THE COLOR OF LAW

A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA

RICHARD ROTHSTEIN

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Frontispiece: *Pittsburgh, 1940. President Franklin D. Roosevelt hands keys to the 100,000th family to receive lodging in the federal government's public housing program. Most projects were for whites only.*

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PREFACE

WHEN, FROM 2014 TO 2016, riots in places like Ferguson, Baltimore, Milwaukee, or Charlotte captured our attention, most of us thought we knew how these segregated neighborhoods, with their crime, violence, anger, and poverty came to be. We said they are "*de facto* segregated," that they result from private practices, not from law or government policy.

De facto segregation, we tell ourselves, has various causes. When African Americans moved into a neighborhood like Ferguson, a few racially prejudiced white families decided to leave, and then as the number of black families grew, the neighborhood deteriorated, and "white flight" followed. Real estate agents steered whites away from black neighborhoods, and blacks away from white ones. Banks discriminated with "redlining," refusing to give mortgages to African Americans or extracting unusually severe terms from them with subprime loans. African Americans haven't generally gotten the educations that would enable them to earn sufficient incomes to live in white suburbs, and, as a result, many remain concentrated in urban neighborhoods. Besides, black families prefer to live with one another.

All this has some truth, but it remains a small part of the truth, submerged by a far more important one: until the last quarter of the twentieth century, racially explicit policies of federal, state, and local governments defined where whites and African Americans should live. Today's residential segregation in the North, South, Midwest, and West is not the unintended consequence of individual choices and of otherwise well-meaning law or regulation but of unhidden public policy that explicitly segregated every metropolitan area in the United States. The policy was so systematic and forceful that its effects endure to the present time. Without our government's purposeful imposition of racial segregation, the other causes—private prejudice, white flight, real estate steering, bank redlining, income differences, and self-segregation—still would have existed but with far less opportunity for expression. Segregation by intentional government action is not *de facto*. Rather, it is what courts call *de jure*: segregation by law and public policy.

Residential racial segregation by state action is a violation of our Constitution and its Bill of Rights. The Fifth Amendment, written by our Founding Fathers, prohibits the federal government from treating citizens unfairly. The Thirteenth Amendment, adopted immediately after the Civil War, prohibits slavery or, in general, treating African Americans as second-class citizens, while the Fourteenth Amendment, also adopted after the Civil War, prohibits states, or their local governments, from treating people either unfairly or unequally.

The applicability of the Fifth and Fourteenth Amendments to government sponsorship of residential segregation will make sense to most readers. Clearly, denying African Americans access to housing subsidies that were extended to whites constitutes unfair treatment and, if consistent, rises to the level of a serious constitutional violation. But it may be surprising that residential segregation also violates the Thirteenth Amendment. We typically think of the Thirteenth as only abolishing slavery. Section 1 of the Thirteenth Amendment does so, and Section 2 empowers Congress to enforce Section 1. In 1866, Congress enforced the abolition of slavery by passing a Civil Rights Act, prohibiting actions that it deemed perpetuated the characteristics of slavery. Actions that made African Americans second-class citizens, such as racial discrimination in housing, were included in the ban.

In 1883, though, the Supreme Court rejected this congressional interpretation of its powers to enforce the Thirteenth Amendment.

The Court agreed that Section 2 authorized Congress to "to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States," but it did not agree that exclusions from housing markets could be a "badge or incident" of slavery. In consequence, these Civil Rights Act protections were ignored for the next century.

Today, however, most Americans understand that prejudice toward and mistreatment of African Americans did not develop out of thin air. The stereotypes and attitudes that support racial discrimination have their roots in the system of slavery upon which the nation was founded. So to most of us, it should now seem reasonable to agree that Congress was correct when it determined that prohibiting African Americans from buying or renting decent housing perpetuated second-class citizenship that was a relic of slavery. It also now seems reasonable to understand that if government actively *promoted* housing segregation, it failed to abide by the Thirteenth Amendment's prohibition of slavery and its relics.

This interpretation is not far-fetched. Indeed, it is similar to one that was eventually adopted by the Supreme Court in 1968 when it effectively rejected its 1883 decision. In 1965, Joseph Lee Jones and his wife, Barbara Jo Jones, sued the Alfred H. Mayer Company, a St. Louis developer, who refused to sell them a home solely because Mr. Jones was black. Three years later, the Supreme Court upheld the Joneses' claim and recognized the validity of the 1866 Civil Rights Act's declaration that housing discrimination was a residue of slave status that the Thirteenth Amendment empowered Congress to eliminate.

Yet because of an historical accident, policy makers, the public, and even civil rights advocates have failed to pay much attention to the implications of the *Jones v. Mayer* decision. Two months before the Supreme Court announced its ruling, Congress adopted the Fair Housing Act, which was then signed into law by President Lyndon B. Johnson. Although the 1866 law had already determined that housing discrimination was unconstitutional, it gave the government no powers of enforcement. The Fair Housing Act provided for modest enforcement, and civil rights groups have used this law, rather than the earlier statute, to challenge housing discrimination.

Joseph Lee and Barbara Jo Jones. Their successful 1968 lawsuit established that housing discrimination is a badge of slavery.

But when they did so, we lost sight of the fact that housing discrimination did not become unlawful in 1968; it had been so since 1866. Indeed, throughout those 102 years, housing discrimination was not only unlawful but was the imposition of a badge of slavery that the Constitution mandates us to remove.

The Color of Law is concerned with consistent government policy that was employed in the mid-twentieth century to enforce residential racial segregation. There were many specific government actions that prevented African Americans and whites from living among one another, and I categorize them as "unconstitutional." In doing so, I reject the widespread view that an action is not unconstitutional until the Supreme Court says so. Few Americans think that racial segregation in schools was constitutional before 1954, when the Supreme Court prohibited it. Rather, segregation was always unconstitutional, although a misguided Supreme Court majority mistakenly failed to recognize this.

