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Administration of Municipal Services in Light of the Equal Protection Clause

ADMINISTRATION OF MUNICIPAL SERVICES IN LIGHT OF THE EQUAL PROTECTION CLAUSE

Referring to a portion of town or a segment of society as being "on the other side of the tracks" has for too long been a familiar expression to most Americans.[1]

Disparities in the quality of human existence have been present throughout civilized societies whenever men have assembled, forming urban communities. The larger and more established these communities have become, the more pronounced have become the social disparities which separate their citizenry.[2] Much of this social division is attributable to the age-old economic differences between the "haves" and the "have nots"—differences accentuated by the complexities of modern urban life. However, with the modernization and increase of all varieties of municipal services,[3] it has become clear that those "on the other side of the tracks" often do not enjoy the same measure of services as do their more affluent fellow citizens. The charge has arisen with increasing frequency that inherent social and economic disparities have been ratified

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[1] Hawkins v. Town of Shaw, 437 F.2d 1286, 1287 (5th Cir. 1971). *See* p. 148 *infra*.

[2] It can now be said with certainty that social disparities in America have evolved to the point of unprecedented domestic crisis. The Detroit riot of July, 1967—in which 43 persons died, 386 were injured and 6,892 were arrested—shocked the national conscience and brought into perspective the perplexity of the problem. Mayor Jerome P. Cavanagh, in commenting upon the tragedy in his city, noted:

> It is important to point out in any analysis of America's urban crisis that the Detroit riot was not an isolated event of vengeance against a single community but part of a national epidemic of despair and discontent. In 1967 alone, there were at least 150 outbreaks of violence in more than 120 cities. At least 118 people were killed and nearly 4,000 injured. Undoubtedly, a great deal of purposeful, overt criminality was involved in the rioting, but the root causes are more deeply imbedded in alienation and neglect . . . . If I were to offer any prescription for our urban ills it would be that we now embark to eliminate any injustice that might hold back any man, of any race, of any description—injustices in law, in housing, in education, in employment opportunity, in acceptability.

Cavanagh, *Injustice and Urban Ills*, 19 VA. L. WEEKLY, *DICTA* 66, 69 (1968).

The purpose of this Comment will be to highlight still another injustice symptomatic of a deeper urban malaise—discriminatory administration of municipal services.

[3] An example of services offered by some modern municipalities would be construction and maintenance of streets, curbing and sidewalks, street lights, surface water drainage, sewers, public transportation, garbage collection, public housing and public recreational facilities. Generally, municipal services may be classified "as things necessary and things convenient," the latter making possible a more complete enjoyment of city life. 1 E. MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 1.115 (3d ed. 1949).

and, indeed, perpetuated by discriminatory administration of these services by public officials. The degree to which urban dwellers are entitled to equality in municipal services is, consequently, an issue in need of definition.

I. Historical Judicial Treatment

There has been prevalent a judicial reluctance to intervene when the exercise of discretionary duties by municipal officers was challenged.[4] This hesitancy reflects blind adherence to the basic governmental scheme of separation of powers, whereby the power of the judicial branch to substitute its mandate for executive or legislative action has been limited. Within this scheme, details of municipal administration are entrusted to elected officials by the public and not to the courts.[5] Proponents of uninhibited discretion in public officials for the distribution of municipal services advance their argument on two grounds: that scanty tax revenues necessitate establishing priorities with respect to such services, and that effective municipal government demands the flexibility to react and initiate innovative measures. It is contended by these advocates that judicial review must be restricted as local government alone is able to cope with the exigencies of urban life.[6]

Nevertheless, conditions in modern urban centers disclose that the grant of administrative authority by the public to elected officials can be, and often is, abused. The concept of separation of powers presup-

[4] *See, e.g.*, Stribling v. Mailliard, 6 Cal. App. 3d 470, 85 Cal. Rptr. 924 (1970); Arbour Park Civic Ass'n v. City of Newark, 267 A.2d 904 (Del. 1970); Hoffman v. City of Stillwater, 461 P.2d 944 (Okla. 1969); Weber v. City of Philadelphia, 437 Pa. 179, 262 A.2d 297 (1970).

