“This Law Would...Result in The Hitlerian Rule of Quotas”:
The Rhetoric of Racial Backlash and the Politics of Fair Employment Practice
Legislation in New York State, 1941-1945

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Anthony S. Chen
University of Michigan, Ann Arbor
E-mail: anthony.s.chen@umich.edu

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“It is one of the happy incidents of the federal system,” wrote Justice Louis Brandeis in his 1932 dissent to *New State Ice*, “that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”

Few examples more clearly illustrate the Brandeisian metaphor of federalism—however overwrought it has become—than the overlooked wave of civil rights legislation that swept across northern states during the 1940s and 1950s. Even as a southern-conservative coalition held Congress in thrall, northern state legislatures passed more than sixty civil rights laws covering employment, accommodations, and housing. Of these, fair employment practices (FEP) laws were the most politically and economically significant. Cast in race-neutral language, they mandated non-discrimination and equal treatment in both public and private employment, offering significant protection to racial, religious, and national-origin minorities in the labor market. What were the politics of their passage?

This question seems intuitively interesting, but it has largely escaped historical scrutiny. Many authors continue to write about the postwar struggle over civil rights as

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primarily a matter of shepherding reluctant southerners into a “liberal consensus” about integration. Most other Americans, it is thought, had seen fit by then to heed the better angels of their nature, embracing the ideals of racial equality and color-blindness. The struggle reached a luminous summit in 1964, when the South was finally brought to heel with the passage of the Civil Rights Act. National controversy came only after 1964, with urban riots, black power, and affirmative action fomenting a backlash against civil rights that resonated even in the North. This ill feeling drove a wedge through the New Deal coalition and made it possible for Republicans to forge a new electoral majority that included disaffected whites across the country. If state FEP laws are mentioned at all, they are regarded as further evidence of a liberal consensus, or as so many ironic intimations of the hopeful directions in which subsequent policies might have gone if the civil rights movement had not veered so sharply off course.3

In recent years, studies of the postwar urban North have begun to reveal the limits of the consensus interpretation. Arnold Hirsch’s *Making the Second Ghetto*, Thomas J. Sugrue’s *Origins of the Urban Crisis*, and Robert O. Self’s *American Babylon* probe the social and political history of racial inequality in postwar northern cities, finding that deep fissures within the New Deal coalition—particularly tensions between the white, urban working-class and African-Americans—long pre-dated the 1960s. Sugrue’s history of Detroit illustrates with vivid clarity how a “grass-roots rebellion against liberalism” originated during the 1940s and 1950s “from within the New Deal coalition itself.” The resistance of northern whites to the integration of their neighborhoods and workplaces suggests the “‘silent majority’ did not emerge de novo from the alleged failures of liberalism in the 1960s; it was not the unique product of the white rejection of the Great Society.” Rather, white backlash was the “culmination” of “simmering white discontent” that had begun decades earlier.4

These studies form a critical, new stream of research in historiography of the postwar United States, challenging the main contours of the consensus interpretation, but much work remains to be done. With the notable exception of Sidney Alan Fine’s study of Michigan, “Expanding the Frontiers of Civil Rights”, few studies have given sustained consideration to the politics of civil rights in northern states.5

This article represents first in-depth effort to examine the passage of the Ives-Quinn bill, whose enactment in 1945 gave New York the distinction of being the first state to pass FEP legislation. The statute banned discrimination in employment and established the New York State Commission against Discrimination (SCAD) as the enforcement agency. The new commission—which possessed both cease-and-desist authority as well as the power to order offending parties to take “affirmative action” to compensate their victims—epitomized a distinct model of social regulation in which color-blindness would be achieved through individualized determinations of harms and remedies. Newspapers declared Ives-Quinn a matter of “national importance,” and its passage lent significant momentum to campaigns for similar bills in New Jersey,

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Massachusetts, Connecticut, Pennsylvania, Ohio, Illinois, and California. The accomplishments of SCAD were widely touted in subsequent years, and Ives-Quinn was regarded as blueprint for other states. Yet historians have largely overlooked the story of how it came to pass.6

Perhaps there is not much of a story to tell. It is no surprise that the Empire State, bastion of liberalism and birthplace of Rockefeller Republicanism, enacted the first civil rights statute with overwhelming bipartisan support. It seemed a congenial laboratory for experimentation. Indeed, postwar proponents of FEP laws in other states were fond of claiming that events in New York “proved that all could join above politics” in supporting civil rights, reserving special praise for the leadership role played by Republican governor Thomas E. Dewey. Even employers in New York would appear to have come to a workable accommodation with the law. A personnel officer at Western Electric would pronounce years later that the law was “fair and reasonable” and had not placed any “undue hardship” on employers. The passage of Ives-Quinn may have been inevitable.7

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But there are scattered hints that the bill was engulfed by controversy. The first chairman of the SCAD, Republican Elmer A. Carter, writes that the “enactment of the law had been bitterly fought by powerful industrial and commercial interests” and by a “distinguished group of citizens…who honestly believed that such a measure would accentuate racial and religious antipathies.” Richard N. Smith, in his fine biography of Dewey, characterizes the Ives-Quinn bill as the “most controversial” of Dewey’s initiatives in 1945, maintaining that it “divided New Yorkers down the middle.” Smith’s sketch of the events suggests a hard-fought, wide-ranging battle that included opposition from the New York State Chamber of Commerce, conservative columnist Westbrook Pegler, and park commissioner Robert Moses, who expressed fears of “quotas.” In a thoroughly researched and tenaciously argued study of antidiscrimination law, Paul H. Moreno adds that “large numbers of conservative Republicans” defected from the bipartisan majority.8

Most of the details of the story remain unknown, however. Who originated the idea of a state commission, and what considerations informed its design? Who clashed over the legislation, and what language did they invoke? Why did supporters of the Ives-Quinn bill ultimately prevail?

My research suggests that the passage of Ives-Quinn was a major watershed in modern American politics. Along with efforts to reauthorize the Fair Employment Practices Act (Chicago, 1951); State Council for a Pennsylvania FEPC, Business Looks Ahead to Fair Employment Practices, [circa 1949], General Pamphlet Collection (Urban Archives, Temple University, Philadelphia).

Practice Committee (FEPC), it helped to catalyze the formation of a new interracial, interfaith coalition out of a motley collection of groups that had until then perceived themselves as sharing few common interests. The coalition—which might be characterized as the “other” civil rights movement to distinguish it from the southern-based, direct action movement to dismantle Jim Crow—included not only stalwart race organizations like the National Association for the Advancement of Colored People (NAACP) and National Urban League (NUL) but also religious groups like the American Jewish Congress (AJ Congress), Catholic Interracial Council (CIC), Federal Council of Churches (FCC), selected craft unions like the Brotherhood of Sleeping Car Porters (BSCP), many international and local unions in the Congress of Industrial Organizations (CIO), and liberal groups like the American Civil Liberties Union (ACLU).9 The interwar struggle for formal equality had focused on anti-lynching and anti-poll tax legislation in Congress, but Ives-Quinn brought together a broad liberal coalition that worked through normal electoral channels to redefine the struggle for racial equality as a campaign to make “freedom from discrimination” a “civil right.” The coalition was not confined to a single party; it boasted a bipartisan base of leadership that included liberal Republicans like Thomas E. Dewey, Irving M. Ives, Fiorello H. La Guardia, and Alvin S. Johnson as well as Democrats like Herbert S. Lehman and Frieda S. Miller. Nor was the coalition dominated by a coterie of political elites. Although their influence is visible in the historical record only at certain moments, ordinary men and women of all faiths and

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9 Thanks to Margaret Weir for suggesting the term the “other civil rights movement.”

Quarterly 40 (1954), 1-20; Richard N. Smith, Thomas Dewey and His Times (New York, 1982), 443-8, esp. 446; Moreno, From Direct Action to Affirmative Action, 111.
backgrounds wrote letters to their elected representatives, appear at legislative hearings, and ultimately made a decisive contribution to the legislative process.10

Standing staunchly against the “other” civil rights movement was a coalition of conservative and upstate Republicans and employers—responding to the concerns of rural and suburban whites—who staged a major, if brief, insurgency against the GOP leadership. It nearly succeeded in fatally derailing the campaign for Ives-Quinn. In their public statements and appearances, groups like the Associated Industries of New York State and public figures like Moses and Pegler helped to fashion a powerful, new language of resistance to civil rights. While professing to share the goal of racial equality, they expressed profound uneasiness about achieving it through legislative means, claiming to prefer education and voluntary compliance to compulsion and regimentation. The passage of the proposed law, they warned, would lead to the informal imposition of quotas, grant preferential treatment to minorities, undermine standards of merit, and foster rather than reduce color-consciousness. Only after Dewey’s belated endorsement and unprecedented public mobilization did this illiberal coalition reluctantly concede their defeat.