Yet even if we came to a nationally shared recognition that government policy has created an unconstitutional, *de jure*, system of residential segregation, it does not follow that litigation can remedy this situation. Although most African Americans have suffered under this *de jure* system, they cannot identify, with the specificity a court case requires, the particular point at which they were victimized. For example, many African American World War II veterans did not apply for government-guaranteed mortgages for suburban purchases because they knew that the Veterans Administration would reject them on account of their race, so applications were pointless. Those veterans then did not gain wealth from home equity appreciation as did white veterans, and their descendants could then not inherit that wealth as did white veterans' descendants. With less inherited wealth, African Americans today are generally less able than their white peers to afford to attend good colleges. If one of those African American descendants now learned that the reason his or her grandparents were forced to rent apartments in overcrowded urban areas was that the federal government unconstitutionally and unlawfully prohibited banks from lending to African Americans, the grandchild would not have the standing to file a lawsuit; nor would he or she be able to name a particular party from whom damages could be recovered. There is generally no *judicial* remedy for a policy that the Supreme Court wrongheadedly approved. But this does not mean that there is no constitutionally required remedy for such violations. It is up to the people, through our elected representatives, to enforce our Constitution by implementing the remedy.

By failing to recognize that we now live with the severe, enduring effects of *de jure* segregation, we avoid confronting our constitutional obligation to reverse it. If I am right that we continue to have *de jure* segregation, then desegregation is not just a desirable policy; it is a constitutional as well as a moral obligation that we are required to fulfill. "Let bygones be bygones" is not a legitimate approach if we wish to call ourselves a constitutional democracy.

Racial segregation in housing was not merely a project of southerners in the former slaveholding Confederacy. It was a nationwide project of the federal government in the twentieth century, designed and implemented by its most liberal leaders. Our system of official segregation was not the result of a single law that consigned African Americans to designated neighborhoods. Rather, scores of racially explicit laws, regulations, and government practices combined to create a nationwide system of urban ghettos, surrounded by white suburbs. Private discrimination also played a role, but it would have been considerably less effective had it not been embraced and reinforced by government.

Half a century ago, the truth of *de jure* segregation was well known, but since then we have suppressed our historical memory and soothed ourselves into believing that it all happened by accident or by misguided private prejudice. Popularized by Supreme Court majorities from the 1970s to the present, the *de facto* segregation myth has now been adopted by conventional opinion, liberal and conservative alike.

A turning point came when civil rights groups sued to desegregate Detroit's public schools. Recognizing that you couldn't desegregate schools if there were few white children in Detroit, the plaintiffs argued that a remedy had to include the white suburbs as well as the heavily African American city. In 1974, by a 5–4 vote, the Supreme Court disagreed. The majority reasoned that because government policy in the suburbs had not segregated Detroit's schools, the suburbs couldn't be included in a remedy. Justice Potter Stewart explained that black students were concentrated in the city, not spread throughout Detroit's suburbs, because of "unknown and perhaps unknowable factors such as in-migration, birth rates, economic changes, or cumulative acts of private racial fears." He concluded: "The Constitution simply does not allow federal courts to attempt to change that situation unless and until it is shown that the State, or its political subdivisions, have contributed to cause the situation to exist. No record has been made in this case showing that the racial composition of the Detroit school population or that residential patterns within Detroit and in the surrounding areas were in any significant measure caused by governmental activity."

Most disturbing about Justice Stewart's observation was that the civil rights plaintiffs did offer evidence to prove that residential patterns within Detroit and in the surrounding areas were in significant measure caused by governmental activity. Although the trial judge agreed with this argument, Justice Stewart and his colleagues chose to ignore it, denying that such evidence even existed.*

This misrepresentation of our racial history, indeed this willful blindness, became the consensus view of American jurisprudence, expressed again in a decision written by Chief Justice John Roberts in 2007. His opinion prohibited school districts in Louisville and Seattle from accounting for a student's race as part of modest school integration plans. Each district permitted students to choose which school they would attend, but if remaining seats in a school were limited, the district admitted students who would contribute to the school's racial balance. In other words, black students would get preference for admission to mostly white schools, and white students would get preference for mostly black ones.

The chief justice noted that racially homogenous housing arrangements in these cities had led to racially homogenous student bodies in neighborhood schools. He observed that racially separate neighborhoods might result from "societal discrimination" but said that remed-

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* From this evidence, federal district court judge Stephen J. Roth, in his opinion that was overruled by the Supreme Court, concluded: "The policies pursued by both government and private persons and agencies have a continuing and present effect upon the complexion of the community—as we know, the choice of a residence is a relatively infrequent affair. For many years FHA and VA openly advised and advocated the maintenance of 'harmonious' neighborhoods, *i.e.*, racially and economically harmonious. The conditions created continue." Judge Roth urged that to acknowledge that other factors were also involved, we "need not minimize the effect of the actions of federal, state and local governmental officers and agencies, and the actions of loaning institutions and real estate firms, in the establishment and maintenance of segregated residential patterns—which lead to school segregation."

ying discrimination "not traceable to [government's] own actions" can never justify a constitutionally acceptable, racially conscious, remedy. "The distinction between segregation by state action and racial imbalance caused by other factors has been central to our jurisprudence. . . . Where [racial imbalance] is a product not of state action but of private choices, it does not have constitutional implications." Because neighborhoods in Louisville and Seattle had been segregated by private choices, he concluded, school districts should be prohibited from taking purposeful action to reverse their own resulting segregation.

Chief Justice Roberts himself was quoting from a 1992 opinion by Justice Anthony Kennedy in a case involving school segregation in Georgia. In that opinion Justice Kennedy wrote: "[V]estiges of past segregation by state decree do remain in our society and in our schools. Past wrongs to the black race, wrongs committed by the State and in its name, are a stubborn fact of history. And stubborn facts of history linger and persist. But though we cannot escape our history, neither must we overstate its consequences in fixing legal responsibilities. The vestiges of segregation . . . may be subtle and intangible but nonetheless they must be so real that they have a causal link to the *de jure* violation being remedied. It is simply not always the case that demographic forces causing population change bear any real and substantial relation to a *de jure* violation."

The following pages will refute this too-comfortable notion, expressed by Justice Kennedy and endorsed by Chief Justice Roberts and his colleagues, that wrongs committed by the state have little causal link to the residential segregation we see around us. *The Color of Law* demonstrates that racially explicit government policies to segregate our metropolitan areas are not vestiges, were neither subtle nor intangible, and were sufficiently controlling to construct the *de jure* segregation that is now with us in neighborhoods and hence in schools. The core argument of this book is that African Americans were unconstitutionally denied the means and the right to integration in middle-class neighborhoods, and because this denial was state-sponsored, the nation is obligated to remedy it.