"[F]air latitude should be allowed by the court to the legislative body to generate new and imaginative mechanisms addressed to municipal problems. 'Novelty is no argument against constitutionality.'" 8200 Realty Corp. v. Lindsay, 27 N.Y.2d 124, 261 N.E.2d 647, 651, 313 N.Y.S.2d 733, 738, *appeal dismissed*, 400 U.S. 962 (1970).

[5] The organizational approach outlined by the decision of People *ex rel.* Clapp v. Listman, 84 App. Div. 633, 82 N.Y.S. 784, 786 (1903) has been rearticulated by numerous modern cases:

> The interference of the Supreme Court with the details of municipal administration is not to be encouraged. These details are entrusted by the people to officers chosen directly or indirectly by themselves. These officers are criminally responsible for a willful neglect of their duties, and upon them the responsibility for the government of our cities should usually be allowed to rest.
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> The Supreme Court is not so organized as to enable it conveniently to assume a general supervisory power over their acts; and, indeed, such an assumption by it would be contrary to the whole spirit and intent of our government.

[6] *Id.*

poses a system of checks and balances.[7] Judicial review of abusive state or municipal power is, therefore, not precluded and should include matters vital to public well-being, such as the allocation of municipal services. The financial plight of urban areas has been well documented and publicized,[8] as has been the squalor of life in urban slums. Without doubt, responsive elected representatives are best able to balance these divergent conditions so as to insure an equitable implementation of services with the resources at hand. Yet, abuses of power are inevitable, demanding the formation of judicial guidelines in this area—guidelines which will not prove unduly restrictive while having the much desired effect of restoring public confidence in municipal government.

II. Potential Foundations for Review

Two theories can be advanced to support granting relief to urbanites who are deprived of equal enjoyment of municipal services: breach of a public trust and violation of the Equal Protection Clause of the Fourteenth Amendment.

A. Breach of Public Trust

When a municipal official assumes his representative position, it could be said that he assumes as well the capacity of trustee of the public welfare.[9] Certainly, such officials control the allocation of tax revenues and,

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[7] The Federalist No. 48 (J. Madison).

[8] An inflationary economy has tended to neutralize any increases in municipal revenues while, concurrently, demands for expanded service, most notably welfare, have continued. State and federal aid has, for the most part, failed to make up the variance, and municipalities across the country face the unprecedented contingency of bankruptcy. Cleveland and Newark are two cities on the brink of economic collapse.

[9] Courts, called upon to determine whether public officials have any legally enforceable property rights in their offices, have often supported the conclusion that public office is not conferred by contract by noting that public office is a public trust to which compensation is merely incident. *See, e.g.*, Taylor v. Beckham (No. 1), 178 U.S. 548, 577 (1900); Katz v. Brandon, 156 Conn. 521, 245 A.2d 579, 587 (1968); State *ex rel.* Stage v. Mackie, 82 Conn. 398, 74 A. 759, 761 (1909); Tuscan v. Smith, 130 Me. 36, 153 A. 289 (1931); Fellows *ex rel.* Cummings v. Eastman, 126 Me. 147, 136 A. 810, 812 (1927); State *ex rel.* Nagle v. Sullivan, 98 Mont. 425, 40 P.2d 995 (1935); State *ex rel.* Gordon v. Barthalow, 150 Ohio St. 499, 83 N.E.2d 393 (1948); Hull v. City of Cleveland, 79 Ohio App. 87, 70 N.E.2d 137, 138 (1946).

> Public officers are created for the purpose of effecting the end for which government has been instituted . . . . In our form of government it is fundamental that a public office is a public trust, or "a public charge or employment," and not a vested property right. . . .

3 E. McQuillin, The Law of Municipal Corporations § 12.29, at 164-65 (3d ed. 1949).

to a limited degree, the application of expanding federal aid to cities and localities. These funds form the corpus of a public trust,[10] created by the machinery of municipal government to benefit the individual residents. It should follow, necessarily, that a discriminatory distribution of municipal services[11] would constitute a breach of the public trust for which a suit in equity will lie to afford relief[12] to the deprived citizens, the intended beneficiaries.

