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The Demographics of Desegregation: Residential Segregation Remains High 40 Years After the Civil Rights Act of 1964

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THE DEMOGRAPHICS OF DESEGREGATION: RESIDENTIAL SEGREGATION REMAINS HIGH 40 YEARS AFTER THE CIVIL RIGHTS ACT OF 1964

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[O]ne-third of all African-Americans in the United States live under conditions of intense racial segregation. They are unambiguously among the nation's most spatially isolated and geographically secluded people, suffering extreme segregation across multiple dimensions simultaneously. Black Americans in these metropolitan areas live within large, contiguous settlements of densely inhabited neighborhoods that are packed tightly around the urban core. In plain terms, they live in ghettos.[1]

I. INTRODUCTION

At the dawn of the twentieth century the vast majority of the African-American population resided in the nation's most impoverished areas: isolated, rural communities in southern states. One hundred years later, at the beginning of the twenty-first century, African-Americans were disproportionately concentrated in the nation's poorest and most segregated communities: America's inner cities.[2] The nation is becoming more racially diverse, but many of its cities are more segregated today than they were in 1964, when the Civil Rights Act was signed into law.[3] Opportunities are not distributed evenly across the urban landscape. Some communities are deemed to be more desirable than others. They have more expensive homes, better schools, and safer streets. An improvement in a family's economic circumstances is

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1. DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 77 (1993). *See also* Lewis Mumford Center, *Ethnic Diversity Grows, Neighborhood Integration Lags Behind* (Dec. 18, 2001), *at* http://mumford1.dyndns.org/cen2000/WholePop/WPreport/page1.html (last visited Jan. 24, 2005).

2. MASSEY & DENTON, *supra* note 1, at 77.

3. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964). *See also* Leland Ware, *Race and Urban Space: Hypersegregated Housing Patterns and the Failure of School Desegregation*, 9 WIDENER L. SYMP. J. 55, 55 (2002).

typically accompanied by advancement in its residential status. This is not the case for many African-Americans. Housing discrimination is a formidable barrier to their economic and social mobility.[4] The quality of schools, property values, exposure to crime, and the quality of public services are all affected by the location in which a family resides.

The persistence of segregated housing patterns makes it difficult for black families to escape the poverty and extreme isolation of urban ghettoes. This places them at a severe disadvantage in education, employment, and other opportunities for advancement.[5] The end of bussing and the return to neighborhood schools means that schools in urban communities will be as segregated as the neighborhoods in which they are located.[6] School desegregation research has not adequately addressed the demographic aspects of this trend.

In the South, particularly in rural areas, school desegregation commenced, albeit slowly, after *Brown v. Board of Education.*[7] In districts where there were only one or two high schools, the white and black high schools simply merged with all students attending a single, racially integrated school. In urban areas, however, demographic patterns made school desegregation far more difficult.[8] Beginning in the years during and after World War I, African-Americans migrated in large numbers from rural areas in the South to urban communities in the North.[9] As African-American families were moving north, whites were relocating to suburban communities. This trend accelerated exponentially during the post-World War II era, when the federal government heavily subsidized home ownership with Federal Housing Administration and Veteran's Administration mortgage programs.[10] African-Americans were locked out of suburban communities by redlining, racially restrictive covenants, exclusionary zoning, and other discriminatory practices.[11]

4. *See, e.g.*, Ware, *supra* note 3, at 57–59.

5. *See* John H. Blume et al., *Education and Interrogation: Comparing* Brown *and* Miranda, 90 CORNELL L. REV. 321, 335–36 (2005).

6. *See, e.g.*, Angela G. Smith, *Public School Choice and Open Enrollment: Implications for Education, Desegregation, and Equality*, 74 NEB. L. REV. 255, 291 (1995).

7. 347 U.S. 483 (1954).

8. *See, e.g.*, Jose Felipe Anderson, *Perpsectives on* Missouri v. Jenkins*: Abandoning the Unfinished Business of Public School Desegretation "with All Deliberate Speed,"* 39 HOW. L.J. 693, 694–95 (1996) (discussing demographic shifts that have hindered the desegretation of urban schools).