Many legal scholars are properly skeptical of the distinction between *de jure* and *de facto* segregation. Where private discrimination is pervasive, they argue, discrimination by public policy is indistinguishable from "societal discrimination." For example, if it becomes a community norm for whites to flee a neighborhood where African Americans were settling, this norm can be as powerful as if it were written into law. Both public policy discrimination and societal discrimination express what these scholars term "structural racism," in which many if not most institutions in the country operate to the disadvantage of African Americans. It is pointless, these scholars argue, to try to distinguish the extent to which these institutions' racially disparate impact originated with private or public discrimination. Government has an obligation, they say, to remedy structural racism regardless of its cause decades ago.

These scholars may be right, but in this book I don't take their approach. Rather, I adopt the narrow legal theory of Chief Justice Roberts, his predecessors, his colleagues, and their likely successors. They agree that there is a constitutional obligation to remedy the effects of government-sponsored segregation, though not of private discrimination. I will take them at their word. Where *The Color of Law* differs is not with their theory but with their facts. For those who, like the Court, believe that the Constitution requires a remedy for government-sponsored segregation, but that most segregation doesn't fall into this category, I hope to show that Justice Roberts and his colleagues have their facts wrong. Most segregation *does* fall into the category of open and explicit government-sponsored segregation.

Before I begin, some notes about word usage: I will frequently refer (indeed, I've already done so) to things *we* have done, or things *we* should do. *We* means all of us, the American community. This is not a book about whites as actors and blacks as victims. As citizens in this democracy, we—all of us, white, black, Hispanic, Asian, Native American, and others—bear a collective responsibility to enforce our Constitution and to rectify past violations whose effects endure. Few of us may be the direct descendants of those who perpetuated a segregated system or those who were its most exploited victims. African Americans cannot await rectification of past wrongs as a gift, and white Americans collectively do not owe it to African Americans to rectify them. We, all of us, owe this to ourselves. As American citizens, whatever routes we or our particular ancestors took to get to this point, we're all in this together now.

Over the past few decades, we have developed euphemisms to help us forget how we, as a nation, have segregated African American citizens. We have become embarrassed about saying *ghetto*, a word that accurately describes a neighborhood where government has not only concentrated a minority but established barriers to its exit. We don't hesitate to acknowledge that Jews in Eastern Europe were forced to live in ghettos where opportunity was limited and leaving was difficult or impossible. Yet when we encounter similar neighborhoods in this country, we now delicately refer to them as the *inner city*, yet everyone knows what we mean. (When affluent whites gentrify the same geographic areas, we don't characterize those whites as *inner city* families.) Before we became ashamed to admit that the country had circumscribed African Americans in ghettos, analysts of race relations, both African American and white, consistently and accurately used *ghetto* to describe low-income African American neighborhoods, created by public policy, with a shortage of opportunity, and with barriers to exit. No other term succinctly describes this combination of characteristics, so I use the term as well.*

* In 1948, Robert Weaver, long before becoming the first African American to serve in the cabinet, wrote a book called *The Negro Ghetto* that documented how government segregated the nation. In 1965, Kenneth B. Clark, the social psychologist whose research was relied upon by the Supreme Court in *Brown v. Board of Education*, published *Dark Ghetto*, which described the lack of opportunity in New York City's Harlem. In 1968, the Kerner Commission (the National Advisory Committee on Civil Disorders) published its influential report that concluded: "[W]hite society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it." A definitive scholarly study of how public policy segregated Chicago is *Making the Second Ghetto*, published in 1983 by Arnold R. Hirsch. A similar study of Cleveland, *A Ghetto Takes Shape: Black Cleveland, 1870–1930*, was published by Kenneth L. Kusmer in 1978. One of the more important books on American race relations of the past decade or more is Michelle Alexander's *The New Jim Crow*, published in 2010. She uses the term *ghetto* frequently.

We've developed other euphemisms, too, so that polite company doesn't have to confront our history of racial exclusion. When we consider problems that arise when African Americans are absent in significant numbers from schools that whites attend, we say we seek *diversity*, not racial integration. When we wish to pretend that the nation did not single out African Americans in a system of segregation specifically aimed at them, we diffuse them as just another *people of color*. I try to avoid such phrases.

Because our majority culture has tended to think of African Americans as inferior, the words we've used to describe them, no matter how dignified they seem when first employed, eventually sound like terms of contempt. African Americans react and insist on new terminology, which we eventually accept until it too seems to connote inferiority. So at the beginning of the twentieth century, America's subordinated race was called *colored*. Later, we came to think of it as *Negro*, first with a lowercase and then with a capital N. It was replaced by *black*, a term that has had a seemingly permanent currency. Today *African American* strikes us as most appropriate. In these pages, it's the term I'll use most frequently, but I will sometimes use *black* as well. Occasionally, in describing historical events, I will refer to *Negroes*, intending the same respect that it enjoyed in those earlier periods.

This shifting of terminology should not distract us from this underlying truth: We have created a caste system in this country, with African Americans kept exploited and geographically separate by racially explicit government policies. Although most of these policies are now off the books, they have never been remedied and their effects endure.

8

LOCAL TACTICS

When Frank Stevenson and his carpoolers needed housing near the new Ford plant, FHA- and VA-insured subdivisions were rapidly filling the area between Milpitas and the African American communities of Richmond and Oakland. The most active developer was David Bohannon, who had built the whites-only Rollingwood subdivision just outside Richmond in 1943. The following year, he created the massive whites-only San Lorenzo Village about five miles south of the Oakland border. With more than 5,000 units and 17,000 residents, San Lorenzo Village was the nation's largest wartime government-insured project, intended for workers at naval shipyards and support factories. Like the homes in Rollingwood, each house included a bedroom with a separate entrance, so the owner could rent it to another war worker.

The development was financed by a seven-million-dollar FHA-authorized loan from the Bank of America and the American Trust Company. As was the case with other FHA developments, houses were sold at relatively low prices so as to be within reach of war workers, and the deeds included restrictive covenants to prevent future resales to African Americans. Within easy commuting distance of Milpitas, San Lorenzo Village was an ideal location for Ford workers. Sales brochures in the early to mid-1950s, when Ford workers would have been seeking housing in the area, assured prospective buyers that the village was "a safe investment" because "farsighted protective restrictions . . . permanently safeguard your investment."

