

NEW YORK TIMES BESTSELLER

RESIDENTIAL SECURITY MAP

- LEGEND
- A FIRST GRADE
 - B SECOND GRADE
 - C THIRD GRADE
 - D FOURTH GRADE
 - SPARSELY BUILT UP (COLOR INDICATES GRADE)
 - INDUSTRIAL & COMMERCIAL
 - UNDEVELOPED OR FARMLAND (NO PROBABLE CHANGE WITHIN 5 YEARS)

THE COLOR OF LAW

A FORGOTTEN HISTORY
OF HOW OUR GOVERNMENT
SEGREGATED AMERICA

RICHARD ROTHSTEIN

"A powerful and disturbing history of residential segregation in America. . .
While the road forward is far from clear, there is no better history of this troubled journey."

—NEW YORK TIMES BOOK REVIEW



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LOOK At These Homes NOW!

An entire block ruined by negro invasion. Every house marked "X" now occupied by negroes. ACTUAL PHOTOGRAPH OF 4300 WEST BELLE PLACE.

SAVE YOUR HOME! VOTE FOR SEGREGATION!

73

St. Louis, 1916. Leaflet urging voters to adopt a referendum that prohibited African Americans from moving onto predominantly white blocks.

3

RACIAL ZONING

WE LIKE TO think of American history as a continuous march of progress toward greater freedom, greater equality, and greater justice. But sometimes we move backward, dramatically so. Residential integration declined steadily from 1880 to the mid-twentieth century, and it has mostly stalled since then.

I

AFTER THE Civil War, liberated slaves dispersed throughout the United States, seeking work and to escape the violence of the post-war South. For several decades many lived relatively peacefully in the East, the Midwest, and the West. But in 1877 the disputed presidential election of the previous autumn was resolved in a compromise that gave the Republican candidate, Rutherford B. Hayes, the White House. In return for southern Democratic support of their presidential candidate, Republicans agreed to withdraw federal troops who had been protecting African Americans in the defeated Confederacy.

The period of black liberation known as Reconstruction then

came to an end. In the South, the former slaveholding aristocracy renewed African Americans' subjugation. Supported by a campaign of violence against the newly emancipated slaves, southern states adopted segregation statutes—Jim Crow laws. Denied the right to vote, segregated in public transportation, schools, and private accommodations, and victimized by lynching and other forms of brutality, African Americans in the South were reduced again to a lower-caste status. Plantation owners redefined their former slaves as sharecroppers to maintain harsh and exploitative conditions.

Events in the African American town of Hamburg, in the Edgefield District of South Carolina, were typical of many others across the former Confederacy where white paramilitary groups mobilized to regain control of state governments. Their aim was simple: prevent African Americans from voting. In July 1876, a few months before the election that gave the presidency to Hayes, a violent rampage in Hamburg abolished the civil rights of freed slaves. Calling itself the Red Shirts, a collection of white supremacists killed six African American men and then murdered four others whom the gang had captured. Benjamin Tillman led the Red Shirts; the massacre propelled him to a twenty-four-year career as the most vitriolic racist in the U.S. Senate.

Following the massacre, the terror did not abate. In September, a "rifle club" of more than 500 whites crossed the Savannah River from Georgia and camped outside Hamburg. A local judge begged the governor to protect the African American population, but to no avail. The rifle club then moved on to the nearby hamlet of Ellenton, killing as many as fifty African Americans. President Ulysses S. Grant then sent in federal troops, who temporarily calmed things down but did not eliminate the ongoing threats.

Employers in the Edgefield District told African Americans they would be fired, and landowners threatened black sharecroppers with eviction if they voted to maintain a biracial state government. When the 1876 election took place, fraudulent white ballots were cast; the total vote in Edgefield substantially exceeded the entire voting age population. Results like these across the state gave segregationist Democrats the margin of victory they needed to seize control of South Carolina's government from the black-white coali-

tion that had held office during Reconstruction. Senator Tillman later bragged that "the leading white men of Edgefield" had decided "to seize the first opportunity that the Negroes might offer them to provoke a riot and teach the Negroes a lesson."

Although a coroner's jury indicted Tillman and ninety-three other Red Shirts for the murders, they were never prosecuted and continued to menace African Americans. Federal troops never again came to offer protection. The campaign in Edgefield was of a pattern followed not only in South Carolina but throughout the South.

With African Americans disenfranchised and white supremacists in control, South Carolina instituted a system of segregation and exploitation that persisted for the next century. In 1940, the state legislature erected a statue honoring Tillman on the capitol grounds, and in 1946 Clemson, one of the state's public universities, renamed its main hall in Tillman's honor. It was in this environment that hundreds of thousands of African Americans fled the former Confederacy in the first half of the twentieth century.*

II

AS THE Jim Crow atmosphere intensified in the South, fear (turning to hatred) of African Americans began to spread beyond that region. Throughout the country, whites came to assume black perversity and inferiority. Consider a state as seemingly improbable as Montana where African Americans thrived in the post-Civil War years. In the early 1900s they were systematically expelled from predominantly white communities in the state. Public officials supported and promoted this new racial order.