To bolster this approach, an analogy can be drawn to the fiduciary responsibilities of corporate business officers toward individual shareholders. The law of business corporations has evolved from the mere acknowledgement of fiduciary duties of officers and directors owed to the corporation, to a modern, expanded view of fiduciary duties owed the individual shareholder as well.[13] The municipality is itself, conceptually, a corporation[14] and the same judicial standard could logically be applied to municipal officials as is applied to corporate officers and normal trustees. If municipal officers abuse their discretion by a disproportionate allocation of funds or services, this should be perceived as a breach of fiduciary duty to the detriment of individual citizens.[15] Consequently, the courts should then make available the traditional equitable remedies for breach of trust.[16]

B. Violation of Equal Protection

While there is no constitutional necessity for a municipality to pro-

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10 A trust relationship need not be expressly set forth to be recognized by the courts. When taxes are collected subject to authorized expenditures by municipal officials it could be said that a constructive trust results even though the taxpayers had no such intention in paying their taxes. For a distinction between express and constructive trusts *see* 5 A. SCOTT, THE LAW OF TRUSTS § 462.1 (3d ed. 1967).

11 In the distribution of the public *cestui que trust* to the public "trustees," both black and white, municipal officials would be held to the standard of loyalty, fairness and impartiality. 2 A. SCOTT, THE LAW OF TRUSTS §§ 164, 170, 183 (3d ed. 1967). Further restrictions supporting a right of action by deprived citizens might be found in local city and municipal charters.

12 3 A. SCOTT, THE LAW OF TRUSTS §§ 205-15 (3d ed. 1967).

13 *See* Pepper v. Litton, 308 U.S. 295, 307 (1939); Mansfield Hardwood Lumber Co. v. Johnson, 268 F.2d 317, 318-19 (5th Cir.), *cert. denied*, 361 U.S. 885 (1959); Perlman v. Feldmann, 219 F.2d 173, 175, 178 (2d Cir.), *cert. denied*, 349 U.S. 952 (1955).

14 1 E. MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS §§ 2.23-52 (3d ed. 1949).

15 With regard to the standing of an individual citizen to sue municipal officers to enforce public duties, *see* Jaffe, *The Citizen as Litigant in Public Actions: The Non-Hohfeldian or Ideological Plaintiff*, 116 U. PA. L. REV. 1033 (1968).

16 *See* note 12 *supra*.

vide services to its citizens, once it elects to do so, services must be administered on a nondiscriminatory basis.[17] A more comprehensive and promising approach to enforcement of the citizen's right to equality in municipal services would be by application of the Equal Protection Clause. The requisites of state action[18] and justiciability[19] provide no substantial obstacle.

Although it has been argued that judicial intervention in this area is precluded as a nonjusticiable "political question," [20] the decision in *Baker v. Carr*[21] redefined the political question controversy. The Supreme Court established in *Baker* that a finding of justiciability would hinge on whether there existed "judicially discoverable and manageable standards" for resolution of the issue and, on whether the issue might more properly be resolved by "an initial policy determination of a kind clearly for nonjudicial discretion." [22] Viable judicial standards would be feasible in review of administration of municipal services without jeopardizing the discretion of municipal officials, just as such standards have been established in the vastly more complex area of reapportionment.[23] The

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[17] Application of constitutional safeguards does not necessitate that a statute or activity of the state be expressly authorized by the Constitution. A contrary holding would serve either to strip constitutional provisions of any protectionary effect or to rob the Constitution of the flexibility that has assured its survival. *See, e.g.*, Shapiro v. Thompson, 394 U.S. 618 (1969) (welfare assistance, not a constitutional right, must be applied consistent with equal protection); Levy v. Louisiana, 391 U.S. 68 (1968) (same logic applied to wrongful death action); Griffin v. Illinois, 351 U.S. 12 (1956) (appellate review for convicted felons must not discriminate against impoverished defendants).

[18] *See* p. 146 *infra.*

[19] *See* pp. 145-46 *infra.*

[20] The judiciary has been hesitant, if not unwilling, to determine issues political in nature—that is, when the matter in controversy might concern the legitimate exercise of discretion on the part of a public official. *See* note 5 *supra.*

[21] 369 U.S. 186 (1962).

[22] The Supreme Court set forth the following requisites, any one of which could support a finding of a nonjusticiable political issue:

> a.) A constitutional commitment of the issue to a coordinate political department;
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> b.) A lack of judicially discoverable and manageable standards for resolving it;
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> c.) The obvious need for an initial policy determination by a nonjudicial body;
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> d.) The impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government;
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> e.) An unusual need for unquestioning adherence to a political decision already made;
>
> f.) The potential embarrassment from multifarious pronouncements by various departments on one question. *Id.* at 217.