I

IN 1955, Bohannon began developing Sunnyhills, a project in Milpitas itself. After Western Pacific announced plans to create its new industrial zone, other builders had also obtained FHA guarantees to construct whites-only, single-family subdivisions in the area. One, Milford Village, a development of 1,500 units on unincorporated land just outside the town boundaries, was guaranteed by the VA and required little or no down payment for veterans and low monthly payments.

When it became apparent that no existing Milpitas-area development would sell or rent to black workers, the American Friends Service Committee (AFSC), a Quaker group committed to racial integration, offered to assist Ben Gross—the chair of the Ford plant's union housing committee—by finding a developer who would agree to build an interracial subdivision. The AFSC had an existing campaign to press (unsuccessfully) Richmond to desegregate its public housing and find adequate, integrated residences for its African American population being displaced by the demolition of federal war projects. The group also operated a settlement house in North Richmond with after-school tutoring, dances and other youth recreational opportunities, a well-baby clinic for mothers, a day care program for children of working parents, a small playground for toddlers, and a meeting room for community organizations. Ford workers were involved in all these activities.

The rapid growth of the Milpitas area had resulted in some overbuilding, and several new subdivisions had were affordable to Ford workers. Despite this excess inventory, the AFSC was unsuccessful in persuading any existing developer to sell to African Americans.

The first builder recruited by the AFSC selected a plot in an unincorporated area south of Mountain View, a Santa Clara County community about ten miles west of Milpitas and accessible to other growing industrial areas in Silicon Valley. The AFSC, however, could not find a financial institution in the San Francisco Bay or San Jose areas willing to provide funds for a development that would permit sales to African Americans. After a few months, an AFSC official flew to New York to meet with a Quaker vice-president of the Metropolitan Life Insurance Company who, despite his skepticism about the feasibility of integrated suburban development, agreed to issue a loan for initial construction. Only as a result of this Quaker connection was the AFSC able to obtain a financial commitment. It may also have helped that Metropolitan Life was a bit chastened by the reversal of its racial segregation policy by New York city and state legislative bodies.

But when the builder's intent to sell both to blacks and whites became known, the Santa Clara Board of Supervisors rezoned the site from residential to industrial use. When he found a second plot, Mountain View officials told him that they would never grant the necessary approvals. He next identified a third tract of land in another town near the Ford plant; when officials discovered that the project would not be segregated, the town adopted a new zoning law increasing the minimum lot size from 6,000 to 8,000 square feet, making the project unfeasible for working-class buyers. After he attempted to develop a fourth site on which he had an option, the seller of the land canceled the option upon learning that the project would be integrated. At that point, the builder gave up.

Ben Gross then recruited another builder who proposed to the union that he create two projects, one integrated and the other all white. Because white buyers would be directed to the all-white project, it was apparent that the plan for a nominally integrated projwould result in an all-black one. The builder proposed to construct the white project in a suburban area and the integrated one in a less desirable environment—a plot sandwiched between the Ford plant and two tracts zoned for heavy industry.

Workers at Ford, members of the United Auto Workers (UAW), were divided over whether to accept this proposal, and at the next local union election, candidates who opposed the two-project concept challenged those who were in favor. It was a difficult decision, because the union was faced with choosing between segregated housing and no new housing for any union members, black or white. It was a dilemma similar to the one confronted by Hubert Humphrey and other congressional liberals when they attempted to enact President Truman's housing proposal. But the union decided differently from the congressional liberals. Although the membership was overwhelmingly white, the union adopted a policy that it would support only developers who would commit to integrated housing.

A San Jose businessman in the meatpacking business, with no previous experience as a developer, obtained a tract adjoining David Bohannon's all-white Sunnyhills project and proposed an all-black development. When the UAW and AFSC became aware of these plans, they persuaded the developer to construct an integrated project instead, and the union promised to promote the project to its white as well as to its African American members. For six months, the businessman sought financing, but every bank or thrift institution he approached, knowing that FHA backing would be unavailable, either refused to lend money for a project that was open to African Americans or agreed to lend only if he paid higher interest, a premium for integration ranging from an additional 5½ percent to an additional 9 percent. Such a payment would have greatly increased project costs and made the houses unaffordable to union members. The businessman advised the UAW that he would have to drop his plans. The union was able to persuade him to continue only by promising that the union itself would take responsibility for finding a lender. UAW and AFSC representatives again went to New York to politan Life to provide construction financing, which the insurance company agreed to do.

In January 1955, more than a year after Ford notified its Richmond workers that their jobs were going to Milpitas, and only a month and a half before the scheduled transfer of automobile assembly, the UAW was able to advise its black members in Richmond that a nondiscriminatory housing development, called Agua Caliente, was going to be available in the Milpitas area. By this time, many white workers had already found housing in racially restricted Santa Clara County neighborhoods.

David Bohannon's company, however, remained fiercely opposed to an integrated project adjoining Sunnyhills, and after a San Francisco newspaper article revealed the plan to establish "the first subdivision in the Bay Area where Negro families will be sold homes without discrimination," the company began to pressure the newly formed Milpitas City Council to prevent the construction of Agua Caliente by denying it access to sewer lines.

The sanitary district for Milpitas, whose chair was a member of the Santa Clara County board of supervisors and whose other members were the Milpitas mayor and a Milpitas city councilman, had advised the Agua Caliente builder that its fee for sewer access would be one hundred dollars an acre, based on the project's anticipated use of about 3 percent of the sewer line's capacity. The union and its builder estimated project costs and set sale prices using this figure; Metropolitan Life had extended its financing based on it. Under pressure from David Bohannon's company, the sanitary district board held an emergency meeting and adopted an ordinance that increased the sewer connection fee by more than ten times the hundred-dollar figure.

The new charge caused the builder to suspend work. He attempted unsuccessfully to negotiate a compromise with the sanitary district and the Bohannon organization, whose representatives acknowledged that the purpose of the ordinance was to prevent minorities from living close to Sunnyhills. The mayor of Milpitas, however, denied that his motive in voting to increase the sewer fee was discriminatory but added that he did not think it would be a great loss if the subdivision never got developed because, he asserted, the Ford workers' tract would depress property values in Milpitas. A real estate agent himself, the mayor claimed that Negroes inquiring about housing had told him that they did not want to go where they weren't wanted. He was only deferring to these customers' wishes, he said, in declining to show them properties in the city.