The removal of African Americans was gradual. By 1890, black

* Only in 2015, after the murder of nine black church members by a white supremacist youth in Charleston, did the trustees of Clemson adopt a resolution dissociating themselves from Tillman's "campaign of terror against African Americans in South Carolina that included intimidation and violence." But the trustees can't take his name off the hall unless the state legislature authorizes it, and the legislature has not done so.

settlers were living in every Montana county. By 1930, though, eleven of the state's fifty-six counties had been entirely cleared of African Americans, and in the other counties few remained. The African American population of Helena, the state capital, peaked at 420 (3.4 percent) in 1910. It was down to 131 by 1930, and only 45 remained by 1970. By 2010 the 113 African Americans in Helena comprised less than half of one percent of the city's population.

At the turn of the twentieth century, African Americans in Helena had included an established middle-class community, alongside those who came as laborers or to work on the railroads and in Montana's mines. The police officer assigned to patrol one of Helena's wealthiest white neighborhoods was an African American. Helena's African Methodist Episcopal Church was important enough in 1894 to host its denomination's western regional conference. The city had black newspapers, black-owned businesses, and a black literary society that sometimes drew one hundred attendees to hear presentations by poets, playwrights, and essayists. But in 1906, Helena's prosecuting attorney expressed the new attitude of public authorities when he announced, "It is time that the respectable white people of this community rise in their might and assert their rights." Helena's newspaper called the prosecutor's statement masterful and eloquent. Three years later Montana banned marriages between blacks and whites.

During this era many towns across the country adopted policies forbidding African Americans from residing or even from being within town borders after dark. Although the policies were rarely formalized in ordinances, police and organized mobs enforced them. Some towns rang bells at sundown to warn African Americans to leave. Others posted signs at the town boundaries warning them not to remain after sundown.

A 1915 newspaper article in Glendive, Montana, was headlined "Color Line Is Drawn In Glendive." It noted that the town's policy was that "the sun is never allowed to set on any niggers in Glendive" and boasted that the town's black population was now a "minus quantity." The town of Roundup posted a sign banning African Americans from remaining overnight. In Miles City a once-substantial African American community was forced to flee by white mob violence. In 1910, 81

African Americans comprised 2 percent of the Miles City population. Today it has only 25, or 0.3 percent.

III

THE IMPOSITION of a new African American subordination eventually spread to the federal government as well. In Washington, D.C., in the late nineteenth and early twentieth centuries, African Americans in the federal civil service had been making great progress; some rose to positions whose responsibilities included supervising white office workers and manual laborers. This came to an end when Woodrow Wilson was elected president in 1912. Although he had served as president of Princeton University in New Jersey, and then as governor of that state, his origins were in the South, and he was an uncompromising believer in segregation and in black inferiority. At Princeton, for example, he refused to consider African Americans for admission.

In 1913, Wilson and his cabinet approved the implementation of segregation in government offices. Curtains were installed to separate black and white clerical workers. Separate cafeterias were created. Separate basement toilets were constructed for African Americans. Black supervisors were demoted to ensure that no African American oversaw a white employee. One official responsible for implementing segregation was the assistant secretary of the navy: Franklin Delano Roosevelt. He might or might not have been enthusiastic about segregation, but it was an aspect of the changing national political culture in which he matured and that he did not challenge.

IV

IN THIS early-twentieth-century era, when African Americans in the South faced terror that maintained them in subjugation, when African Americans throughout the nation were being driven from small towns where they had previously enjoyed a measure of inte-

gration and safety, and when the federal government had abandoned its African American civil servants, we should not be surprised to learn that there was a new dedication on the part of public officials to ensure that white families' homes would be removed from proximity to African Americans in large urban areas.

Unlike public housing, which was primarily a federal program with some local participation, government policies to isolate white families in all-white urban neighborhoods began at the local level. As African Americans were being driven out of smaller midwestern and western communities like those in Montana, many other cities, particularly in southern and border states, already had large black populations that couldn't be expelled. Instead, many of these cities adopted zoning rules decreeing separate living areas for black and white families.

The first to do so was Baltimore, which in 1910 adopted an ordinance prohibiting African Americans from buying homes on blocks where whites were a majority and vice versa. Milton Dashiell, the lawyer who drafted Baltimore's ordinance, explained:

Ordinarily, the negro loves to gather to himself, for he is very gregarious and sociable in his nature. But those who have risen somewhat above their fellows appear to have an intense desire to leave them behind, to disown them, as it were, and get as close to the company of white people as circumstances will permit them.

The segregation ordinance, he said, was needed to prevent this.