The political struggle over Ives-Quinn did not merely prefigure the shape of things to come. It was a major conflict in its own right, and it gave rise to a form of racial politics that has been misrecognized by the consensus interpretation as emerging much later. Although big-business, small-government conservatives failed to defeat Ives-

Quinn, they helped to construct some of the most powerful elements of the rhetorical template within which subsequent commentators would frame their own criticisms of civil rights policies in employment. The resentful language of “backlash” did not arise after 1964 as a singular response to the growing militancy of the civil rights movement or the advent of policies like affirmative action. It was forged in the 1940s during the conflict over Ives-Quinn, and it was incubated in subsequent battles over FEP laws in other northern states and cities—where it was readily available for appropriation when civil rights became a national issue in the 1960s.11 Nor was backlash rhetoric first uttered only when members of the New Deal coalition grew disillusioned by the color-conscious turn in public policy. In states like New York, it was initially spoken by business lobbyists, conservative Republicans legislators, and non-urban whites. If the consensus interpretation misses the “simmering discontent” among the northern, urban whites, it also underplays the strength, endurance, and creativity of a distinctly illiberal coalition that even in the Empire State had never fully accepted the broad outlines of the New Deal. The political and legislative history of the Ives-Quinn bill suggests—contra the powerful imagery of the consensus interpretation—that the year 1964 did not mark a total discontinuity in the politics of civil rights. Wielding charges of racial quotas, reverse discrimination, and preferential treatment, conservative Republicans and their constituents played a crucial role in the assault on fair employment, just as they would

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use the same rhetoric to spearhead the retrenchment of affirmative action forty years later.

The impetus for the passage of strong anti-discrimination legislation did not materialize overnight. Its origins went back to the earliest months of 1940, when the ideological problem posed by the looming war was cast into increasingly sharp relief. The country would shortly be marching overseas against a fascist enemy, but how could it legitimately denounce intolerance abroad if it continued to countenance segregation and discrimination at home? Nobody grasped the strategic opportunities of the impending conflict better than African Americans themselves. In a phrase that the Pittsburgh Courier would adopt as their official slogan during the war, James G. Thompson called for a double victory: “The first V for victory over enemies from without, the second V for victory over our enemies from within.” Such demands did not go unheard. Roosevelt pledged a reinvigorated commitment to egalitarianism. “Let us here resolve that in a time of world division,” he wrote in 1940, “this nation shall be rededicated to the principles that all men are brothers, that religious prejudice and group intolerance may not here destroy that unity in freedom which is the strength of our national character.” But the federal response consisted more of symbolic gestures than real policy change. When FDR established the first wartime FEPC in 1941—marking the first moment since Reconstruction that the federal government had openly supported black civil rights—he nonetheless did not go so far as to grant it formal authority enforcement authority. Throughout the war, no matter how dire the need for recruitment, officials in the War Department and the Office of War Administration remained deeply reluctant to integrate
military service. Instead, they promoted the participation of black heroes like Joe Louis in military-sponsored activities, hoping, in the words of Lauren Rebecca Sklaroff, that “the use of black cultural symbols could reconcile the escalating ‘Negro problem’ with official pronouncements of American egalitarianism.”

New York State seemed prepared to venture beyond rhetoric and symbolism when Governor Herbert H. Lehman established the New York State War Council Committee on Discrimination in Employment (CDE) in March 1941. The committee was meant to serve not only as a propaganda tool but also as a vehicle for resolving allegations of discrimination. Lehman had not created the committee unbidden—his announcement was preceded by the introduction of three anti-discrimination bills by Harlem legislators—but he took two steps to indicate that he was serious. First, he appointed a roster of highly prominent and influential African Americans to the CDE, notably Randolph, Lester Granger of the NUL, and Channing Tobias of the Young Men’s Christian Association (YMCA). Other members included such redoubtable eminences as Beardsley Ruml of the Federal Reserve Bank of New York, David Sarnoff of the Radio

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Corporation of American, and Stephen S. Wise of AJ Congress. New York’s accomplished industrial commissioner, Freida S. Miller, was made chair. Then, after some urging from the CIO, Lehman signed the Mahoney anti-discrimination bill, which barred defense contractors from refusing to hire a person on account of their race or religion. Although the bill did not put the CDE on statutory footing, as some observers erroneously surmised, it gave the committee further momentum and raised hopes that something could and would be done about discrimination.13

Lehman’s choice of Miller seemed especially sound. Miller was a younger member of the same generation of public-minded women that included Frances Perkins and Eleanor Roosevelt. Joining the Department of Labor in 1929, she was appointed industrial commissioner in 1938, making her the second woman to ever hold the post, after Perkins herself. Miller’s two biggest responsibilities included the administration of the workmen’s compensation program and the rollout of the state unemployment insurance program, both of which entailed processing thousands of claims and disbursing millions of dollars in benefits. When the CDE was added to her already-sizeable roster of

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responsibilities in 1941, she had already acquired more than ten years of experience in industrial relations.  

At the beginning of her tenure, Miller heavily stressed the educational and conciliatory functions of the committee. It would aim primarily to inform New Yorkers of their rights and responsibilities under the law, and it would also work informally to persuade them to abandon any discriminatory practices, using the “conference method” pioneered by the NUL. Only in “extraordinary cases” would the committee consider taking legal action to enforce the law. Accordingly, several thousand copies of the Mahoney Act were printed and sent out to defense contractors. Letters were mailed to community leaders asking them to endorse the democratic principles tolerance for which the committee stood. The committee distributed 10,000 copies of a program manual to schools, clubs, and informal groups interested in promoting better intergroup relations.

The committee worked especially hard on outreach to employers. Its campaign reached a zenith in 1942 when the CDE began disseminating a fifty-page handbook, *How Management Can Integrate Negroes in War Industries*. The handbook was every bit the primer that the title suggested. The author, Lincoln University professor John A. Davis,

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14 *Current Biography* (New York, 1945).

15 CDE, Minutes, September 10, 1941; Folder 28, Box 2, Miller Papers; CDE, Minutes, September 17, 1941, Folder 28, Box 2, Miller Papers; CDE, Minutes, October 8, 1941, Folder 28, Box 2, Miller Papers; CDE, Minutes, October 22, 1941, Folder 28, Box 2, Miller Papers; Frieda S. Miller to Defense Employers, September 10, 1941, Box 1, Folder 2, Minutes and Investigations Files, 1941-1945, Records of the New York State War Council Committee on Discrimination (New York State Archives, Albany); CDE, *Report: March 1941, to July 1944*, 2-15; Karl Drew Hartzell, *The Empire State at War: World War II* (Albany, 1949), 67. On the origins of the complaint-adjustment procedure, see Daniel Kryder, *Divided Arsenal: Race and the American State during World War II* (New York, 2000), 42-45.
recommended a gradualist, strategic approach to the problem—enlisting a supportive supervisor, targeting white-collar jobs first, and hiring a “high type” of African American. Often, he noted, successful companies “start[ed] the program off with the appointment of a neat, efficient, attractive, well-qualified colored girl in the employment office itself.” Davis expressed great faith in the effectiveness of conference and education. When a white worker refused to work with a black worker, it was “seldom” necessary to fire or transfer them—“if the situation is clearly explained.” Getting management to eliminate discrimination was no more difficult. “When the problem is plainly stated, any competent supervisor will put the national interest ahead of his personal prejudice.”

Within days of publication, requests for the handbook poured in from 80 cities and 25 states. More than 25,000 copies were eventually distributed. The handbook won especially high praise from the business lobby, typically happy to promote the resolution of problems out of the limelight. Mark A. Daly, Vice President of the Associated Industries of New York State, offered to send out 1,400 copies of the handbook to his membership, which included General Motors, Bethlehem Steel, Corning Glass Works, Otis Elevator Company, IBM, and Pfizer. “Your booklet is a most comprehensive statement covering one important phase of a very difficult problem,” Daly wrote to Miller. “I am sure every employer will welcome an opportunity to read it.”