Problems persisted even after the UAW's builder indicated he would proceed with the Agua Caliente project, despite the higher sewer connection fees. The Bohannon group next filed suit to prevent the project from using a drainage ditch alongside its tract. This was purely a nuisance suit because the drainage ditch belonged to the county, not to Bohannon. The UAW then mounted a public campaign against the Sunnyhills project. Not only did union members refrain from purchasing the houses, but they flooded open houses to disrupt sales to white buyers. Meanwhile the UAW and the AFSC contacted California attorney general Edmund C. (Pat) Brown, who sent an assistant to Milpitas to investigate the sewer fee controversy. Brown promised help "in overcoming any racial discrimination by governmental units which might be disclosed."

The Agua Caliente builder could no longer sustain the delays; nor could he afford the legal bills that would be incurred if he persisted. The Bohannon company, perhaps influenced by the attorney general's implicit threat, also tired of the fight. The union's boycott had been responsible, or partly responsible, for the company's being stuck with finished but unsold homes. In November 1955, both the Agua Caliente builder and Bohannon sold out to a new developer recruited by the UAW, making the sewer connection controversy moot, and a combined project was finally constructed.

The combined development took the name of the original Bohannon project, Sunnyhills. California banks and thrift institutions continued to refuse, without an exorbitant interest rate surcharge, to issue individual mortgages, without FHA insurance, to borrowers living in an integrated project. At first the UAW's own pension fund offered to guarantee the African American workers' loan repayments. Eventually the FHA agreed to guarantee mortgages with a favorable rate only if the subdivision were converted to a cooperative, in which the owners would possess shares of the overall project rather than their individual houses. The union and its member-buyers agreed, and on this basis twenty of the project's first 500 units were sold to African American families.

By this time, however, the Milpitas Ford plant had been operational for nearly a year, and almost all white workers who wanted to move to the area had done so. The delays, legal fees, and financing problems had raised the cost of the combined Sunnyhills project to a level that was unaffordable to all but the most highly skilled and highly paid Ford workers. Many of the African American workers had become so discouraged about housing opportunities in the Milpitas area that, like Frank Stevenson, they had formed carpools to share the hundred-mile daily round trip from Richmond. As a last alternative, the UAW and other area unions pressed for a public authority to create rental housing, but the idea was met with strong resistance from the local finance and real estate industry—the local association of savings and loan institutions called it "dangerous to our American way of life"—and the county refused to act.

In the ensuing years, African American residence in Milpitas continued to be confined to Sunnyhills and a relatively undesirable project, built in the 1960s between two freeways and a heavily trafficked main shopping thoroughfare. The Ford plant closed in 1984. Milpitas is no longer all white—it now has many Hispanic and Asian families—but the effects of its earlier segregation remain visible: African Americans make up only 2 percent of the population.

As the Milpitas area developed, other plants transferred there from the Oakland-Richmond corridor. One was a Trailmobile factory that relocated from Berkeley in 1955. Soon after, the plant manager announced a change in hiring policy: the company would accept only new workers who lived in the vicinity, and they, of course, were almost exclusively white. Black workers, he said, attempting to commute from the Oakland area, were too likely to have car accidents from the long drives, leading to excessive absenteeism. Before Trailmobile moved from Berkeley, its workforce was 16 percent African American. By 1967 it had dropped to 6 percent, mostly carryovers from before the new hiring policy was adopted.

II

THE MILPITAS story illustrates the extraordinary creativity that government officials at all levels displayed when they were motivated to prevent the movement of African Americans into white neighborhoods. It wasn't only the large-scale federal programs of public housing and mortgage finance that created *de jure* segregation. Hundreds, if not thousands of smaller acts of government contributed. They included petty actions like denial of access to public utilities; determining, once African Americans wanted to build, that their property was, after all, needed for parkland; or discovering that a road leading to African American homes was "private." They included routing interstate highways to create racial boundaries or to shift the residential placement of African American families. And they included choosing school sites to force families to move to segregated neighborhoods if they wanted education for their children.

Taken in isolation, we can easily dismiss such devices as aberrations. But when we consider them as a whole, we can see that they were part of a national system by which state and local government supplemented federal efforts to maintain the status of African Americans as a lower caste, with housing segregation preserving the badges and incidents of slavery.

III

DEVICES LIKE those that Milpitas and surrounding towns employed to exclude African Americans were common segregation tactics throughout the country after World War II. In numerous instances, local governments condemned or rezoned property to prevent African Americans from residing there.

For example, in 1954 a University of Pennsylvania professor and his wife purchased a site in Swarthmore, a town just outside Philadelphia, where they planned to develop a tract of twenty-eight middle-class homes to be sold to both African Americans and whites. The couple's intent was to prove that "families of differing races, colors, and religions can live together in harmony." The Swarthmore Property Owners' Association petitioned the borough council that it did not want the town to become "a laboratory" for social experiments. The council reacted by refusing to consider the housing plan without a certified engineer's drawing, an expensive condition that it had not imposed on other developments.

After the couple submitted the drawing, the council made a series of objections, none of which it had made when considering other recent projects: It blocked the construction of a private drive leading to some of the homes, and it required a costly new sewer system. The professor and his wife forged ahead, scaling back their plans to avoid the need for a private drive. Adjoining property owners then asserted that the project could not proceed because the main road accessing the property was also private, notwithstanding that the borough had made public improvements to the road in the past without anyone raising similar issues. When the neighbors sued to halt the project on these grounds, borough officials supported the neighbors and did not intervene. With no prospect that such impediments would ever end, the professor and his wife abandoned the project.

A similar situation developed in Deerfield, Illinois, a white suburb of Chicago. In 1959 a developer purchased two tracts of vacant land and proposed to subdivide and build fifty-one houses on them, with a plan to sell ten to African Americans. He specifically chose Deerfield for the project because it was far from an existing African American community; he hoped it would be less likely to attract the attention of real estate speculators who could spur panic selling and white flight. Without knowing that the developer intended an integrated project, the village approved his plans, and water, sewer, and street improvements proceeded. Work had begun on two model homes when village officials discovered his intention.