The troubles Baltimore encountered in applying the ordinance reflected just how integrated some areas of the city were. Soon after it adopted the ordinance, the city pursued twenty prosecutions to evict wrong-race residents. Judges had to grapple with such questions as whether an African American should be allowed to buy a home on a block that was evenly divided between white and black. A white homeowner moved out while his house was being repaired but then couldn't move back because the block was 51 percent black. An African American pastor of a church with an African American congregation complained to the mayor that

because his church was on a mostly white block, the pastor who succeeded him would be forbidden to move into the parsonage. Eventually, the ordinance was revised so that it applied only to blocks that were entirely white or black, leaving Baltimore's integrated blocks unaffected.

Many southern and border cities followed Baltimore and adopted similar zoning rules: Atlanta, Birmingham, Dade County (Miami), Charleston, Dallas, Louisville, New Orleans, Oklahoma City, Richmond (Virginia), St. Louis, and others. Few northern cities did so; before the Great Migration stimulated by the First World War, most northern urban black populations were still small. Nonetheless support for these segregation ordinances was widespread among white political and opinion leaders. In 1915, *The New Republic*, still in its infancy but already an influential magazine of the Progressive movement, argued for residential racial segregation until Negroes ceased wanting to "amalgamate" with whites—which is to say, ceased wanting to engage in relationships that produced mixed-race children. The article's author apparently did not realize that race amalgamation in the United States was already considerably advanced, resulting from the frequent rapes of slaves by white masters.

In 1917, the Supreme Court overturned the racial zoning ordinance of Louisville, Kentucky, where many neighborhoods included both races before twentieth-century segregation. The case, *Buchanan v. Warley*, involved an African American's attempt to purchase property on an integrated block where there were already two black and eight white households. The Court majority was enamored of the idea that the central purpose of the Fourteenth Amendment was not to protect the rights of freed slaves but a business rule: "freedom of contract." Relying on this interpretation, the Court had struck down minimum wage and workplace safety laws on the grounds that they interfered with the right of workers and business owners to negotiate individual employment conditions without government interference. Similarly, the Court ruled that racial zoning ordinances interfered with the right of a property owner to sell to whomever he pleased.

Many border and southern cities ignored the *Buchanan* decision. One of the nation's most prominent city planners, Robert Whitten, wrote in a 1922 professional journal that notwithstanding the *Buchanan* decision, "[e]stablishing colored residence districts has removed one of the most potent causes of race conflict." This, he added, was "a sufficient justification for race zoning. . . . A reasonable segregation is normal, inevitable and desirable." Whitten then went ahead and designed a zoning ordinance for Atlanta, advising city officials that "home neighborhoods had to be protected from any further damage to values resulting from inappropriate uses, including the encroachment of the colored race." The zone plan drafted by Whitten and published by the Atlanta City Planning Commission in 1922 explained that "race zoning is essential in the interest of the public peace, order and security and will promote the welfare and prosperity of both the white and colored race." The zoning law divided the city into an "R-1 white district" and an "R-2 colored district" with additional neighborhoods undetermined.

Challenged in court, Atlanta defended its law by arguing that the *Buchanan* ruling applied only to ordinances identical to Louisville's. Atlanta's was different, its lawyers contended, because it designated whole neighborhoods exclusively for black or white residence, without regard to the previous majority-race characteristics of any particular block. The lawyers also claimed that the Louisville decision didn't apply because Atlanta's rules addressed only where African Americans and whites could live, not who could purchase the property. The Georgia Supreme Court rejected this argument in 1924, finding Whitten's plan unconstitutional, but Atlanta officials continued to use the racial zoning map to guide its planning for decades to come.

Other cities continued to adopt racial zoning ordinances after *Buchanan*, insisting that because their rules differed slightly from Louisville's, the Court's prohibition didn't apply. In 1926, Indianapolis adopted a regulation permitting African Americans to move to a white area only if a majority of its white residents gave their

written consent, although the city's legal staff had advised that the ordinance was unconstitutional. In 1927, the Supreme Court overturned a similar New Orleans law that required a majority vote of opposite-race neighbors.

Richmond, Virginia, attempted a sly evasion of *Buchanan*. In 1924, the state adopted a law banning interracial marriage, so the city then prohibited anyone from residing on a street where they were ineligible to marry a majority of those already living there. Municipal lawyers told federal courts that *Buchanan* did not apply because their city's racial zoning law was solely intended to prevent intermarriage and its interference with residential property rights was incidental. In 1930 the Supreme Court rejected this reasoning.

Birmingham, like Atlanta, defended a racial zoning law with claims that *Buchanan* banned only sales of property to persons of the other race, not residence in an other-race district; the city also argued that threats to peace were so imminent and severe if African Americans and whites lived in the same neighborhoods that the need to maintain order should trump the constitutional rights involved. After a lower court banned Birmingham's ordinance in 1947, the city claimed that the ban applied only to the single piece of property involved in the court case, then increased criminal penalties for future violations. The city commission (council) president stated that "this matter goes beyond the written law, in the interest of . . . racial happiness." Birmingham continued to administer its racial zoning ordinance until 1950, when a federal appeals court finally struck it down.