9. *See, e.g.*, NICHOLAS LEMANN, THE PROMISED LAND: THE GREAT MIGRATION AND HOW IT CHANGED AMERICA 6 (1991); GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY (Transaction Publishers 2002) (1944).

10. *See* MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 16–18 (1997).

11. *See* Ware, *supra* note 3, at 58–59.

In the early 1990s, the Supreme Court in *Board of Education of Oklahoma City v. Dowell*,[12] *Freeman v. Pitts*,[13] and *Missouri v. Jenkins*[14] created a much lower standard for finding that a school system has achieved "unitary status," the ultimate goal of desegregation efforts. The new standard requires courts to hold that the desegregation obligation has been satisfied, even though most urban schools are largely black and Latino as a result of the persistence of segregated housing patterns.[15]

The assumption underlying the return to neighborhood schools is that housing patterns reflect the preferences of individual families; any segregation that results is a product of private choice.[16] Contrary to this belief, however, African-Americans and nonwhite Hispanics do not now, nor have they ever had the range of housing choices that are available to whites with comparable incomes and credit histories.[17] Their options are limited by discriminatory practices that abound in the nation's housing markets.

This essay examines the effect of residential segregation on African-Americans. Part II examines the development of racially segregated communities. It explains how residential segregation was established in reaction to the migration of large numbers of African-American families into metropolitan areas during the first half of the twentieth century. Part III discusses efforts to eliminate discriminatory housing practices by the NAACP and other civil rights organizations from the 1940s to the late 1960s, when the Fair Housing Act was adopted. Part IV shows that despite the nearly forty-year history of the Fair Housing Act, discriminatory practices are pervasive in the nation's housing markets and high levels of residential segregation persist. The concluding sections examine the adverse consequences of residential segregation on African-American families, particularly those residing in the nation's inner-city communities. The Civil Rights legislation of the 1960s has done little to improve their access to the opportunity structures that are available to whites.

12. 498 U.S. 237 (1991).

13. 503 U.S. 467 (1992).

14. 515 U.S. 70 (1995).

15. In *Freeman* v. *Pitts*, the Supreme Court held that "[w]here resegregation is a product not of state action but of private choices, it does not have constitutional implications. It is beyond the authority and beyond the practical ability of the federal courts to try to counteract these kinds of continuous and massive demographic shifts." 503 U.S. at 495.

16. *See* John Powell, *Segregation and Educational Inadequacy in Twin Cities Public Schools*, 17 HAMLINE J. PUB. L. & POL'Y 337, 349–50 (1996) (noting and rejecting the argument that residential segregation is a result of minority preference for "homogenous neighborhoods and schools").

17. Leland Ware, *Foreward to The Louis L. Redding Civil Rights Symposium*, 9 WIDENER L. SYMP. J. i, ii (2002).

II. THE CONSTRUCTION OF RACIALLY SEGREGATED COMMUNITIES

Segregated housing patterns developed under a pervasive system of public and private discrimination that was validated by *Plessy v. Ferguson*, the 1896 decision that established the "separate but equal" doctrine.[18] After the system was established, African-Americans were subordinated in virtually all aspects of economic, social, and political relations.[19] Segregated neighborhoods were imposed as a reaction to the decades-long migration of thousands of African-American families from rural areas in the south to urban industrial centers. The migration began in the early years of the twentieth century, during the period of rapid industrialization.[20] African-Americans relocating from the rural south took advantage of expanded employment opportunities in the Northern and Midwestern industrial centers. They were also seeking refuge from the economic deprivations and extreme forms of racial violence that prevailed in the South, where murder, lynching, and other acts of intimidation were commonplace.[21]

African-Americans moving into metropolitan communities encountered residential obstacles. Several communities enacted municipal ordinances that prohibited African-Americans from occupying properties except in designated neighborhoods. These laws were challenged and eventually declared unconstitutional in a 1917 decision, *Buchanan v. Warley*, which held that the ordinances violated the Due Process Clause of the Fourteenth Amendment.[22] After *Buchanan*, property owners discovered another device to maintain segregated neighborhoods—racially restrictive covenants.[23] These were restrictions in deeds that prevented property owners and subsequent purchasers from making conveyances to racial and religious minorities. As the covenants were agreements between private parties, they avoided the Fourteenth Amendment issues that resulted in the holding in *Buchanan*. The Supreme Court implicitly approved restrictive covenants in a 1926 decision, *Corrigan v. Buckley*.[24] The Court declined to review the merits of *Corrigan* on jurisdictional grounds, but it issued an opinion which indicated that restrictive

18. 163 U.S. 537 (1896).