[23] The "reapportionment cases" have been most pronounced in the application of the

most obvious standard, of course, would be the quality of services enjoyed by those citizens who are favored by discriminatory practices. Any variation from that same quality of service would require further judicial scrutiny to determine whether the classification among citizens is rationally based. Whatever the standard, a check on municipal abuse of discretion within the framework of equal protection of the laws should not be found to be an infringement of separation of governmental powers.[24]

As regards state action, it is well established that the Fourteenth Amendment applies only to "state action" or action taken under color of state authority.[25] Although state action is of declining significance as a necessity for constitutional safeguards,[26] it is still true that, theoretically, the contention of "no state action" is the last bastion on which advocates of de facto discrimination might stand.[27] The state action concept has been broadened to include "creatures" of the states when their function has been governmental in nature.[28] It follows that actions by municipal officials relating to the public welfare clearly fall within the ambit of state action. Judicial review should not be limited merely to affirmative activities of municipal government, however. Municipal inaction in response to discrimination in public institutions, thereby en-

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Baker standard. Avery v. Midland County, 390 U.S. 474 (1968); Reynolds v. Sims, 377 U.S. 533 (1964); Gray v. Sanders, 372 U.S. 368 (1963); Baker v. Carr, 369 U.S. 186 (1962).

[24] *Contra,* Riss v. City of New York, 22 N.Y.2d 579, 240 N.E.2d 860, 293 N.Y.S.2d 897 (1968) (failure to supply police protection). *But see* p. 148 *infra.*

[25] Thompson v. City of Louisville, 362 U.S. 199 (1960); Cooper v. Aaron, 358 U.S. 1, 16 (1958); Terminiello v. Chicago, 337 U.S. 1 (1949); Shelley v. Kraemer, 334 U.S. 1 (1948).

[26] *See* United States v. Guest, 383 U.S. 745 (1966); Katzenbach v. McClung, 379 U.S. 294 (1964); Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964). *See also* Note, *The Strange Career of "State Action" Under the Fifteenth Amendment,* 74 YALE L.J. 1448 (1965).

[27] *See* Black, Foreword: *The Supreme Court 1966 Term,* 81 HARV. L. REV. 69, 70 (1967).

[28] The Supreme Court in Avery v. Midland County, 390 U.S. 474 (1968) stated in an unequivocal manner:

> Although the forms and functions of local government and the relationships among the various units are matters of state concern, it is now beyond question that a State's political subdivisions must comply with the Fourteenth Amendment. The actions of local government *are* the actions of the State. A city, town, or county may no more deny the equal protection of the laws than it may abridge freedom of speech, establish an official religion, arrest without probable cause, or deny due process of law. *Id.* at 480.

couraging further discrimination, is also violative of the Equal Protection Clause.[29]

III. Evolution of an Equal Protection Standard

The traditional equal protection test demanded only that the state action in controversy, be it legislation or municipal activity, bear some rational relation to a legitimate governmental purpose.[30] Yet, the Supreme Court has altered the standard when a racial classification is made among citizens.[31] The Court in *McLaughlin v. Florida*,[32] while ruling upon the constitutionality of a Florida statute which prohibited cohabitation between a Negro and white person, determined that equal protection of the laws is not satisfied merely by a demonstration of equal application of a statute among class members singled out by the statute.[33] Rather, it is to be adjudged whether "the classifications drawn in a statute are reasonable in light of its purpose." [34] Racial classifications are, in general, "constitutionally suspect" [35] and should, as a result, be subjected to the "most rigid scrutiny." [36]

> Such a law (based on racial classification) . . . bears a heavy burden of justification . . . and will be upheld only if it is necessary, and not merely rationally related, to the accomplishment of a permissible state policy.[37]

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29 Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920, 931 (2d Cir. 1968).

30 Williamson v. Lee Optical Co., 348 U.S. 483 (1955); Tigner v. Texas, 310 U.S. 141 (1940).

31 Loving v. Virginia, 388 U.S. 1 (1967); McLaughlin v. Florida, 379 U.S. 184 (1964); Korematsu v. United States, 323 U.S. 214 (1944); Jackson v. Godwin, 400 F.2d 529, 537 (5th Cir. 1968).