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Not every employer considered discrimination a problem, however. Some of them downplayed the incidence of discrimination. One top official at Rochester’s Industrial Management Council, A. E. Crockett, conceded that discrimination may have once been rampant. But his personal observation suggested that it was fast receding. It was true that labor shortages accounted for minority gains, but he was certain that the gains would be lasting: “[I]f and when these young men of this racial extraction fit themselves where they can compete on terms favorable as against their competitors, we’ll soon be hearing very little about racial discrimination.” Crockett cited the example of a local school whose graduates commanded a “premium” among local employers: “[O]ut of 37 men of Italian race in [the] June, 1941 graduating class at Edison Tech all but three are employed.” Crockett did not deny that pockets of discrimination lingered, but he strongly believed that “substantial progress” had been made against discrimination: “[A]fter a while it will be nearly gone, if not entirely so.”

If some employers considered discrimination insignificant, many workers did not. The CDE received numerous complaints and adjusted many of them successfully. When a hate strike at one company erupted after a black worker was promoted, CDE officials rushed to the scene and explained to workers that the action could result in misdemeanors. The workers voted to return to work the next day. When a taxicab company placed a discriminatory order with the U.S. employment service—fearing that hiring black drivers would drive up their insurance rates—CDE officials called a meeting. After the companies received assurances from insurers that their rates would not

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Papers (Department of Rare Books, Special Books, and Preservation, University of Rochester, Rochester, New York).

18 A.E. Crockett to Miller, November 1, 1941, Folder 28, Box 2, Miller Papers.
increase, they signed a statement committing them to hire black drivers and maintenance men. CDE officials successfully adjusted 304 complaints in 1942, and 435 in 1943.\textsuperscript{19}

Soon, however, CDE officials began expressing dissatisfaction with what Tobias called a “painfully slow rate in getting results.” The chief reason for the plodding pace of change, according to Miller, was the inability of the CDE to enforce the law in the face of non-compliance, delay, or obstruction. As she told Lehman, “enforcement of the existing legislation forbidding discrimination in employment was being slowed down through lack of administrative authority.” Concerns were so serious and widely shared that the committee agreed to urge the passage of new legislation granting it stronger powers. Its demands were met in April, when Lehman signed the Schwartzwald bill, which gave the industrial commissioner the authority to subpoena witnesses, hold public hearings, and require the submission of employment records. In a September 1942 press release, CDE officials announced that they would also interpret the legislation as a legitimate basis for issuing various administrative orders to defense contractors: “The order may require the submission of monthly or bi-monthly reports of pertinent employment data to the Industrial Commissioner; it may order the employer to cease and desist from the practice of certain discriminations based on race, creed, color or national origin; or it may direct the employer to take affirmative action to correct discriminatory refusals to hire.”\textsuperscript{20}

\textsuperscript{19} CDE, Minutes, January 13, 1942, Folder 28, Box 2, Miller Papers; CDE, \textit{Report: March 1941, to July 1944}, 22, 49-76. See also CDE, Report for the Months of July and August 1943 (New York, 1943), Folder: New York State War Council – Dispensations, Box 185, Irving M. Ives Papers (Rare and Manuscript Collections, Cornell University, Ithaca, New York).

\textsuperscript{20} Miller to Lehman (circa April 1942), Bill Jacket Collection, 1942, Chapter 677 (New York State Library, Albany); Channing H. Tobias to Lehman, May 7, 1942, \textit{ibid.},
The full extent of Miller’s new authority remained legally ambiguous, but how she interpreted the mandate of the law did not require any creative inferences or radical revisionism on her part. As a long-time labor official, she reached for the regulatory tools most familiar to her. Such administrative orders had been commonplace in labor relations since the Wagner Act, which conferred on the National Labor Relations Board (NLRB) the authority to order companies to “cease and desist” from activities defined as “unfair labor practices” and also “to take such affirmative action including restitution, as will effectuate the policies of this act.” NLRB officials had used the authority to prevent companies from firing workers who were organizing a union. In some cases, they also ordered companies to reinstate fired workers with back pay. Various “little Wagner acts” conferred similar authority on state labor boards, including the New York State Labor Relations Board, created by the State Labor Relations Bill in 1937. Although some controversy lingered, state and federal courts had quickly upheld the constitutionality of the arrangement. Miller’s primary innovation was extending the regulatory framework of management-worker relations “unfair labor practices” involving job bias.21

Miller issued her first cease-and-desist order in October when she demanded that Navy contractor Brewster Aeronautical Corporation drop a question about religion from a job application. The company objected, but the question of whether she had overstepped the bounds of her authority would remain unanswered. At the end of the year, Lehman’s committee fell into disarray. Lehman resigned his office to accept a position as head of New York Times, May 8, 1942, p. 19; CDE, Press Release, September 17, 1942, quoted in CDE, Report: March 1941, to July 1944, 24.

the U.S. Office of Foreign Relief and Rehabilitation Operations. When Republican
attorney Thomas E. Dewey won the election to replace Lehman, Miller resigned as well.
Dewey did not immediately appoint her successor, and suddenly the fate of the
committee appeared in limbo. Dewey’s hesitation ended only in August of 1943, when
Harlem erupted in a race riot that led to six deaths and $5 million in property damage.
Only then did he reconstitute the CDE, naming Alvin S. Johnson as chair. The *New York
Times* had no illusions about the difficulty of Johnson’s assignment. “The Harlem
disorders,” it wrote, “are just one yardstick of the magnitude of the task” that confronted
him. But it deemed Johnson a “distinguished” leader who “commands confidence.” The
perspicacious, bespectacled Johnson was indeed a logical choice to lead the second
incarnation of the CDE. As the founder of the University in Exile at the New School,
which provided a refuge for Jewish scholars fleeing the shadow of the Third Reich, he
had acquired unimpeachable credentials in the defense of racial and religious tolerance. A
former editor of the *New Republic*, he was a lively, arresting correspondent, and his
missives were full of clever allusions and eloquent turns of phrase. Johnson’s experience
and skills were among the few reasons to hope that the CDE could recover.  

Such hopes were soon dashed. The reorganization of the committee, rather than
serving as a source of inspiration, raised a thicket of troubling questions instead. What
would happen to the CDE after the war? Had it been effective only because of labor

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22 *New York Times*, October 5, 1942, p. 14; ibid., December 30, 1942, p. 16; CDE,
Minutes, November 12, 1942, Folder 28, Box 2, Miller Papers; Takaki, *Double Victory*,
52-56; *New York Times*, August 5, 1943, p. 36; ibid., August 6, 1943, p. 14; *Current
Biography* (1942). On the Harlem riot, see Dominic J. Capeci, Jr., *The Harlem Riot of
shortages or patriotic fervor? What could it possibly do to ensure the compliance of a company or union determined to flout the law?

Although these questions were apparent to most observers who followed the CDE closely, nobody was more concerned about the limits of the CDE than the new chairman himself. The larger mandate of the committee, Johnson told almost everyone, would obviously vanish with the end of the war, as would the war contracts over which it had specific jurisdiction. Even if the CDE did somehow survive beyond the war, it had no independent authority to enforce the law: “no counsel of its own, no power to hold hearings and subpoena witnesses, no power to launch inquiries and prepare reports.”

Johnson pointed out, correctly, that he would have to petition the industrial commissioner for enforcement. Such problems tempted him to recommend the abolition of the committee, “[A]s matters stand, we haven’t the power to a real job…[and] I can’t sacrifice my established record of doing a real job when I set out to do one.”

Johnson did not recommend abolition. Instead, he worked energetically to convince the committee that new legislation was necessary. By early 1944, he had organized a consensus, and a subcommittee of the CDE set out to make legislative recommendations. Their most substantial proposal—which declared that the “opportunity to obtain employment without discrimination because of race, color, creed, national origin” was a “civil right”—clearly bore the signs of his handiwork. It called for the establishment a permanent, stand-alone commission with centralized jurisdiction over

\[23\] Walter White to Thomas E. Dewey, August 20, 1943, Box 20, Folder 1, Alvin S. Johnson Papers (Archives and Special Collections, University of Nebraska, Lincoln); Alvin S. Johnson to Paul E. Lockwood, August 23, 1943; Box 20, Folder 1, Johnson Papers; Johnson to Editor of PM, March 30, 1944, Box 20, Folder 1, Johnson Papers;
public and private employment as well as independent authority to enforce the law, including the authority to order recalcitrant offenders “to cease and desist from such unfair employment practice and to take such affirmative action, including hiring or reinstatement of persons with or without back pay.” The initial idea of borrowing the regulatory framework of the State Labor Board had originated with Miller, but under Johnson it was given further definition. Administrative enforcement was especially important to him. As he would later write, “letting the Attorney General or the district attorneys enforce the law is strongly favored by those who won’t want any law against discrimination enforced.”