Almost immediately speculators did arrive and attempt to create fear among village residents by offering to purchase their properties for as little as half of fair market values. A citizens committee was organized, and 600 protesters marched on a town board meeting being held in a school gymnasium. By a show of hands, the crowd vowed its uncompromising rejection of integration. The police were unable or unwilling to prevent the model homes from being vandalized. A survey of Deerfield residents found that opposition to the development ran nearly eight to one.

The day after the survey results were announced, the village's park district announced it would condemn the land. The idea was not new. Several months earlier, voters had rejected a proposal that the district take these properties, but now they overwhelmingly approved a bond issue for that purpose. A federal court held that the park district's exploitation of community hostility to integration was not unlawful because the district was not itself racially motivated; it had unsuccessfully attempted to get voter approval before the likelihood of African American buyers had arisen. The court concluded that voters cannot be compelled to express nonracial motives at the ballot box. By this logic, though, a democratic vote could insulate any racially discriminatory action from legal challenge. The Bill of Rights and Civil War amendments are designed to restrict popular majorities in just this way.

IV

AT THE time, condemning a proposed African American residence for park purposes was a useful device for whites-only communities because, as a Missouri appeals court ruled, also in 1959, the judicial system could not inquire as to the motives for a condemnation, provided the purpose of the condemnation was public, which a park surely was. In the Missouri case, an African American couple had attempted to build a home in the white St. Louis suburb of Creve Coeur. Again, permits had been approved and work had begun when the town discovered that the purchasers were African American. A hastily organized citizens committee then raised contributions to purchase the property. White property owner groups frequently attempted this ploy when faced with integration: in Lorraine Hansberry's 1959 play, *A Raisin in the Sun*, an owners' group in a white Chicago community attempts a similar buyout of African American neighbors. As in the Hansberry drama, the Creve Coeur couple refused the offer. The city then condemned the property for recreational use.

Condemnations of property and manipulations of zoning designations to prevent African Americans from building occurred almost routinely in the 1950s and 1960s. But one case caught national attention. In 1969, a Methodist church-sponsored nonprofit organization proposed to construct a federally subsidized, racially integrated complex for moderate- and low-income families in Black Jack, an all-white suburb in unincorporated St. Louis County. In response, voters in Black Jack incorporated their community and adopted a zoning ordinance that prohibited future development of more than three homes per acre. This made development of new moderate-income housing impossible, although such modest units already existed within the new city boundaries. Several African Americans in St. Louis City sued. They claimed they had been unable to find decent homes outside the ghetto and therefore had little access to jobs that were increasingly suburban. The incident attracted national attention, and the Nixon administration deliberated for many months about whether to file its own suit to enjoin the zoning ordinance.

Eventually it did, and a federal appeals court ordered Black Jack to permit the pro-integration group to proceed. The court observed that hostility to the development was "repeatedly expressed in racial terms by persons whom the District Court found to be leaders of the incorporation movement, by individuals circulating petitions, and by zoning commissioners themselves." The court continued: "Racial criticism [of the proposed development] was made and cheered at public meetings. The uncontradicted evidence indicates that, at all levels of opposition, race played a significant role, both in the drive to incorporate and the decision to rezone."

Citing similar cases from elsewhere in the country, the court concluded that Black Jack's actions were "but one more factor confining blacks to low-income housing in the center city, confirming the inexorable process whereby the St. Louis metropolitan area becomes one that has the racial shape of a donut, with the Negroes in the hole and with mostly Whites occupying the ring." The court further noted that Black Jack's actions were exacerbating residential segregation that was "in large measure the result of deliberate racial discrimination in the housing market by the real estate industry *and by agencies of the federal, state, and local governments.*" This is *de jure* segregation.

The Methodist organization, however, did not win its legal victory until 1974, five years after it had first proposed the integrated project. By then, financing was no longer available, interest rates had climbed, and the federal government had become less supportive of subsidizing integrated housing. The lawyers for the church group said that, despite the court ruling, "no developer in his or her right mind" would proceed with the project in the face of such hostility. It was never built. "Justice delayed is justice denied" was the frequent experience of African Americans having to fight legal battles to obtain housing in white neighborhoods.

V

WHILE MANY *de jure* segregation policies aimed to keep African Americans far from white residential areas, public officials also shifted African American populations away from downtown business districts so that white commuters, shoppers, and business elites would not be exposed to black people.

"Slum clearance" was the way to accomplish this. By the mid-twentieth century, "slums" and "blight" were widely understood euphemisms for African American neighborhoods. Once government had succeeded in preventing black families from joining their white peers in the suburbs, and in concentrating them within a few urban districts, these communities were indeed blighted. In many cases, slum clearance could have been a good idea. Where low-income African Americans were living in squalor, plans to demolish substandard structures and provide new, decent homes in integrated neighborhoods would have been appropriate. But mostly policy makers contemplated no such relocation. Instead, slum clearance reinforced the spatial segregation of African Americans as well as their impoverishment. This, in turn, led to further segregation because the more impoverished African Americans became, the less welcome they were in middle-class communities.

One slum clearance tool was the construction of the federal interstate highway system. In many cases, state and local governments, with federal acquiescence, designed interstate highway routes to destroy urban African American communities. Highway planners did not hide their racial motivations.*

The story of such highway planning begins in 1938, when the federal government first considered aid for interstate highways. Secretary of Agriculture (and subsequently Vice President) Henry Wallace proposed to President Roosevelt that highways routed through cities could also accomplish "the elimination of unsightly and unsanitary districts." Over the next two decades, the linkage

* "Urban renewal" programs, to clear slums not only for highways but for hospitals, universities, middle-class housing, and offices, operated similarly. That "urban renewal means Negro removal" was a frequent twentieth century slogan of civil rights groups protesting such displacement.

between highway construction and removal of American Americans was a frequent theme of those who stood to profit from a federal road-building program. They found that an effective way to argue a case for highway spending was to stress the capacity of road construction to make business districts and their environs white. Mayors and other urban political leaders joined in, seizing on highway construction as a way to overcome the constitutional prohibition on zoning African Americans away from white neighborhoods near downtowns.