32 379 U.S. 184 (1964).

33 *Id.* at 191.

34 *Id.* Mr. Justice Stewart, in his concurring opinion, expressed his belief that even this standard was not broad enough. ". . . I cannot conceive of a valid legislative purpose under our Constitution for a state law which makes the color of a person's skin the test of whether his conduct is a criminal offense." *Id.* at 198.

35 Bolling v. Sharpe, 347 U.S. 497, 499 (1954).

36 Korematsu v. United States, 323 U.S. 214, 216 (1944).

The Supreme Court has also stated that a classification of citizens on the basis of wealth should evoke more exacting judicial scrutiny. McDonald v. Board of Election Comm'rs, 394 U.S. 802, 807 (1969).

37 McLaughlin v. Florida, 379 U.S. 184, 196 (1964).

The more rigid equal protection standard was successfully employed recently in *Hawkins v. Town of Shaw*[38] to review allocation of municipal services. The *Hawkins* decision viewed the racially discriminatory provision of such services violative of the rigid standard and, consequently, granted injunctive relief to Negro citizens under 42 U.S.C. §1983.[39] Undisputed statistical evidence was presented which reflected ". . . a substantial qualitative and quantitative inequity in the level and nature of services accorded 'white' and 'black' neighborhoods in Shaw." [40] Noting that "figures speak, and when they do, Courts listen," the Court of Appeals for the Fifth Circuit found a clear prima facie case of racial discrimination.[41]

In reaching this conclusion, the Fifth Circuit reversed the trial court's decision,[42] which had applied the traditional equal protection standard in denying relief. The trial court began its analysis by recognizing that discretion in allocating public services properly belongs in municipal officials,[43] and that, in the absence of contrary evidence, there exists a presumption that public officers are honest and will carry out their obligations in good faith.[44] Conceding that the town of Shaw was not one of the more liberal in the nation, the trial court concluded, nonetheless, that

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38 437 F.2d 1286 (5th Cir. 1971).

39 The so-called Civil Rights Act reads as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C. § 1983.

The extent to which municipalities can be held liable under § 1983 was decided by the Supreme Court in Monroe v. Pape, 365 U.S. 167 (1961). It was established that a municipality is a "person" under § 1983 for purposes of injunctive relief. However, the Supreme Court concluded that this provision had not been enacted with the intention of providing a private litigant a course of action for damages against a municipality. *See* Harkless v. Sweeny Independent School Dist., 427 F.2d 319 (5th Cir. 1970); United States v. City of Jackson, 318 F.2d 1 (5th Cir. 1963); 70 COLUM. L. REV. 1467 (1970).

40 437 F.2d at 1288.

41 *Id.*

42 Hawkins v. Town of Shaw, 303 F. Supp. 1162 (N.D. Miss. 1969).

43 The District Court set the tone of its decision with the statement that ". . . determination of the necessity and character of public improvements, the matter of their construction and the priority of accomplishment, ordinarily, are questions to be resolved by officials, usually elected, who constitute the governing authority of the municipality." *Id.* at 1167.

44 *Id.*

the disparities in municipal services in Shaw could be explained in terms of legitimate public interests.

> If actions of public officials are shown to have rested upon rational considerations, irrespective of race or poverty, they are not within the condemnation of the Fourteenth Amendment, and may not be properly condemned upon judicial review. Persons or groups who are treated differently must be shown to be similarly situated and their unequal treatment demonstrated to be without any rational basis or based upon an invidious factor such as race.[45]

This application of the "traditional" equal protection standard in the trial court actually hinged on the factual determination by the court that "rational considerations" did exist, sufficient to justify the differences in services enjoyed by citizens of Shaw. The proper forum for an expression of discontent with the quality of municipal services was suggested to be the ballot box.[46]

Reversal by the Fifth Circuit in the *Hawkins* case and the subsequent granting of relief were founded upon the contrary conclusion that there existed no compelling state interests inherent in the administration of these services so as to validate the obvious racial classification made by the responsible officials.[47] The town of Shaw could not sustain the "heavy burden of justification" required under the rigid equal protection standard employed whenever classifications among citizens are founded on suspect traits, such as race.[48] No overriding governmental objective

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45 *Id.* at 1168. *See also* Davis v. Georgia State Bd. of Educ., 408 F.2d 1014 (5th Cir. 1969).