The CDE proposal was introduced into legislature by Senator Arthur H. Wicks (R-Kingston), but it would never emerge from committee. Dewey introduced a different bill calling for the creation of the New York State Temporary Commission against Discrimination (TCAD), which would study the problem and make legislative recommendations for the subsequent session. The bill, which the *New York Times* characterized as an “admitted substitute” for the CDE proposal, passed easily in the Republican-controlled legislature, sparking a range of public responses that ranged from partisan sniping to reasoned patience and feigned outrage. More significantly, Dewey’s move fatally split the CDE. Johnson conceded that everyone, including himself, was “bitterly disappointed” in the outcome. If their proposal had become law, it would have

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[CDE, Minutes, September 15, 1943, 3-5, CDE Records; Johnson to Edward Schoeneck, September 30, 1943, Box 20, Folder 1, Johnson Papers.](#)

**24** CDE, Minutes, January 31, 1944, February 13, 1944, February 23, 1944, Box 1, Folder 1, Records of the CDE; CDE, *Report: March 1941, to July 1944*, 87-98; *New York Times*, March 10, 1944, p. 32; Alvin Johnson to Charles C. Burlingham, December 29, 1945, Box 1-3, Charles Culp Burlingham Papers (Harvard Law School Library, Harvard University, Cambridge, Mass.).
made “freedom from discrimination a civil right.” But he stayed on board. Eight other members made good on their threat to resign in protest, including Tobias, Granger, and attorney Louis Weiss, who had spent so many hours helping Johnson with the legislation. They argued that the “urgency and gravity of the problems” were so “great” that seeking to study them further was “wholly unjustified.” The CDE could not “continue to function without any real power” when most of the public believed it “has and exercises extensive powers to reduce...discrimination.”

The spate of resignations effectively marked the end of the beleaguered CDE, yet the committee had made a significant mark. To be sure, it had not identifiably improved the economic prospects for racial minorities. A comprehensive study by Robert C. Weaver, director of the Negro Manpower Service in the War Manpower Commission, would later conclude that black wartime gains were “occasioned principally by economic necessity.” The most important legacy of the CDE was how it defined the policy agenda inherited by TCAD. As the TCAD would note later, reports by the CDE “fully established the existence of discrimination against various minorities groups” and “saved many months of investigation.” This freed the TCAD to consider a different question. If discrimination was clearly a problem, what was the best way to address it? The

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experience of the CDE had thrown the question into high relief, and how it would be addressed was a matter for the TCAD to resolve.26

The majority leader of the Assembly, Republican Irving M. Ives, was elected Chairman of the new TCAD when it met for the first time on June 19, 1944. Ives was a fairly unlikely guardian of civil rights. Except for a short tour of duty in France and Germany during World War II, he had spent most of his life in central New York State. In 1930, he was elected to the Assembly as a Republican from his native Chenango County and quickly rose to majority leader. Ives would eventually win election to the U.S. Senate, where he would become known as a champion of civil rights. In 1944, however, little in his personal background or legislative record indicated that that he was destined for such a fate.27

The first meeting of the TCAD went smoothly. Most members of the commission—which consisted of a bipartisan roster of legislators as well as representatives of labor, civil rights, and religious organizations—seemed ready to approach the process in good faith, making a point to order copies of Gunnar Myrdal’s American Dilemma, published earlier in the year to great fanfare. There were only faint murmurs of discontent. Mark A. Daly, who had considered discrimination a “very difficult problem,” now doubted whether it existed. “I cannot conceive of any man

discriminating against a Negro if he is skilled.” Daly called for the TCAD “to make a preliminary study to distinguish between discrimination and what might be termed sensible, logical selection and placement of employees.” Frank S. Columbus, who represented the Railroad Brotherhoods, did not dispute the existence of discrimination. “My organization does exclude the colored race,” he flatly admitted. But he was “fearful that ‘must’ legislation only agitates the subject.”

Such concerns did not amount to much. Nobody echoed Daly’s earlier skepticism, and even he began to couch his reservations in different terms, complaining instead about the “undue expense” that would be created by another “bureaucratic commission.” Most commissioners agreed with Ives that “what is necessary in this state is some form of FEPC.” The only disagreement concerned questions of emphasis. What kind of balance should be struck between education and enforcement?29

Johnson, who had been elected Vice Chair, privately pressed Ives to adopt the CDE proposal. In time, Johnson’s vision would prevail. By November, TCAD decided to recommend the establishment of a new commission with administrative enforcement power. To galvanize awareness and solicit public input, Ives and other commissioners embarked on an exhausting series of hearings across the state. For eleven days after

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29 TCAD, Minutes, August 7, 1944, 4-6, 23-4, Minutes, September 11, 1944 (New York State Library, Albany). Mark A. Daly to Bernard Gittelson, October 25, 1944.
Thanksgiving, often traveling by train at night, they heard testimony from witnesses in Albany, Syracuse, Rochester, Buffalo, and New York City. Each hearing lasted all day, with Ives and TCAD counsel Charles H. Tuttle orchestrating questions and answers. The public response was astounding. More than 200 political, community, religious, and civic groups sent representatives to give statements and make suggestions. The verbatim transcript of the hearings, printed in three volumes, ran in excess of 1,500 pages.30

But the TCAD hearings were as politically uneventful as the deliberations of the commissioners themselves, particularly in contrast to the rancorous clash in Congress earlier in the year. There, southern Democrats had wielded their formidable rhetorical talents in a failed bid to consign the FEPC to fiscal oblivion. Malcolm C. Tarver (D-GA) assailed it as “one tentacle of a devilfish” that created entirely new problems for the country; it “promote[d] disunity where none had existed before.” Jamie L. Whitten (D-MS) noted that 61 of 106 staff persons at the FEPC were black. Such a disparity seemed clear evidence to him that the intent of the committee was not to “prevent unfair discrimination against Negroes….What they wanted, what they have done and are doing is to discriminate in favor of the Negro.” Samuel F. Hobbs (D-AL) went as far as to charge the FEPC with racial proportionalism: “[A]ccording to the FEPC, if there are in a community of 10 Negroes out of each 100 persons, then 10 percent of those employed in each category of employment must be Negroes.” The shrewdest speakers sought to expose unintended ironies. Ed Gossett (D-TX) told his colleagues about a job ad in the

Dallas Morning News that had openly solicited black applicants for a good position in the paper industry, but unbelievably the ad was struck down by the FEPC as unlawful. Why should the committee be given federal funding to harm people it was meant to help?31

The hearings over which Ives presided were tame by comparison. Naturally, critical voices were not entirely absent. A few spokesmen for business took their concerns public, extolling the virtues of informal methods and claiming that discrimination would inevitable fade away if left alone. Professing to agree with the TCAD proposal in principle, one lobbyist from Buffalo remained “convinced that the best—yes the only effective—method of combating this evil is through persuasion, education, and good example.” Rochester’s Crockett reiterated the same concerns he had once expressed privately to Miller. “I personally know of no discrimination,” he said, “and I do know that the spirit of tolerance that was spoken of so frequently at Albany does exist in a larger measure than it ever existed before. We have moved ahead since this war began, and I believe the effects will be lasting.”32

Aside from a handful of thick-skinned lobbyists, there was a consensus about the pervasiveness of discrimination. Scores of witnesses stepped forward to offer their personal testimony. A representative of the Albany branch of the NAACP told TCAD commissioners about the difficulty that African Americans experienced when seeking jobs in the retail or teaching sector. She hoped that the TCAD proposal would pass before her son came home from serving overseas. “My boy, like the thousands of other Negroes,

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Jew, and Catholic boys, will expect a better American for which they have sacrificed and fought, when he returns.” A rabbi related a first-hand story about a Rochester-area steel mill manager who turned down twenty-two Jewish boys for employment. Members of the Italian Civic League in Rochester reported “many instances” of discrimination against Americans of Italian descent. The NAACP’s Thurgood Marshall quoted treatment, reading aloud from Justice Murphy’s ruling in the *Hirabayashi* decision. “Distinctions based on a color and ancestry,” he intoned, “are utterly inconsistent with our traditions and ideals. They are at variance with the principles for which we are no waging war.”33

If most participants in the hearings agreed that discrimination was the central problem, they also agreed with the Myrdalian diagnosis that discrimination stemmed largely from prejudices lodged deeply in the “heart of every American.” “Let us always bear in mind,” Ives constantly reminded his audiences, “that discrimination in itself is not the disease, it is a symptom…. [T]he disease is prejudice.” But few participants believed that discrimination could be resolved only—or even most effectively—through educational outreach and moral suasion. Just because discrimination stemmed from prejudice did not obviate the need for government regulation. “We do not believe education alone can solve the problem,” said Louis Hollander, president of the New York State CIO. Education could be effective only if there was a cost to non-compliance. In

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fact, informal methods might be strengthened if the participants knew that enforcement action was a real possibility. “[I]f you have no law, education itself will not do it.”  