19. *See* LEON F. LITWACK, TROUBLE IN MIND: BLACK SOUTHERNERS IN THE AGE OF JIM CROW 7 (1998).

20. *See* LEMANN, s*upra* note 9, at 6.

21. *See, e.g.*, LITWACK, *supra* note 19.

22. 245 U.S. 60, 81–82 (1917) (basing ruling on the rights of whites to sell their property to whomever they wished rather than the equality rights of African-Americans); *see also* DAVID DELANEY, RACE, PLACE, & THE LAW: 1836–1948 145 (1998).

23. CLEMENT E. VOSE, CAUCASIANS ONLY: THE SUPREME COURT, THE NAACP, AND THE RESTRICTIVE COVENANT CASES 52 (1959).

24. 271 U.S. 323 (1926). The Court noted that because the discrimination was an agreement among private parties and no governmental entity was involved, there was no violation of the Fourteenth Amendment. *Id.* at 330.

covenants did not involve the state action needed to invoke the Equal Protection Clause of the Fourteenth Amendment.[25] This decision effectively legitimized restrictive covenants as a means of maintaining segregated neighborhoods in the United States.

The use of covenants became widespread after *Corrigan*. African-Americans were confined to marginal neighborhoods, usually in substandard housing and overcrowded conditions. However, the population explosion resulting from the continued migration of southern blacks contributed to mounting housing shortages. Many black families used "straw man" purchases, in which a white intermediary would purchase a property and subsequently convey title to an African-American purchaser, often at a substantial profit.[26] White homeowners in the neighborhood reacted by filing civil actions to enforce the covenants.[27]

III. ORGANIZED EFFORTS TO ELIMINATE DISCRIMINATORY HOUSING PRACTICES

During the 1940s, the National Association for the Advancement of Colored People (NAACP) launched a litigation campaign against restrictive covenants.[28] This carefully orchestrated approach involved several cases that were handled by a network of lawyers associated with the NAACP. The strategy bore fruit in 1948 when the Supreme Court decided *Shelley v. Kraemer*.[29] In *Shelley*, the Court held that covenants were private arrangements, but judicial enforcement of discriminatory agreements constituted state action that violated the Fourteenth Amendment.[30] *Shelley* was an important symbolic victory for the NAACP, but it did not hold that the covenants themselves were unconstitutional nor did it result in the desegregation of the nation's housing markets.

In many ways *Shelly* was a rehearsal for the *Brown v. Board of Education*[31] decision six years later. In *Brown*, the Supreme Court held that segregation in public schools violated the Equal Protection Clause of the Fourteenth Amendment.[32] School districts were ordered to commence desegregation with "all deliberate speed."[33] Southern states reacted with a

25. *Id.*

26. Ware, *supra* note 3, at 59.

27. VOSE, *supra* note 23, at 52.

28. Leland B. Ware, *Invisible Walls: An Examination of the Legal Strategy of the Restrictive Covenant Cases*, 67 WASH. U. L.Q. 737, 738 (1989).

29. 334 U.S. 1 (1948).

30. *Id.* at 19

31. 347 U.S. 483 (1954).

32. *Id.* at 495.