46 303 F. Supp. at 1169.

47 Evidence presented by the record which prompted the inescapable conclusion of racial classification in the expenditure of municipal services, was as follows: over 97% of those who lived in homes located on unpaved streets were black; no high intensity mercury vapor street lights were installed in black neighborhoods, whereas the superior lighting fixtures were found only in white residential areas; 20% of the black residents received no sanitary sewer service, while 99% of the white residents were served; many streets in the black residential areas had inadequate drainage ditch systems, whereas no comparable problem existed in white communities; the water pressure to two black neighborhoods, constituting 63% of the town's black population, was substandard because these areas were served by 2" or 1¼" water mains, while most of the white population was served by 6" mains.

Faced with the severity of these figures, the Fifth Circuit Court of Appeals concluded that "[t]he only question that remains to be examined is whether or not these disparities can possibly be justified by any compelling state interests." 437 F.2d at 1288.

48 *See* McLaughlin v. Florida, 379 U.S. 184, 192, 196 (1964).

was presented, to the satisfaction of the court, so as to obviate equal protection safeguards.[49]

There was no finding of bad faith on the part of Shaw's public officials, but such a finding was immaterial.[50] A showing of good intentions in distribution of services is no justification when a discriminatory classification results.[51] Nor may elected officials avoid their responsibilities to the entire citizenry by claiming to represent, through disproportionate allocation of services, the will of the majority of their constituents.[52] It is now firmly recognized ". . . that the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a willful scheme." [53]

IV. Conclusion

The impact of the more rigid equal protection standard in the field of municipal services and the increased willingness of the courts to implement it, reflected by the *Hawkins* decision, could serve to revolutionize municipal administration, thereby aggravating further the fiscal dilemma under which local governments presently suffer. Indubitably, as governmental services are expanded seeking to improve the quality of human existence, litigation of the *Hawkins* variety will accompany this growth.

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49 437 F.2d at 1289-91.

50 [T]he record contains no direct evidence aimed at establishing bad faith, ill will or an evil motive on the part of the Town of Shaw and its public officials. We feel, however, that the law on this point is clear. In a civil rights suit alleging racial discrimination in contravention of the Fourteenth Amendment, actual intent or motive need not be directly proved . . . . *Id.* at 1291-92.

51 The Supreme Court in the landmark decision in Brown v. Bd. of Educ. of Topeka, 347 U.S. 483 (1954), and its progeny, has made it clear that a deliberate policy to separate the races cannot be justified by the good intentions with which other laudable goals are pursued.

As regards motive and municipal discriminatory policies, *see* Kennedy Park Homes Ass'n v. City of Lackawanna, 318 F. Supp. 669 (W.D.N.Y. 1970); Gautreaux v. Chicago Housing Authority, 304 F. Supp. 736 (N.D. Ill. 1969).

> Orthodox equal protection doctrine can be encapsulated in a single rule: government action which without justification imposes unequal burdens or awards unequal benefits is unconstitutional. The complaint that analytically no violation of equal protection vests unless the inequalities stem from a deliberately discriminatory plan is simply false.

Hobson v. Hansen, 269 F. Supp. 401, 497 (D.D.C. 1967).

52 Gautreaux v. Chicago Housing Authority, 296 F. Supp. 907, 914 (N.D. Ill. 1969).

53 Hobson v. Hansen, 269 F. Supp. 401, 497 (D.D.C. 1967). While the *Hobson* decision involves segregation in education rather than discrimination in municipal services, it provides an excellent discussion of the evolving equal protection standard.

Unfortunately, many questions remain unanswered by the *Hawkins* ruling. The degree of difficulty and expense in gathering sufficient statistical data to prove a prima facie case of discriminatory classification, and the validity of specially assessing affluent white residents for additional services while not improving the quality of general services, are issues yet to be resolved—issues which will bear on the long term significance of *Hawkins*. At the very least, *Hawkins* represents another step in a growing judicial tendency to control abuse of power in areas once thought exclusive of judicial influence. The necessity for such control cannot be denied, and it is suggested that the equal protection standard applied in *Hawkins* meets this need while affording municipal officials necessary operative flexibility.

C. F. W.