In Florida, a West Palm Beach racial zoning ordinance was adopted in 1929, a dozen years after *Buchanan*, and was maintained until 1960. The Orlando suburb of Apopka adopted an ordinance banning blacks from living on the north side of the railroad tracks and whites from living on the south side. It remained in effect until 1968. Other cities, like Austin and Atlanta, continued racial zoning without specific ordinances by designating African American areas in official planning documents and using these designations

to guide spot zoning decisions. Kansas City and Norfolk continued this practice until at least 1987.

But in cities that respected *Buchanan* as the law, segregationist officials faced two distinct problems: how to keep lower-income African Americans from living near middle-class whites and how to keep middle-class African Americans from buying into white middle-class neighborhoods. For each of these conditions, the federal and local governments developed distinct solutions.

V

IN 2014, police killed Michael Brown, a young African American man in Ferguson, a suburb of St. Louis. Protests followed, some violent, and subsequent investigations uncovered systematic police and government abuse of residents in the city's African American neighborhoods. The reporting made me wonder how the St. Louis metropolitan area became so segregated. It turns out that economic zoning—with a barely disguised racial overlay—played an important role.

To prevent lower-income African Americans from living in neighborhoods where middle-class whites resided, local and federal officials began in the 1910s to promote zoning ordinances to reserve middle-class neighborhoods for single-family homes that lower-income families of all races could not afford. Certainly, an important and perhaps primary motivation of zoning rules that kept apartment buildings out of single-family neighborhoods was a social class elitism that was not itself racially biased. But there was also enough open racial intent behind exclusionary zoning that it is integral to the story of *de jure* segregation. Such economic zoning was rare in the United States before World War I, but the *Buchanan* decision provoked urgent interest in zoning as a way to circumvent the ruling.

St. Louis appointed its first plan commission in 1911 and five years later hired Harland Bartholomew as its full-time planning engineer. His assignment was to categorize every structure in the

city—single-family residential, multifamily residential, commercial, or industrial—and then to propose rules and maps to prevent future multifamily, commercial, or industrial structures from impinging on single-family neighborhoods. If a neighborhood was covered with single-family houses with deeds that prohibited African American occupancy, this was taken into consideration at plan commission meetings and made it almost certain that the neighborhood would be zoned “first-residential,” prohibiting future construction of anything but single-family units and helping to preserve its all-white character.

According to Bartholomew, an important goal of St. Louis zoning was to prevent movement into “finer residential districts . . . by colored people.” He noted that without a previous zoning law, such neighborhoods have become run-down, “where values have depreciated, homes are either vacant or occupied by colored people.” The survey Bartholomew supervised before drafting the zoning ordinance listed the race of each building's occupants. Bartholomew attempted to estimate where African Americans might encroach so the commission could respond with restrictions to control their spread.

The St. Louis zoning ordinance was eventually adopted in 1919, two years after the Supreme Court's *Buchanan* ruling banned racial assignments; with no reference to race, the ordinance pretended to be in compliance. Guided by Bartholomew's survey, it designated land for future industrial development if it was in or adjacent to neighborhoods with substantial African American populations.

Once such rules were in force, plan commission meetings were consumed with requests for variances. Race was frequently a factor. For example, one meeting in 1919 debated a proposal to reclassify a single-family property from first-residential to commercial because the area to the south had been “invaded by negroes.” Bartholomew persuaded the commission members to deny the variance because, he said, keeping the first-residential designation would preserve homes in the area as unaffordable to African Americans and thus stop the encroachment.

On other occasions, the commission changed an area's zoning from residential to industrial if African American families had begun to move into it. In 1927, violating its normal policy, the commission authorized a park and playground in an industrial, not residential, area in hopes that this would draw African American families to seek housing nearby. Similar decision making continued through the middle of the twentieth century. In a 1942 meeting, commissioners explained they were zoning an area in a commercial strip as multifamily because it could then "develop into a favorable dwelling district for Colored people." In 1948, commissioners explained they were designating a U-shaped industrial zone to create a buffer between African Americans inside the U and whites outside.

In addition to promoting segregation, zoning decisions contributed to degrading St. Louis's African American neighborhoods into slums. Not only were these neighborhoods zoned to permit industry, even polluting industry, but the plan commission permitted taverns, liquor stores, nightclubs, and houses of prostitution to open in African American neighborhoods but prohibited these as zoning violations in neighborhoods where whites lived. Residences in single-family districts could not legally be subdivided, but those in industrial districts could be, and with African Americans restricted from all but a few neighborhoods, rooming houses sprang up to accommodate the overcrowded population.

Later in the twentieth century, when the Federal Housing Administration (FHA) developed the insured amortized mortgage as a way to promote homeownership nationwide, these zoning practices rendered African Americans ineligible for such mortgages because banks and the FHA considered the existence of nearby rooming houses, commercial development, or industry to create risk to the property value of single-family areas. Without such mortgages, the effective cost of African American housing was greater than that of similar housing in white neighborhoods, leaving owners with fewer resources for upkeep. African American homes were then more likely to deteriorate, reinforcing their neighborhoods' slum conditions.