33. Brown v. Bd. of Educ., 349 U.S. 294, 301 (1955).

campaign of "massive resistance" in which *Brown* was actively resisted.[34] After nearly fifteen years of virtually no progress toward school desegregation, the Supreme Court in *Alexander v. Holmes County Board of Education* finally abandoned the "deliberate speed" standard and ordered districts to desegregate their schools immediately.[35]

In the late 1960s, when *Alexander* was decided, demographic patterns made integration in urban schools virtually impossible. When *Brown* was decided, housing patterns were already highly segregated as a result of decades of "redlining," restrictive covenants, and other discriminatory practices.[36] During the post-World War II era, population distributions were undergoing a dramatic change. White families were rapidly relocating to suburban communities.[37] This was facilitated by a prosperous, post-war economy and federal subsidy programs such as Veterans Administration and Federal Housing Authority loans.[38] The suburban communities that became a staple of the American landscape developed during this period. However, black families who were ready, willing, and able to purchase suburban homes were excluded by discriminatory practices, many of which were imposed by the federal government, which required restrictive covenants on government-insured mortgage loans.[39] The result was that African-Americans were barred from participating in one of the largest wealth-producing programs in the history of the United States: single family, suburban homes subsidized by federally insured mortgages.[40]

Exclusionary zoning practices also contributed to the perpetuation of segregated neighborhoods, particularly in suburban communities. During the late nineteenth century, land-use planners decided that the public's health, safety, and welfare would be promoted by separating commercial and industrial uses from residential areas. By the early twentieth century, land use

34. *See* ABRAHAM L. DAVIS & BARBARA LUCK GRAHAM, THE SUPREME COURT, RACE, AND CIVIL RIGHTS 125–28 (1995); CONSTANCE BAKER MOTLEY, EQUAL JUSTICE UNDER LAW: AN AUTOBIOGRAPHY 114–47 (1998); JAMES T. PATTERSON, *BROWN V. BOARD OF EDUCATION*: A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY 86–117 (2001).

35. 396 U.S. 19, 20 (1969).

36. "Redlining" is a discriminatory practice institutionalized by a federal government agency, the Home Owners' Loan Corporation, in the 1930s and widely used in the real estate industry. It was used to evaluate the risks associated with loans made in specific neighborhoods. The Home Owners' Loan Corporation's underwriting guidelines established four categories of neighborhood quality. The lowest of these was color-coded red and declared ineligible for government loans. Black neighborhoods were rated in the fourth category. OLIVER & SHAPIRO, *supra* note 10, at 17.

37. *See, e.g.*, *id.* at 16–17.

38. *Id.* at 16–19.

39. *Id.* at 18.

40. *Id.*

controls extended the separation principle to residential communities.[41] Single-family and multi-family residential units were separated into different zones. This excluded many low and moderate-income families from areas that were designated as single-family districts. Multi-family zones were often limited to older neighborhoods. Renters and lower-income families were locked into urban cores.

Exclusionary zoning limited the access of African-Americans and other minorities to suburban communities because the majority of these groups resided in lower-cost housing and multi-family dwellings. During the mid-twentieth century, many suburban municipalities modified their zoning practices by establishing single-family zones with minimum lot sizes ranging from 5,000 to 40,000 square feet.[42] As land prices were a major contributor to housing costs, this practice expanded areas of exclusion, especially in suburban communities.

Challenges to exclusionary zoning have met with only limited success. In *Arlington Heights v. Metropolitan Housing Development Corporation* the plaintiffs asserted Due Process and Equal Protection challenges to a municipality's disapproval of a proposal for a subsidized, racially integrated housing development.[43] The Supreme Court rejected the challenge, ruling that proof of a violation of the Equal Protection Clause of the Fourteenth Amendment requires evidence of intent to discriminate.[44] A showing of discriminatory effect, without more, is not sufficient.[45] The proof regime established by *Arlington Heights* makes it virtually impossible to prove that zoning decisions violate the Fourteenth Amendment because local governments will have little difficulty articulating a non-discriminatory reason for their decisions, even when they operate to exclude African-Americans.[46]

41. Euclid v. Ambler Realty Co., 272 U.S. 365, 380–81 (1926) (establishing the power of localities to develop and regulate land use through zoning).

42. *See* Jeffrey M. Lehmann, *Reversing Judicial Deference Toward Exclusionary Zoning: A Suggested Approach*, 12 J. AFFORDABLE HOUS. & CMTY. DEV. 229, 243 (2003) (cataloguing minimum lot sizes in excess of 40,000 square feet).

