjoy, and dispose of his property. Being of this character, it was void as being opposed to the due process clause of the constitution.

That there exists a serious and difficult problem arising from a feeling of race hostility which the law is powerless to control, and to which it must give a measure of consideration, may be freely admitted. But its solution cannot be promoted by depriving citizens of their constitutional rights and privileges.”

**Secondary Description**

The justice argues that Louisville’s ordinance was not constitutional because it violated an individual’s property rights. The ordinance was not in place as a legal regulation. The justice claims that racial tension exists, but it cannot be corrected through ordinances that violate protected rights.

**In My Words**

Justice Day says...

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**Primary Source Quote 3**

“It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution.

It is said that such acquisitions by colored persons depreciate property owned in the neighborhood by white persons. But property may be acquired by undesirable white neighbors or put to disagreeable though lawful uses with like results.

We think this attempt to prevent the alienation of the property in question to a person of color was not a legitimate exercise of the police power of the State, and is in direct violation of the fundamental law enacted in the Fourteenth Amendment of the Constitution preventing state interference with property rights except by due process of law. That being the case, the ordinance cannot stand.”

**Secondary Description**

The justice argues that conflicts cannot be prevented through ordinances like Louisville’s that go against rights protected in the Constitution. As a result, the ordinance must be struck down.

He also references how White people would often claim that their property values would decrease if people of color moved into their neighborhoods. This type of argument was often used by people to seem “logical,” making their racism less explicit.

**In My Words**

The amendment says...

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