VI

LOCAL OFFICIALS elsewhere, like those in St. Louis, did not experiment with zoning in isolation. In the wake of the 1917 *Buchanan* decision, the enthusiasm of federal officials for economic zoning that could also accomplish racial segregation grew rapidly. In 1921 President Warren G. Harding's secretary of commerce, Herbert Hoover, organized an Advisory Committee on Zoning to develop a manual explaining why every municipality should develop a zoning ordinance. The advisory committee distributed thousands of copies to officials nationwide. A few months later the committee published a model zoning law. The manual did not give the creation of racially homogenous neighborhoods as the reason why zoning should become such an important priority for cities, but the advisory committee was composed of outspoken segregationists whose speeches and writings demonstrated that race was one basis of their zoning advocacy.

One influential member was Frederick Law Olmsted, Jr., a former president of the American City Planning Institute and of the American Society of Landscape Architects. During World War I, Olmsted Jr. directed the Town Planning Division of the federal government's housing agency that managed or built more than 100,000 units of segregated housing for workers in defense plants. In 1918, he told the National Conference on City Planning that good zoning policy had to be distinguished from "the legal and constitutional question" (meaning the *Buchanan* rule), with which he wasn't concerned. So far as policy went, Olmsted stated that "in any housing developments which are to succeed, . . . racial divisions . . . have to be taken into account. . . . [If] you try to force the mingling of people who are not yet ready to mingle, and don't want to mingle," a development cannot succeed economically.

Another member of the advisory committee was Alfred Bettman, the director of the National Conference on City Planning. In 1933 President Franklin D. Roosevelt appointed him to a National Land Use Planning Committee that helped to establish planning

commissions in cities and states throughout the country. Planning (i.e., zoning) was necessary, Bettman and his colleagues explained, to "maintain the nation and the race."

The segregationist consensus of the Hoover committee was reinforced by members who held positions of leadership in the National Association of Real Estate Boards, including its president, Irving B. Hiatt. In 1924, two years after the advisory committee had published its first manual and model zoning ordinance, the association followed up by adopting a code of ethics that included this warning: "a realtor should never be instrumental in introducing into a neighborhood . . . members of any race or nationality . . . whose presence will clearly be detrimental to property values in that neighborhood."

Other influential zoning experts made no effort to conceal their expectation that zoning was an effective means of racial exclusion. Columbia Law School professor Ernst Freund, the nation's leading authority on administrative law in the 1920s, observed that preventing "the coming of colored people into a district" was actually a "more powerful" reason for the spread of zoning during the previous decade than creation of single-family districts, the stated justification for zoning. Because the *Buchanan* decision had made it "impossible to find an appropriate legal formula" for segregation, Freund said that zoning masquerading as an economic measure was the most reasonable means of accomplishing the same end.

Secretary Hoover, his committee members, and city planners across the nation believed that zoning rules that made no open reference to race would be legally sustainable—and they were right. In 1926, the Supreme Court for the first time considered the constitutionality of zoning rules that prohibited apartment buildings in single-family neighborhoods. The decision, arising from a zoning ordinance in a Cleveland suburb, was a conspicuous exception to the Court's rejection of regulations that restricted what an owner could do with his property. Justice George Sutherland, speaking for the Court, explained that "very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district" and that apartment houses in single-family districts

"come very near to being nuisances." In reaching this decision, the Supreme Court had to overrule the findings of a district judge who would have preferred to uphold the zoning ordinance but could not pretend ignorance of its true racial purpose, a violation of *Buchanan*. The judge explained, "The blighting of property values and the congesting of the population, whenever the colored or certain foreign races invade a residential section, are so well known as to be within the judicial cognizance."

In the years since the 1926 Supreme Court ruling, numerous white suburbs in towns across the country have adopted exclusionary zoning ordinances to prevent low-income families from residing in their midst. Frequently, class snobbishness and racial prejudice were so intertwined that when suburbs adopted such ordinances, it was impossible to disentangle their motives and to prove that the zoning rules violated constitutional prohibitions of racial discrimination. In many cases, however, like Secretary Hoover's experts, localities were not always fastidious in hiding their racial motivations.

The use of zoning for purposes of racial segregation persisted well into the latter half of the twentieth century. In a 1970 Oklahoma case, the segregated town of Lawton refused to permit a multiunit development in an all-white neighborhood after residents circulated a petition in opposition. They used racial appeals to urge citizens to sign, although the language of the petition itself did not mention race. The sponsors of the apartment complex received anonymous phone calls that expressed racial antagonism. In a subsequent lawsuit, the only member of the planning commission who voted to allow the project testified that bias was the basis of other commissioners' opposition. Although the commission did not use race as the reason for denying the permit, a federal appeals court found that the stated reasons were mere pretexts. "If proof of a civil rights violation depends on an open statement by an official of an intent to discriminate, the Fourteenth Amendment offers little solace to those seeking its protection," the court concluded.