What little disagreement there was involved the question of whether the TCAD proposal went far enough. Some witnesses worried that the bill did not have enough teeth and would lead to interminable foot-dragging by accused parties. Others focused on arcane but important questions of regulatory design, particularly the provision giving judges the authority to try cases de novo. This “practically invites appeal,” said one participant, and could effectively “nullify” the “effective operation” of the proposed commission. Still others wondered whether the commission would be more effective if the commission could initiate investigations without first waiting for a complaint.

The TCAD transmitted a final report to the Assembly on January 29, 1945. The centerpiece of the report was a recommendation to create a new regulatory commission whose powers had been inferred by Miller and envisaged by Johnson [Figure 1 about here.] The new commission would have a strong educational component, but it would also to enforce the law by receiving and handling individual complaints. Complaints would first be resolved through informal methods, bringing together aggrieved parties in a conference and seeking to reconcile their views through persuasion and mediation. Only if informal methods failed would the commission hold a hearing to assess the validity of the complaint, subpoenaing witnesses and records if necessary. If it determined that discrimination had occurred, it could direct the offending party to “cease

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and desist from such unlawful employment practice and to take such affirmative action, including (but not limited to) hiring, reinstatement, or upgrading of employees, with or without back pay, or restoration to membership in any respondent labor organization.” To protect the rights of everyone involved, such orders were subject to judicial review.36

The next day Ives joined with Senator Elmer F. Quinn (D) to introduce TCAD’s proposal. News reports noted that opposition was brewing upstate. The final report, indeed, had been sprinkled with footnotes detailing their concerns. Dissent was finally spilling into the open. One of the footnotes was contributed by Daly, and it reiterated the long-standing misgivings. Like “every other right-thinking citizen” and “every intelligent executive in industry,” he was opposed to “any discrimination because of race, creed, color or national origin or ancestry.” But he was strongly convinced that “there is sufficient law on the books” to address any lingering discrimination that did exist.37

There were nonetheless strong reasons for optimism. The bill had benefited from a lengthy and public gestation, making it far less vulnerable charges that it was the brainchild of wild-eyed agitators wanting to plunge the state precipitously into a social experiment. Ives himself had experienced a major evolution in his views. At the outset, he had known “little about the problem and felt that the proper solution must lie largely in a broad program of education.” This commitment to education had grown out of his belief that social and political conflicts arose from mutual misunderstanding and could be resolved most effectively without coercion. But it had become apparent to him over the

36 TCAD, Report, 81.
months that discrimination “not only has existed, but does exist” and constitutes a “fundamental contradiction in our American Way of Life.” The experience had opened his eyes to the full scope of the problem and steeled his resolve to find a sensible solution. Ives considered TCAD’s legislative proposal, which combined informal methods with administrative enforcement, to be “moderate, reasonable, and workable,” and little would dissuade him from trying his utmost to see it become law. “I mean business on this thing,” he declared.38

The suddenness and ferocity of the public resistance to Ives-Quinn must have surprised almost everyone. If critics had once sought to frame their concerns in reasonable terms, they now abandoned any pretense of moderation. A bill they opposed had actually landed on the docket, and it had the potential to pass. This was no slapdash improvisation but rather the product of careful, consensual and bipartisan reflection. The time for restraint had come and gone, and harsher language was needed.

The source of the flare up was no surprise. [Figure 2 about here.] Predictably, Frank Columbus of the Railroad Brotherhoods asked legislators to vote against the measure. But organized business unleashed the most damaging litany of attacks. Diverse segments of the business community—manufacturers, merchants, and the corporate bar—joined to praise the intent of the bill, but prophesied that all manner of terrible consequences would erupt if it were adopted. Businesses and jobs would flee the state in droves. The proposal law was “hysterically conceived,” in the words of the West Side

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38 Assembly Introductory 833, January 30, 1945, Box 182, Ives Papers; Irving M. Ives, “Why I Favor a Permanent State Commission against Discrimination as
Association of Commerce, and it would “intensify rather than eliminate any
discrimination which exists.” Julian Myrick of the New York State Chamber of
Commerce warned legislators that the law would give “disgruntled” employees the
leverage to “blackmail” employers by threatening to complain at every possible
opportunity. The resultant concern on the part of employers could lead to the “enforced
employment of undesirable persons.” No comparison seemed too outlandish or out of
bounds. The law would fuel a “burning resentment” that would exacerbate intolerance
and “tend to foment…the possibility of race riots, pogroms, and the evils associated with
the Ku Klux Klan.” A spokesman for the Commerce and Industry Association said the
law would “work against those whom it was indeed to benefit,” implying darkly that a
kosher butcher would be forced to hire a Gentile.  

Backers did not sit on their hands helplessly. Although organized labor could not
match coherence of the business community—with the State Federation of Labor
showing decidedly less enthusiasm than CIO-affiliated unions—it rallied to the cause of
fair employment, as did the NAACP, NUL, AJ Congress and other members of the
liberal coalition. Ives himself spoke out, reiterating his conviction that discrimination was
a clear and present threat to American democracy as it sought to repel fascism overseas.
The only question was whether the state would continue on a path of “drifting and
indifference” or declare a fresh start and “establish a new agency to handle the most
important phase of the discrimination problem—discrimination in employment.” He

Recommended by the New York State Temporary Commission against Discrimination,”
Folder: January 29, 1945 Ives Statement in Chamber, Box 188, Ives Papers.

39 New York Times, February 1, 1945, p. 15; New York Times, February 12, 1945,
p. 32; ibid., February 15, 1945, p. 17; PM, February 12, 1945, p. 9; Chamber of
noted that the proposed agency would be no leviathan; it stressed education and informal methods first, enforcing the law only when absolutely necessary. Ives had apparently struck the right tone. A serviceman overseas wrote to tell him that he and his crewmates had read the full text of the speech and came away impressed: “If this war is against anything, it is a war against racial prejudices, discrimination, and bigotry.” Free to go on the attack, Tuttle took a sharper tone than Ives, denouncing opponents of the proposal as “modern Jeremiahs” lacking any “rugged faith that in business, American democracy works.” He also noted the geopolitical implications of the bill. “If we do not want the blue ribbon for international hypocrisy, let us curb our national passion for pulling motes out of other people’s eyes until we have first cast this beam out of our own eyes.”

Not all liberals felt as Ives and Tuttle did. A debate that raged across editorial page of the *New York Times* revealed some doubts. The debate had been shrewdly orchestrated behind the scenes by Charles C. Burlingham—admiralty lawyer, judicial reformer, and “New York’s First Citizen.” A widely respected, headstrong Democrat, Burlingham quickly concluded of Ives-Quinn that the “remedy [was] worse than the disease.” The chief problem was the reliance on administrative enforcement. To justify their new jobs, commissioners would face implacable pressure to find discrimination

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Commerce of the State of New York to Members of the Senate and Assembly, February 10, 1945, Box 1-5, Burlingham Papers.