In 1943, the American Concrete Institute urged the construction of urban expressways for "the elimination of slums and blighted areas." In 1949, the American Road Builders Association wrote to President Truman that if interstates were properly routed through metropolitan areas, they could "contribute in a substantial manner to the elimination of slum and deteriorated areas." An important influence on national legislation and administration of the highway system was the Urban Land Institute, whose 1957 newsletter recommended that city governments survey the "extent to which blighted areas may provide suitable highway routes." By 1962 the Highway Research Board boasted that interstate highways were "eating out slums" and "reclaiming blighted areas."

Alfred Johnson, the executive director of the American Association of State Highway Officials, was the lobbyist most deeply involved with the congressional committee that wrote the 1956 Highway Act. He later recalled that "some city officials expressed the view in the mid-1950s that the urban Interstates would give them a good opportunity to get rid of the local 'niggertown.'" His expectation did not go unfulfilled.

Hamtramck, Michigan, for example, was an overwhelmingly Polish enclave surrounded by Detroit. The city's 1959 master plan called for a "program of population loss," understood to refer to its small number of African American residents. In 1962, with federal urban renewal funds, the city began to demolish African American neighborhoods. The first project cleared land for expansion of a Chrysler automobile manufacturing plant. Then, federal dollars were used to raze more homes to make way for the Chrysler Expressway (I-75) leading to the plant. In advance, the U.S. Commission on Civil Rights had warned that the expressway would displace about 4,000 families, 87 percent of whom were African American.

Twelve years later, a federal appeals court concluded that HUD officials knew that the highway would disproportionately destroy African American homes and make no provision for assisting them in finding new lodgings: "The record supports a finding that HUD must have known of the discriminatory practices which pervaded the private housing market [in Hamtramck] and *the indications of overt prejudice among some of the persons involved in carrying out the urban renewal projects of the City.*" The court-ordered remedy was construction of new housing in the city only for those families who had been displaced, who could still be found, and who had indicated to interviewers that they would be willing to return to Hamtramck. Because the litigation had dragged on, their number was a small share of those who had suffered harm, most of whom had no choice but to move into the Detroit ghetto.

Federal interstate highways buttressed segregation in cities across the country. In 1956, the Florida State Road Department routed I-95 to do what Miami's unconstitutional zoning ordinance had intended but failed to accomplish two decades earlier: clear African Americans from an area adjacent to downtown. An alternative route utilizing an abandoned railway right of way was rejected, although it would have resulted in little population removal. When the highway was eventually completed in the mid-1960s, it had reduced a community of 40,000 African Americans to 8,000.

In Camden, New Jersey, an interstate highway destroyed some 3,000 low-income housing units from 1963 to 1967. A report by the New Jersey State Attorney General's office concluded: "It is obvious from a glance at the . . . transit plans that an attempt is being made to eliminate the Negro and Puerto Rican ghetto areas by . . . building highways that benefit white suburbanites, facilitating their movement from the suburbs to work and back."

After Miami-Dade mayor Chuck Hall sent the first wrecking ball to destroy an African American neighborhood, buildings were demolished to make way for I-95, as children look on.

In Los Angeles, routing of the Santa Monica Freeway in 1954 destroyed the city's most prosperous black middle-class area, Sugar Hill. In an all-too-familiar series of events, when the first African American—an insurance company executive—arrived there in 1938, neighborhood association leaders suggested to him that he would be happier if he lived elsewhere. When the executive failed to act on that advice, the group proposed to buy the property from him but then could not raise the funds. By 1945, a few middle-class African Americans had settled in Sugar Hill, and the association went to court to apply its restrictive covenant and have them evicted. But anticipating the U.S. Supreme Court's *Shelley* ruling by three years, a state judge ruled that enforcement of the covenant would violate the Fourteenth Amendment. After more African Americans bought houses in the area, the Los Angeles City Council rezoned the neighborhood for rentals, over the protests of affluent African Americans who already lived in Sugar Hill. More lower-income black families then moved in. The routing of the Santa Monica Freeway through Sugar Hill succeeded in demolishing the black community where other efforts had failed. African American leaders pleaded that the freeway be shifted slightly north, but the city engineer dismissed their concerns, assuring them that they would have up to five years to find new housing before properties were seized.

In few of these cases did federal or local agencies provide assistance to displaced African Americans in finding adequate and safe new housing. When enacted into law in 1956, the interstate highway program did not impose even a nominal obligation on federal or state governments to assist those whose residences were being demolished. Although the House version of the bill permitted (but did not require) payment of moving costs to tenants in demolished homes, the Eisenhower administration objected. Council of Economic Advisors chairman Arthur Burns warned that compensation would "run up costs" of the highway program, predicting that the system would evict nearly 100,000 people a year as it grew. The Senate then removed language permitting such payments from the final legislation. In 1965, the federal government began to require that new housing be provided for those forced to relocate by future interstate highway construction, but by then the interstate system was nearly complete.

VI

IN SOUTHERN and border states and in some northern cities where explicit school segregation was practiced before the Supreme Court's 1954 *Brown* decision, authorities developed another tactic to impose residential segregation where it would not otherwise exist: placing the only schools that served African American children in designated African American neighborhoods and providing no transportation for black students who lived elsewhere. African American families who wanted their children to be educated had no choice but to find new housing in the newly segregated areas.

When in 1928 Austin, Texas, adopted its master plan that proposed a single African American neighborhood on the Eastside, the document explicitly lamented the *Buchanan* ruling. It noted that "there has been considerable talk in Austin, as well as other cities, in regard to the race segregation problem. This problem cannot be solved legally under any zoning law known to us at present. Practically all attempts at such have proven unconstitutional."

Unable to legislate explicit segregation, the master plan proposed creating an "incentive to draw the negro population to this [Eastside] area." The incentive was to relocate segregated schools and other public services for African Americans to Austin's Eastside. These actions were effective, and soon almost all African Americans in Austin had moved east. For example, in 1930, the integrated neighborhood of Wheatsville had an African American population of 16 percent. In 1932, its segregated school for African American pupils was shut down, and by 1950 the community's African American population was 1 percent.

The city closed other schools and parks for African Americans outside the Eastside area that had been designated for their residence. Additional inducements for African Americans to consolidate were created by the construction on the Eastside of a new segregated library, a new park, and an improved segregated high school. Then, in 1938, the segregation of the African American population in the area was further reinforced when the planning commission chose it as the location for Rosewood Courts, the all-black public housing project that had been won for Austin by Congressman Lyndon Johnson, while he also won a companion project for whites close to downtown.