Yet the appeals court view did not prevail in other cases. A few years later, in 1977, the Supreme Court upheld a zoning ordinance in Arlington Heights, a suburb of Chicago, that prohib-

ited multiunit development anywhere but adjacent to an outlying commercial area. The ordinance ensured that few, if any, African Americans could reside in residential areas. The city council had adopted its zoning ordinance at a meeting where members of the public urged action for racially discriminatory reasons. Letters to the local newspaper urged support for the ordinance as a way to keep African Americans out of white neighborhoods. But despite the openly racial character of community sentiment, the Supreme Court said the ordinance was constitutional because there was no proof that the council members themselves had adopted the ordinance to exclude African Americans specifically and not exclude all lower-income families, regardless of race.

My purpose, however, is not to argue courtroom standards of proof. I am interested in how we got to the systematic racial segregation we find in metropolitan areas today, and what role government played in creating these residential patterns. We can't prove what was in council members' hearts in Arlington Heights or anywhere else, but in too many zoning decisions the circumstantial evidence of racial motivation is persuasive. I think it can fairly be said that there would be many fewer segregated suburbs than there are today were it not for an unconstitutional desire, shared by local officials and by the national leaders who urged them on, to keep African Americans from being white families' neighbors.

VII

THE USE of industrial, even toxic waste zoning, to turn African American neighborhoods into slums was not restricted to St. Louis. It became increasingly common as the twentieth century proceeded and manufacturing operations grew in urban areas. The pattern was confirmed in a 1983 analysis by the U.S. General Accounting Office (GAO), concluding that, across the nation, commercial waste treatment facilities or uncontrolled waste dumps were more likely to be found near African American than white residential areas.

Studies by the Commission for Racial Justice of the United Churches of Christ and by Greenpeace, conducted at about the same time as the GAO report, concluded that race was so strong a statistical predictor of where hazardous waste facilities could be found that there was only a one-in-10,000 chance of the racial distribution of such sites occurring randomly, and that the percentage of minorities living near incinerators was 89 percent higher than the national median. Skeptics of these data speculated that African Americans moved to such communities after these facilities were present. But while this may sometimes have been the case—after all, most African Americans had limited housing choices—it cannot be the full explanation: neighborhoods with proposed incinerators, not those already built, had minority population shares that were much higher than the shares in other communities.

Decisions to permit toxic waste facilities in African American areas did not intend to intensify slum conditions, although this was the result. The racial aspect of these choices was a desire to avoid the deterioration of white neighborhoods when African American sites were available as alternatives. The welfare of African Americans did not count for much in this policy making. Oftentimes, as in St. Louis, zoning boards made explicit exceptions to their residential neighborhood rules to permit dangerous or polluting industry to locate in African American areas.

In Los Angeles, for example, a black community became established in the South Central area of the city in the 1940s. The neighborhood had some industry, but its nonresidential character was more firmly entrenched when the city began a process of "spot" rezoning for commercial or industrial facilities. Automobile junkyards became commonplace in the African American neighborhood. In 1947, an electroplating plant explosion in this newly developing ghetto killed five local residents (as well as fifteen white factory workers) and destroyed more than one hundred homes. When later that year the pastor of an African American church protested a rezoning of property adjacent to his church for industrial use, the chairman of the Los Angeles City Council's planning

committee, responsible for the rezoning, responded that the area had now become a "business community," adding, "Why don't you people buy a church somewhere else?"

For the most part, courts have refused to reject toxic siting decisions without proof of explicit, stated intent to harm African Americans because of their race. In a 1979 Houston case, an African American community that already had a disproportionately high number of hazardous waste sites protested the addition of another. A federal judge found that the proposal was "unfortunate and insensitive" but refused to ban it without proof of explicit racial motivation. A 1991 case arose in Warren County, North Carolina, whose overall population was about half white and half African American. The county had three existing landfills, all in African American areas. When a new landfill was proposed for a white area, residents protested, and county officials did not issue a permit. But when another was proposed, this time in an African American area, county officials ignored residents' protests and approved the landfill. A federal judge upheld the county's decision, finding that there was a discriminatory impact but no explicit racial intent.

In 1991, the Environmental Protection Agency issued a report confirming that a disproportionate number of toxic waste facilities were found in African American communities nationwide. President Bill Clinton then issued an executive order requiring that such disparate impact be avoided in future decisions. The order did not, however, require any compensatory actions for the existing toxic placements.

The frequent existence of polluting industry and toxic waste plants in African American communities, along with subdivided homes and rooming houses, contributed to giving African Americans the image of slum dwellers in the eyes of whites who lived in neighborhoods where integration might be a possibility. This, in turn, contributed to white flight when African Americans attempted to move to suburbs.