40 *New York Times*, February 7, 1945, p. 19; *ibid.*, February 8, 1945, p.14; *ibid.*, February 13, 1945, p. 8; *ibid.*, February 14, 1945, p. 15; Charles C. Burlingham to Allen Wardwell, January 9, 1945, Box 1-4, Burlingham Papers; *PM*, February 9, 1945, p. 2; Vernon O’Rourke to Ives, March 16, 1945, Folder: Correspondence: I-P, 1945, Box 175, Ives Papers.
wherever they looked. Only the judiciary could remain independent and impartial. “I prefer the Courts to the Bureaucrats,” he pronounced.⁴¹

Burlingham launched the debate with a publication of a letter signed by notable liberals, including attorney Whitney North Seymour and reformer Oswald Garrison Villard. Most of them had agreed very reluctantly to lend their names, but the letter criticized Ives-Quinn in no uncertain terms. It lauded the goal of reducing prejudice and discrimination but charged that Ives-Quinn set up a “costly machinery” and “inquisitorial process” that would ultimately prove useless, since the true motivations behind employment decisions were impossible to discern. Moreover, it would lead workers to exaggerate the extent of discrimination and management to conceal their prejudices: “[P]rejudice will become a commodity to be bootlegged.” The reference to Prohibition, however maladroit and strained, captured the essence of their objection. “It is as impossible to destroy prejudice and discrimination by law,” Burlingham’s group wrote, “as it is to control opinion or morals. It is far wiser to rely on the force of slow but steadily growing public opinion, guided and developed under the leadership of fair-minded men and women of every race, color, creed, and national origin.”⁴²

⁴² Burlingham to Editor of The New York Times, February 12, 1945, New York Times, February 13, 1945, p. 22. Burlingham initially asked attorney George Alger to “draft a fine letter to the Times to be signed by you and Whitney and me, and a Negro and a Jew and a Labor man.” Burlingham personally visited Lester Granger to ask for his signature, but Granger refused, and his response badly rattled Alger and prominent Jewish attorney, Bernard Flexner, nearly ending the effort. Burlingham bought time by asking Times editor Charles Merz to “go slow” on editorializing about the bill, warning him that it contained major legal defects. Merz agreed to defer to his legal judgment. A
The letter jolted liberals, but only because such views were rare among them. Far more typical were the sentiments expressed by Jack R. McMichael, executive secretary of the Methodist Federation for Social Services. In a rejoinder to Burlingham, McMichael conceded that “racial prejudice cannot be eliminated by legislation alone, since prejudice is largely a matter of emotional attitude.” But he pointed out that prejudice and discrimination were not identical, and the latter was the appropriate target of government policy. “Discrimination…is not primarily a matter of internal unbrotherly feelings but of external unbrotherly actions—the proper and effective sphere for legislation with teeth.”

The ACLU’s counsel, Osmond J. Fraenkel, questioned the sincerity of critics. “Pious hopes and crocodile tears will accomplish nothing.” What was needed was administrative regulation, which was more efficient than the courts because commissioners would acquire specialized expertise in handling the cases. Another interfaith group of liberals—including most prominently attorney Robert S. Benjamin, jurist Charles B. Sears, and attorney Charles Evans Hughes, Jr.—published a letter calling public opinion a “week

week later, unaware that Burlingham had been preparing a draft, Merz invited him to compose a “full-dress letter.” This solicitation was all Burlingham needed to overcome the earlier reluctance of his associates. The final missive was signed by Villard, Alger, Flexner, Seymour, and Elinore M. Herrick. Villard’s signature was a coup for Burlingham. There was not a single African American signatory, but Villard—descendent of William Lloyd Garrison and founder of the NAACP—was a worthy substitute. “I had hoped for a Negro,” Burlingham wrote, “but Oswald is equivalent to a thousand niggers.” See Burlingham to Dewey, January 3, 1945, Box 1-4, Burlingham Papers; Burlingham to George Alger, Box 1-4, Burlingham Papers; Lester Granger to Burlingham, Box 1-4, Burlingham Papers; Burlingham to Whitney N. Seymour, January 26, 1956, Box 1-4, Burlingham Papers; Burlingham to Charles Merz, January 29, 1945, Box 1-4, Burlingham Papers; Merz to Burlingham, January 30, 1945, Box 1-4, Burlingham Papers; Merz to Burlingham, February 6, 1945, Box 1-4, Burlingham Papers; Burlingham to Mr. and Mrs. John Kingbury, February 13, 1945, Box 1-4, Burlingham Papers; *American Reformers* (1985).
reed” on which to rest hopes for equal treatment during the postwar period; legislation was needed.\(^4^3\)

In contrast, there was near-unanimity among conservatives that Ives-Quinn would bring ruinous consequences upon the Empire State. The *Wall Street Journal* expressed admiration for the goal of the bill but doubted whether “the evil to which this bill addresses itself can be effectively dealt with by any kind of statute; we are convinced that the bill is too loosely drawn to escape stirring up more friction and bad feeling than it could ever allay.” Writing under the pseudonym Henry Stuart Clark, conservative author and economist Henry Hazlett lambasted Ives-Quinn. “The so-called anti-discrimination bill now before the Legislature of this state,” he wrote, “seems to me far more likely to strip up racial antagonisms, to encourage blackmail against employers, and to undermine industrial discipline and production, than to solve the problem that it is ostensibly intended to solve.” By way of illustration, he pointed to the example of the Wagner Act, which he claimed prevented employers from firing incompetent, insubordinate, and troublesome workers at a firm. Ives-Quinn was similarly extremist: “[It] represents the method of zealots, who can never think of any way of curing an evil except by coercion. The bill may undo what years of education and tolerance have done and could still do.”\(^4^4\)

As a clash of ideology unfolded over the op-ed pages, Republican legislators—working closely with the business lobby—wasted no time setting out to undermine bill in the legislature. Confident that a properly informed electorate would repudiate the measure at the polls, they floated the idea of putting the proposal to a referendum. The

\(^{4^3}\) *New York Times*, February 15, 1945, p. 18; *ibid.*, February 20, 1945, p. 18.

same confidence fueled their demands for a second round of public hearings. When the bill came under consideration by the Senate Finance Committee, Senator Frederic Coudert, Jr. (R-Manhattan) submitted a petition signed by seven business groups calling for another chance to present their views. The New York Post roundly denounced the move as “Republican filibustering,” but Coudert claimed that passing such a controversial measure without “objective public consideration” might “jeopardize” whatever chance of success it might have. In an accompanying letter, Daly explained that employers had not appeared en masse at the previous hearings because “they did not have enough advance notice at all of the details of the bill” and “could not commit themselves publicly concerning a bill which they had not studied and analyzed.”

Coudert’s petition would help to launch what the New York Times characterized as a “large-scale revolt against the demand of Republican legislative leaders.” Party leaders like Dewey and Ives—who either held or aspired to statewide office—took a liberal stance on fair employment because they needed to compete for minority votes in

45 Christian Science Monitor, February 9, 1945, p. 12; New York Times, February 8, 1945, p. 14; ibid., February 14, 1945, pp. 1, 15; PM, February 14, 1945, p. 12; ibid., February 18, 1945, p. 12; New York Herald-Tribune, February 14, 1945, p. 1, 16; New York Post, February 7, 1945; ibid., February 13, 1945, p. 5. Daly’s claim seems disingenuous. In a legislative advisory, he admitted he had “refused to ask any individual employer to ‘stick his neck out’ and advised the few who asked his advice not to appear” at the 1944 hearings. This is because his members opposed “either the proposed administration setup of the law or some of the details[,] and [they] were reluctant to say so in public and subject themselves to the same sort of misunderstanding, vilification and abuse that has been accorded to employers in the past.” Moreover, the Board of Directors had reviewed copies of the TCAD proposal before unanimously voting their opposition at a meeting on November 28, 1944. Existing laws were sufficient, they decided, and the TCAD proposal contained too few safeguards against frivolous complaints. See The Monitor Vol. 31, No. 8 (Buffalo, January 1945 ), 6-7, Series 7, (Department of Special Collections and Archives, University at Albany, State University of New York); Board of Directors, Associated Industries of New York State, Minutes, November 28, 1945, Series 1, Records of the Associated Industries of New York State.
statewide elections, but most GOP members faced different electoral circumstances. Led by Senator Frederic H. Bontecou (R-Poughkeepsie) and Assemblyman William M. Stuart (R-Steuben), February’s insurgency took strongest root among rank-and-file Republicans who represented upstate districts where few racial or religious minorities resided. Such districts were largely conservative and Republican, and their ideological tenor was clearly reflected in local papers, which consistently expressed doubts about Ives-Quinn.

“Discrimination…is based on prejudice,” wrote the Niagra Falls Gazette in a passage the borrowed shamelessly from Burlingham’s letter, “and it is just as impossible to destroy prejudice as it is to control opinion or morals.” Stuart’s criticisms of the measure—he considered the bill “in itself discriminatory”—were prominently featured in upstate newspapers. A report in the Watertown Times sought to distinguish “upstate Republicans” from “bourbon Democrats” of the South. The former were not “in favor of discrimination as such.” “They are, however, hard-headed, sensible, ‘up-country’ Yankees, proud of their heritage of independence.”