Once African Americans had been pushed into the Eastside, municipal services in the neighborhood declined. Streets, for example, were more likely to be unpaved than in other parts of the city; sewers were poorly maintained and often clogged; and bus routes that served the Eastside were suspended during the summer, because the same routes served the University of Texas and were not needed for students when the university was on break. Zoning rules to preserve neighborhoods' residential characters were not enforced on the Eastside, leading to the establishment of industrial facilities in the area.

Although the strategic placement of schools to designate racial zones was a tactic primarily available to southern cities with codified school segregation, the device was occasionally employed in the North as well. In the 1920s, Indianapolis used its school siting policy to pursue the goal of residential segregation. The school board shifted the academically prestigious and all-white high school to an exclusive white community, far from the city's racial boundary. This left the former high school in an area near the border between the city's black and white neighborhoods, but the board refused to designate it for use by African Americans; rather, it constructed a new high school for African American students near a glue factory and city dump, far from white areas.

The case of Raleigh and surrounding Wake County, North Carolina, is particularly noteworthy because, in recent years, advocates of school integration have praised the county for its program of busing children to make its schools more diverse. Barred by the Supreme Court from explicitly integrating schools by race, the district—which includes the city of Raleigh and its suburbs—has bused low-income children from the south and east sides of the county to middle-class neighborhoods in the north and west. As it happens, children in the southeast are mostly black, while those in the northwest are mostly white. The segregated design that the busing was designed to overcome was no accident. It was created, in part, by racially motivated school siting decisions in the early twentieth century.

Karen Benjamin, a historian at St. Xavier College in Chicago, has uncovered records that reveal how school placement decisions helped force the segregation of Raleigh as well as of Houston and Atlanta. In Raleigh in the early twentieth century, neighborhoods of black and white concentration were scattered across the city. They included two relatively prosperous African American neighborhoods, Idlewild and College Park, on what was then the city's northeast side. These middle-class communities of owner-occupied single-family homes no longer exist because in the 1920s the school board decided to transfer all schools for black students to the far southeastern section of the city, where planners hoped to isolate Raleigh's African Americans. (Making matters worse, when the board provided Idlewild's and College Park's middle-class residents with a new school, it put the campus next to the city dump and a rock quarry filled with stagnant water.) At the same time, it established the newest and most well-equipped schools for white students in far northwestern neighborhoods. In some cases, these areas were still largely undeveloped, where real estate interests hoped to attract white families.

There was nothing hidden about the racial context of these school-site decisions, and they generated considerable debate. An editorial in the moderate *Raleigh Times* said:

> The negroes making protest are of the best element of the race in Raleigh. Many of them live in the northeastern section already occupied by a numerous, growing population of negro citizens, the majority of whom are owners of their own homes. They have built up with who knows what sacrifice a self-respecting and steadily improving community. . . . It is a

> fact well-known that the northeastern negro section was due largely to the desire of better class negroes to escape the very Rock Quarry locality in which it is suggested the new school will take place.

In Atlanta, the school board also helped to segregate a city that previously had some mixed-race housing. Before World War I, mostly black and white blocks were interspersed in central city neighborhoods. After the war, however, city planners determined that future city growth would be rigidly segregated. Even though courts had struck down an explicit Atlanta racial zoning ordinance in 1924, the segregation maps guided school closure and construction decisions by the Atlanta School Board for the next two decades.

Gradually, schools for whites were closed if they were in zones designated for future African American residence, and schools for African Americans were closed if they were in zones reserved for whites. New schools for white students were built in the developing white suburbs, which forced white families to move to these communities if their children were to have access to the most up-to-date schools. As with white families, black families who did not already live in their racially designated area were forced to find new housing if they wanted their children to attend a modern school.

In 1919, when the policy was developing but still not fully formal, the school board converted the Ashby Street School on the west side in a planned ghetto area, from a school for whites to one for African Americans. The minutes of a school board meeting report the adoption of a motion that white families may be given one year to keep their children in the school, "to allow the white residents of that section to sell their homes, it being understood that the school [would be] turned over to the negroes at the close of the year."

Two high schools for white students in a racially mixed downtown area were closed and moved to the northern suburbs, while the city's first high school for black students was constructed far west of downtown, in a still relatively undeveloped area but one intended for African Americans. The Atlanta School Board commissioned a study by two Columbia University experts, who recommended placing a new junior high school for whites in a densely populated neighborhood northwest of the central city area where elementary school overcrowding was most severe. Because this area was racially mixed (and designated for future African American residence), the board rejected the consultants' recommendation and instead constructed a new white junior high school across the railroad tracks in the far northern suburbs, forcing white families to cease living in an integrated community if they wished their adolescent children to be educated.

In Houston, in the 1920s the city plan commission also drew up a map designating "Race Restriction Areas." Seeing that a Georgia court had rejected Atlanta's zoning ordinance, Houston never formally adopted the map. But as in Atlanta, the school board used it as a guide. At the beginning of the twentieth century, many Houston neighborhoods were integrated; substantial numbers of African American and white children lived in each of the city's six wards. Each ward had a school for African American children that was near, and in some cases on the same block as, the school for whites. Over one-fourth of African American children lived in a school attendance district that was at least 70 percent white. The city plan, however, foresaw developing the west side of Houston for exclusive white residence while pushing African Americans out of the west side and into developing ghettos in the south and northeast.

To accomplish this, in the 1920s and '30s the school board built, on the west side, new schools with advanced facilities for whites; it set up, on the far south side, a modern high school for African Americans, to induce middle-class black families to move there. The city also established a new Houston Negro Hospital near the new high school as a further incentive for African Americans to relocate. The school board closed an elementary school for African on the south and northeast sides, the school board appropriated little money for improvements at schools for African American pupils in the west. Similarly, white schools in the area designated for African Americans were closed or allowed to deteriorate. Each time the board made a decision about schools for African American pupils, a chief consideration was avoiding "proximity to white districts." Professor Benjamin concludes that Houston's "school building programs were the key to preserving school segregation long after the *Brown* decision declared it unconstitutional."