Zoning thus had two faces. One face, developed in part to evade a prohibition on racially explicit zoning, attempted to keep African Americans out of white neighborhoods by making it difficult

for lower-income families, large numbers of whom were African Americans, to live in expensive white neighborhoods. The other attempted to protect white neighborhoods from deterioration by ensuring that few industrial or environmentally unsafe businesses could locate in them. Prohibited in this fashion, polluting industry had no option but to locate near African American residences. The first contributed to creation of exclusive white suburbs, the second to creation of urban African American slums.



Chicago, 1970. When federal policy denied mortgages to African Americans, they had to buy houses on the installment plan, which led to numerous evictions.

6

WHITE FLIGHT

ALONG WITH THE real estate industry and state courts, the FHA justified its racial policies—both its appraisal standards and its restrictive covenant recommendations—by claiming that a purchase by an African American in a white neighborhood, or the presence of African Americans in or near such a neighborhood, would cause the value of the white-owned properties to decline. This, in turn, would increase the FHA's own losses, because white property owners in the neighborhood would be more likely to default on their mortgages. In the three decades during which it administered this policy, however, the agency never provided or obtained evidence to support its claim that integration undermined property values.

The best it could apparently do was a 1939 report by Homer Hoyt, the FHA's principal housing economist, that set out principles of "sound public and private housing and home financing policy." Hoyt explained that racial segregation must be an obvious necessity because it was a worldwide phenomenon. His only support for this assertion was an observation that in

China enclaves of American missionaries and European colonial officials lived separately from Chinese neighborhoods. On this basis, he concluded that "where members of different races live together . . . racial mixtures tend to have a depressing effect on land values."

I

STATISTICAL EVIDENCE contradicted the FHA's assumption that the presence of African Americans caused the property values of whites to fall. Often racial integration caused property values to increase. With government policy excluding working- and middle-class African Americans from most suburbs, their desire to escape dense urban conditions spurred their demand for single-family or duplex homes on the outskirts of urban ghettos nationwide. Because these middle-class families had few other housing alternatives, they were willing to pay prices far above fair market values. In short, the FHA policy of denying African Americans access to most neighborhoods itself created conditions that prevented property values from falling when African Americans did appear.

In an unusual 1942 decision, the federal appeals court for the District of Columbia refused to uphold a restrictive covenant because the clause undermined its own purpose, which was to protect property values. Enforcement, the court said, would depress property values by excluding African Americans who were willing to pay higher prices than whites. In 1948 an FHA official published a report asserting that "the infiltration of Negro owner-occupants has tended to appreciate property values and neighborhood stability." A 1952 study of sales in San Francisco compared prices in racially changing neighborhoods with those in a control group of racially stable neighborhoods. Published in the *Appraisal Journal*, a periodical with which housing practitioners, including FHA officials, would have been familiar, it con-

cluded that "[t]hese results do not show that any deterioration in market prices occurred following changes in the racial pattern." Indeed, the study confirmed that because African Americans were willing to pay more than whites for similar housing, property values in neighborhoods where African Americans could purchase increased more often than they declined. Ignoring these studies' conclusions, the FHA continued its racial policy for at least another decade.

II

IN ONE respect, however, the FHA's theories about property values could become self-fulfilling. An African American influx could reduce a neighborhood's home prices as a direct result of FHA policy. The inability of African American families to obtain mortgages for suburban dwellings created opportunities for speculators and real estate agents to collude in blockbusting. Practiced across the country as it had been in East Palo Alto, blockbusting was a scheme in which speculators bought properties in borderline black-white areas; rented or sold them to African American families at above-market prices; persuaded white families residing in these areas that their neighborhoods were turning into African American slums and that values would soon fall precipitously; and then purchased the panicked whites' homes for less than their worth.

Blockbusters' tactics included hiring African American women to push carriages with their babies through white neighborhoods, hiring African American men to drive cars with radios blasting through white neighborhoods, paying African American men to accompany agents knocking on doors to see if homes were for sale, or making random telephone calls to residents of white neighborhoods and asking to speak to someone with a stereotypically African American name like "Johnnie Mae." Speculators also took out real estate advertisements in African American newspapers,

even if the featured properties were not for sale. The ads' purpose was to attract potential African American buyers to walk around white areas that were targeted for blockbusting. In a 1962 *Saturday Evening Post* article, an agent (using the pseudonym "Norris Vitcheck") claimed to have arranged house burglaries in white communities to scare neighbors into believing that their communities were becoming unsafe.

Real estate firms then sold their newly acquired properties at inflated prices to African Americans, expanding their residential boundaries. Because most black families could not qualify for mortgages under FHA and bank policies, the agents often sold these homes on installment plans, similar to the one Charles Vatterott developed in De Porres, in which no equity accumulated from down or monthly payments. Known as contract sales, these agreements usually provided that ownership would transfer to purchasers after fifteen or twenty years, but if a single monthly payment was late, the speculator could evict the would-be owner, who had accumulated no equity. The inflated sale prices made it all the more likely that payment would not be on time. Owner-speculators could then resell these homes to new contract buyers.