The stance of political elites upstate reflected the ideological convictions of their constituents. Few letters to upstate legislators have survived, but many upstate residents did write to Dewey expressing their displeasure. A manufacturer based in Olean blamed his workers for their close-mindedness and feared that Ives-Quinn “will tend to cause

race riots.” A resident of Freeport felt angry that racial minorities had succeeded in writing racial preferences into the law. “The only unfortunate thing,” he wrote, “is that a lot of us Americans were not lucky enough to be born a member of one of these minority groups, who high pressure you into putting over the Ives bill while our sons were away! These people were only interested in putting themselves in a favored position via kangaroo courts, Soviet style, regardless of their habits or behavior as individuals! There has been less general discrimination here than anywhere else in the world, the Ives Bill is an insult to all Tolerant Americans the state over!”

While centered in the villages and hamlets of upstate New York, hostility to the bill was not exclusively confined there. Some of the most intense feelings could be found in New York City and its environs. A resident of Manhattan objected to Ives-Quinn because it would force whites to come into contact with blacks. “I know girls who have had to give up their jobs because they got sick from the smell of them.” “Instead of smoothing down the distinctions which promote discrimination,” wrote another city dweller, “it accentuates them.” Still another though blacks should pull themselves up by their bootstraps: “If politicians and busy-bodies will only leave the Jews and colored alone they will find their rightful level just as we Irish did.” A self-proclaimed Dewey supporter from Richmond Hill in Queens could not fathom why the governor would back of the black electorate, see Weiss, *Farewell to the Party of Lincoln*; Paul Frymer, *Uneasy Alliances: Race and Party Competition in America* (Princeton, 1999).

a law to benefit blacks when “it is the decent young white men who are winning this war for America and Americans, not the disease-infested Negroes.” One resident of New Rochelle thought that the law could only have been passed to “intimidate the white people of this state.”⁴⁸

With his control over the party breaking down, Dewey abandoned his low profile and intervened, rejecting the entreaties of the Associated Industries and meeting with the City-Wide Citizens’ Committee on Harlem to notify them that he would throw his weight behind the bill. Dewey’s decision won kudos from the New York Herald-Tribune, but his intervention did not decisively settle matters. By mid-February, conservative and upstate Republicans had succeeded in calling for a joint Assembly-Senate hearing. The stakes of upcoming hearing were high for everyone. For critics of Ives-Quinn, it was the best and probably the last opportunity to neutralize the bill by stripping it of enforcement provisions. For supporters, it was a chance to take a decisive stand. The Amsterdam News exhorted readers to “Back [the] Proposed State FEPC!” PM’s Victor Bernstein called for a “march on Albany” and challenged his readers to give people something to hear other than the slurs of “reactionary Chambers of Commerce and the plaintive cries of pacifists like Oswald Garrison Villard, who live in a never-never world where there shouldn’t be any laws because all God’s children got wings.” Bernstein unequivocally threw down the

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⁴ Dewey Papers; Marguerite D. Troupe to Ives, February 5, 1945, Folder: Correspondence, I-P 1945, Box 175, Ives Papers.
gauntlet. “Coudert wants a hearing. Let him hear.” A favorable hearing could actually help a different Republican, Ives, who had been gauging a Senate run. As for Dewey, if things went badly and the bill failed, it would constitute a severe blow to his credibility and widen the breach between him and the GOP rank-and-file; it would also weaken his standing in the national party and cede control to Taft and the conservative wing. But if things went well he could consolidate his control of the state party and claim national leadership on the question of civil rights; it would also boost the overall political fortunes of Republican ticket in the next election.49

All eyes turned to Albany.

The hearings could not have disappointed anyone for lack of interest or attendance. [Figure 3 about here.] Every single seat on the floor and gallery of the Assembly Chamber was filled, and the audience—estimates varied wildly from 400 to 1,000 to 3,000—was packed two to three rows deep against the walls. Employers had a perfect chance to make their arguments on the most visible stage they had thus far enjoyed. Gustave Michelson of the New York Board of Trade spoke first. Like most other Americans, he said, employers considered freedom from discrimination a laudable goal, but Ives-Quinn would “unduly emphasize differences” and “pit race against race, Dewey, March 10, 1945, Folder 47, Anti-Discrimination Bill, January-June, Box 219, Series 4, Dewey Papers.

color against color, creed against creed.” Daly, following Michelson, compared Ives-Quinn to the ineffectual Volstead Act. The only real consequence of the bill would be to put “just one more nail in the coffin of New York business as it continues losing the competitive struggle with other states.” When his turn came, Whitney Seymour North of the New York State Bar Association maintained that Ives-Quinn was “bound to create prejudice where it does not now exist” and it established a new “civil right” that directly conflicted with the “traditional right of the employer to use his own judgment in selection of his employees.”

If most critics reiterated familiar themes, park commissioner Robert Moses made the most original contribution to their rhetorical arsenal in a letter prominently read aloud by Senator Bontecou. Moses had long rejected governmental regulation of discrimination, and he warned in his letter that employment decisions would inexorably become guided by a logic of proportionalism. Others critical voices had made similar arguments on the floor of Congress, but most recently Republican Senator Robert A. Taft (R-OH) had charged that a permanent FEPC would force “every employer to choose his employees approximately in proportion to the division of races and religion in his district.” Moses cast the criticism in new, provocative language, arguing that a legislative assault on discrimination would inevitably lead to quotas:

The most vicious feature of this proposal is that it will inevitably lead to
the establishment of what in European universities and institutions, from

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50 Hearing on Assembly Introductory 883 and Assembly Print 1138 before the Assembly Ways and Means Committee and Senate Finance Committee (Albany, 1945), 5-6, 14 (Kheel Center, Cornell University, Ithaca, New York).
the Middle ages to World War II, was known as the “numerous clauses”, that is, the quota system under which Jews and other minorities were permitted only up to a fixed number proportionate to their percentage of the total population….An honest employer harassed by the system proposed to be established here will either ask the State Commission against Discrimination to fix the various religious and racial quotas which will satisfy them, or he will be forced to establish quotas of his own based upon the anticipated point of view, the practices and the decisions of the new commission. How can such an outrageous and intolerable situation benefit the members of any minority group? It means the end of honest competition, and the death knell of selection and advancement on the basis of talent.52

Moses did not pluck the word “quota” out of thin air. The political discourse of the state had run thick with charges of quotas since the interwar controversy over Jewish admissions at colleges and universities. The controversy had resurfaced recently when a report by the American Dental Association argued that Columbia’s dental school would regain national stature if it could admit a student body that was a “more balanced picture

of the citizenry of the Nation.” Several commentators accused Columbia of endorsing a tacit cap on Jewish admissions, and the resultant *contretemps* attracted wide coverage. Although he was not a particularly observant Jew himself, Moses could surely not have missed the incident.  

Moses chose his words well, and the indictment of quotas would have national resonance. Moses personally sent a copy of his letter to Westbrook Pegler, columnist for King Features Syndicate. Pegler had a keen talent for spotting evocative language, and he would immediately seize upon “quotas” to excoriate Ives-Quinn. Days after Moses sent his letter, Pegler published a nationally syndicated column studded with denunciations. After running through the standard criticisms, it ended with a characteristic fulmination. “Far from erasing such taboos,” he wrote, “this law would emphasize origin, creed, color and race and result in the Hitlerian rule of quotas by which Jews in schools and the professions were restricted in proportion to their number in the entire population.”

Such charges would be so obviously damaging that they attracted the pre-emptive refutation of New York Mayor Fiorello De La Guardia, who sent aide Reuben Lazarus to read aloud a prepared statement. In a display of his keen political instincts, La Guardia reassured anyone listening that Moses had overreached in his criticism. The bill “does not give preference to anyone because of race, creed, color or religion.” It required nothing

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54 Moses to Bontecou, February 17, 1945, Folder: Legislation 1945, Box 25, Moses Papers; William F. Buckley, Jr., “Rabble-Rouser” *New Yorker*, March 1, 2004, pp. 46-53; *New York Amsterdam News*, May 8, 1942; *ibid.*, May 9, 1942; V. Schatz to Moses, July 25, 1945; *Albany Times Union*, February 27, 1945; *Troy Times Record*, February 27, 1945. Richard B. Russell may have read Pegler’s column. Numerous clippings about Ives-Quinn, including Pegler’s February 27 column published in local
more than employment on a merit basis. “It does not compel an employer to employ
quotas or to employ less efficient persons because of race, creed, color, or religion, but it
specifically prohibits discrimination solely on these grounds.” Although he strongly
believed in the effectiveness of educational methods, La Guardia also felt that
guaranteeing the protection of civil rights without “provid[ing] the machinery for
enforcement would be a mere mockery.”

La Guardia’s strong endorsement foreshadowed a parade of witnesses that would
come forward to defend Ives-Quinn in the most aggressive terms. While the businesses
lobbyists had mounted a unified front and shown great discipline, rarely deviating from
the same basic objections, they were simply overwhelmed. Representatives of more than
200 groups had braved the winter weather to come forward and testify, and supporters
outnumbered opponents by a margin of eight-to-one. Favorable witnesses included such
figures as Thurgood Marshall of the NAACP, B.F. McLaurin of the BSCP, Reginald A.
Johnson of the NUL, Stephen S. Wise of the AJ Congress, John F. Brosnan and Stephen
S. Jackson of the New York State Catholic Welfare Committee, Reverend Wayne White
of the Methodist Federation for Social Service, and Louis Hollander of the New York
State CIO. The hearings went on for a total of twelve hours, ending only at two in the

Georgia papers, appear in the Folder 7, Box 58, Series III, Richard B. Russell Papers
(Russell Library, University of Georgia, Athens).

55 Hearing on Assembly Introductory 883 and Assembly Print 1138, 62-3; New
York Times, February 21, 1945, pp. 1, 15; New York Post, February 20, 1945, p. 5; New
York Amsterdam News, February 24, 1945, pp. 1, 12B. For a discussion of La Guardia
and his stance toward civil rights, see Dominic J. Capeci, “From Different Liberal
Perspectives: Fiorello H. La Guardia, Adam Clayton Powell, Jr., and Civil Rights in New
morning. Surveying the scene before him, one legislator opposed to Ives-Quinn was reportedly heard muttering, “You can’t bust your head out against this stone wall.”

He was right. The hearings backfired. In one spectacular confrontation, the insurrection had fallen apart. A day after the hearings, Senator Bontecou and Assemblyman Stuart paid their opponents a backhanded compliment—calling them a “brilliantly organized minority”—and conceded that the bill would pass without the inclusion of any weakening amendments. There were last ditch efforts to attach a rider to the legislation requiring a referendum, but they all failed. Within a matter of weeks, Ives-Quinn cleared the Assembly 109-32 and the Senate 49-6. Every single Democratic legislator voted for the bill. Only a stubborn minority of Republicans voted nay. Yet the bipartisan majorities understated the extent of Republican opposition. “Man after man has told me that he is voting against his convictions,” wrote Coudert, but nothing could be done in “face of terrific minority and executive pressure.” Coudert’s judgment seemed right to most observers, including the New York Herald Tribune, which likewise contended that that the governor’s leadership and “exceedingly strong community support” made the crucial difference. [Figure 4 about here.] Dewey signed Ives-Quinn into law on March 12, 1945.

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57 New York Times, February 22, 1945, pp. 1, 24; ibid., February 28, 1945, pp. 1, ibid., March 6, 1945, p. 1; New York State Bar Association to various elected officials, February 26, 1945, Box 1-6, Burlingham Papers; F. R. Coudert, Jr. to Moses, February 23, 1945, Folder: Legislation 1945, Box 25, Moses Papers; New York Herald Tribune,
“If this bill passes, my guess is that in his mellow fifties my son…will look back on the arguments advanced against it in his young manhood with a tolerant, understanding, forgiving, even if slightly incredulous eye, and wonder how people could ever have thought like that.” So wrote attorney Robert Lane to his friend Charles Burlingham, one day after the climactic hearing in Albany.\textsuperscript{58}

Subsequent developments would not bear out Lane’s guess. Years later, despite the considerable progress made, his son would have heard strikingly similar rhetoric mobilized by conservative Republicans against a very different policy. “Backlash” rhetoric did not slide into political obscurity after the passage of Ives-Quinn. Throughout the 1940s and 1950s, it was incubated in battles over FEP legislation in other northern states. By the late-1960s and early-1970s, when affirmative action programs began taking root in both employment and education, critics did not have to look too far to find the words to express their objections, simply reviving language that had originally been invented to oppose fair employment. In subsequent years, charges of racial quotas, reverse discrimination, divisiveness, and preferential treatment quickly became a staple of conservative attacks against affirmative action, winning special favor among Republicans. This was evidenced most recently in 2003, when cases involving affirmative action policies at the University of Michigan were pending before the Supreme Court. In a statement at the White House, President George W. Bush argued that “Michigan policies amounted to a quota system” that was “divisive, unfair, and impossible to square with the Constitution.” A divided court eventually ruled the Law

School policies constitutional, but Bush’s views were closely echoed in dissents to the majority opinion. Reagan-appointee Justice Scalia attacked the “critical mass” rationale as a “sham to cover a scheme of racially proportionate admissions,” and Nixon-appointee Chief Justice Rehnquist called Michigan’s admissions policies a “carefully managed program designed to ensure proportionate representation of applicants from selected minority groups.” If he had taken the same interest in civil rights as his father, Lane’s son could surely not have missed the continuities in the politics of civil rights.\footnote{Robert P. Lane to Burlingham, February 21, 1945, Box 1-6, Burlingham Papers.}

The concerns of organized business, conservative Republicans, and their constituents in the 1940s were not uncanny premonitions of a color-conscious turn in public policy. Whether the dissenters to the \textit{Grutter} decision were right to insist that Michigan’s policies operated as functional quotas, it is clear that the policies themselves were facially race-attentive. So, too, were the set-aside policies that gave rise to the \textit{Croson} (1989) and \textit{Adarand} (1995) decisions. By contrast, Ives-Quinn and other FEP laws were nothing if not facially race-neutral. FEP laws plainly prohibited discrimination and authorized a government commission to take “affirmative action” to compensate a victim of discrimination for the individual harm that he or she had demonstrably suffered. There was little, if any, basis in the wording of the legislation itself to reasonably justify fears of quotas or preferential treatment. That such fears were expressed regardless makes it difficult to pin the backlash against civil rights entirely on affirmative action and the turmoil of the late-1960s. Instead, it prompts us to consider whether backlash is a historically broader phenomenon—indeed, whether it is a characteristic response to the
difficult process of relinquishing of racial privilege that invariably accompanies the breakdown of caste societies.\textsuperscript{60}
Figure 1. A graphic in *PM* illustrated the central recommendations of the New York State Temporary Commission against Discrimination (TCAD). TCAD rejected the argument that existing laws, enforced through the courts, were sufficient to address labor market discrimination in the Empire State. Under the guidance of chairman Irving M. Ives (R-Chenango), it proposed the establishment of a new administrative agency that would possess the authority to receive allegations of discrimination; investigate their validity, promote conciliation among aggrieved parties; and order offending companies or unions to cease-and-desist from their discriminatory activities and take “affirmative action” to compensate their victims for any harms suffered. Source: *PM*, January 29, 1945.
Figure 2. A cartoon in PM accurately depicted the two biggest sources of opposition to the Ives-Quinn anti-discrimination bill. The hostility of both the railroad brotherhoods and organized business intensified dramatically after the bill was formally introduced and seemed likely to pass. Their closest allies in the New York State legislature were conservative Republicans, many of whom represented upstate districts with few racial or religious minorities. Opponents objected to the proposal on numerous grounds, but many of them compared Ives-Quinn to the Volstead Act and argued it would heighten rather than reduce race-consciousness. Source: PM, February 9, 1945.
Figure 3. Charles H. Tuttle, counsel to the Temporary Commission against Discrimination, spoke on behalf of the Ives-Quinn bill at a public hearing in the New York State Assembly Chamber on February 20, 1945. Estimates of attendance varied widely, but there were almost certainly more than 400 people in the room. Over 200 groups testified at the hearings, with supporters outnumbering opponents by an eight-to-one margin. Source: AP Photo, Albany Knickerbocker News, February 21, 1945.
Figure 4. After a public hearing held in Albany on February 20, 1945, opponents of Ives-Quinn bitterly conceded defeat. Numerous observers throughout the state, like the New York Post’s Stan Mac Govern, credited their defeat to the massive mobilization of liberal interest groups that day. Source: New York Post, February 23, 1945.