The full cycle went like this: when a neighborhood first integrated, property values increased because of African Americans' need to pay higher prices for homes than whites. But then property values fell once speculators had panicked enough white homeowners into selling at deep discounts.

Falling sale prices in neighborhoods where blockbusters created white panic was deemed as proof by the FHA that property values would decline if African Americans moved in. But if the agency had not adopted a discriminatory and unconstitutional racial policy, African Americans would have been able, like whites, to locate throughout metropolitan areas rather than attempting to establish presence in only a few blockbusted communities, and speculators would not have been able to prey on white fears that their neighborhoods would soon turn from all white to all black.

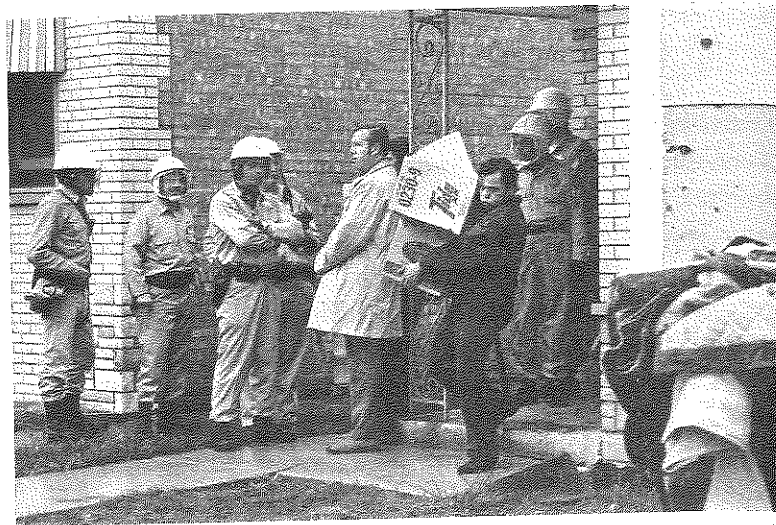
III

THE FHA's redlining necessitated the contract sale system for black homeowners unable to obtain conventional mortgages, and this created the conditions for neighborhood deterioration. Mark Satter was a Chicago attorney who in the early 1960s represented contract buyers facing eviction; mostly he was unsuccessful. His daughter Beryl, now a professor of history at Rutgers University, described the conditions he encountered in her memoir, *Family Properties*, and summarized them like this:

Because black contract buyers knew how easily they could lose their homes, they struggled to make their inflated monthly payments. Husbands and wives both worked double shifts. They neglected basic maintenance. They subdivided their apartments, crammed in extra tenants and, when possible, charged their tenants hefty rents. . . . White people observed that their new black neighbors overcrowded and neglected their properties. Overcrowded neighborhoods meant overcrowded schools; in Chicago, officials responded by "double-shifting" the students (half attending in the morning, half in the afternoon). Children were deprived of a full day of schooling and left to fend for themselves in the after-school hours. These conditions helped fuel the rise of gangs, which in turn terrorized shop owners and residents alike.

In the end, whites fled these neighborhoods, not only because of the influx of black families, but also because they were upset about overcrowding, decaying schools and crime. . . . But black contract buyers did not have the option of leaving a declining neighborhood before their properties were paid for in full—if they did, they would lose everything they'd invested in that property to date. Whites could leave—blacks had to stay.

This contract arrangement was widespread not only in Chicago but in Baltimore, Cincinnati, Detroit, Washington, D.C., and



In the Lawndale neighborhood of Chicago, community opposition to evictions of contract buyers was so strong that sheriffs were often needed to prevent owners and neighbors from carrying belongings back in.

probably elsewhere. In Mark Satter's time, approximately 85 percent of all property purchased by African Americans in Chicago had been sold to them on contract. When the neighborhood where he worked, Lawndale on the city's West Side, was changing from predominantly white to predominantly black, more than half of the residences had been bought on contract.

Although banks and savings and loan associations typically refused to issue mortgages to ordinary homeowners in African American or in integrated neighborhoods, the same institutions issued mortgages to blockbusters in those neighborhoods, all with the approval of federal bank regulators who failed their constitutional responsibilities. State real estate regulators also defaulted on their obligations when they licensed real estate brokers who engaged in blockbusting. Instead, regulators looked the other way when real estate boards expelled brokers who sold to African Americans in stable white neighborhoods.

Blockbusting, the subsequent loss of home values when specu-

lators caused panic, the subsequent deterioration of neighborhood quality when African Americans were forced to pay excessive prices for housing, the resulting identification of African Americans with slum conditions, and the resulting white flight to escape the possibility of those conditions all had their bases in federal government policy. Blockbusting could work only because the FHA made certain that African Americans had few alternative neighborhoods where they could purchase homes at fair market values.