43. 429 U.S. 252, 254 (1977).

44. *Id.* at 270.

45. *Id.* at 270–71.

46. Claims asserted under the Fair Housing Act have been more successful. In *NAACP v. Huntington*, the United States Court of Appeals for the Second Circuit found that a municipality perpetuated segregation in violation of the Fair Housing Act through a zoning ordinance that restricted the construction of government-subsidized multi-family housing to an urban renewal area populated predominantly by minority residents. 844 F.2d 926, 928, 941 (2d Cir. 1988). The Court found that the town's actions violated the Fair Housing Act because the ordinance, although facially neutral, had a discriminatory impact on minority residents. *Id.* at 940–41. Unlike claims asserted under the Fourteenth Amendment of the Constitution, a showing of discriminatory intent is not required in "disparate impact" claims asserted under the Fair Housing Act. *Id.* at 934. Site selection for public housing by municipalities also contributes to residential

Suburbanization and residential segregation frustrated efforts to integrate schools in urban communities. With the advent of school desegregation plans that included court-ordered bussing in the late 1960s,[47] white flight to suburban areas accelerated. By that time residential patterns were well-established. Black families were concentrated in urban centers, and white families resided in suburban areas beyond the city limits.[48]

In *Milliken v. Bradley*, civil rights advocates attempted to address white flight by proposing a school desegregation plan that would have included the city of Detroit, Michigan, and several suburban districts.[49] The trial court ruled for the plaintiffs, but the Supreme Court held that the lower court exceeded its authority when it imposed a remedy that included suburban school districts.[50] The Court found that suburban school districts were not responsible for the segregated conditions in Detroit, even though white flight to the suburbs was prompted, to some extent, by a desire to avoid integrated schools; there could be no interdistrict remedy without proof of an inter-district violation.[51] As school assignments are usually based on attendance zones drawn along the boundaries of municipal districts, student populations in urban and suburban schools reflect the segregated housing patterns that exist in most metropolitan areas.[52]

IV. RESIDENTIAL SEGREGATION PERSISTS

The Fair Housing Act of 1968 prohibited discrimination based upon race, color, religion, sex, and national origin in connection with the sale or rental of residential housing.[53] This was the last component of the federal civil rights laws of the 1960s, which ended the Jim Crow era. Not long after the enactment of the 1968 legislation, however, fair housing advocates recognized

segregation. *See generally,* Gautreaux v. Chicago Hous. Auth., 265 F. Supp. 582 (N.D. Ill. 1967) (allowing tenants to maintain an action alleging that housing was being administered in a racially discriminatory manner); ARNOLD R. HIRSCH, MAKING THE SECOND GHETTO: RACE AND HOUSING IN CHICAGO, 1940–1960 (1983); Kristine L. Zeabart, *Requiring a True Choice in Housing Choice Voucher Programs*, 79 IND. L.J. 767 (2004).

47. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 29–31 (1971) (approving bussing as a means of achieving racial balance in schools).

48. *See* MASSEY & DENTON, *supra* note 1, at 77.

49. 418 U.S. 717, 732–34 (1974).

50. *Id.* at 721–22, 752–53.

51. *Id.* at 752.

52. *See* GARY ORFIELD & SUSAN E. EATON, DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF *BROWN V. BOARD OF EDUCATION* 310–12, 323–25 (1996); James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249, 284 (1999).

53. Pub. L. No. 90-284, 82 Stat. 81 (1968) (codified as amended at 42 U.S.C. §§ 3601–3619 (2000)). The Act prohibits discrimination by housing providers whose actions make housing unavailable to persons because of race, sex, color, national origin, disability or familial status. *See id.* § 3604.

the shortcomings of the statute. The original administrative enforcement mechanism was limited to conciliation, a process encouraging voluntary compliance that the real estate industry largely ignored.[54] A private right of action was established, but even if a victim of housing discrimination prevailed in court, the relief awarded typically consisted of a nominal award of damages and an injunction that ordered the defendant simply to comply with existing laws.[55]

Congress eventually became aware of these failings. In 1988, a comprehensive overhaul of the Fair Housing Act was enacted.[56] The primary purpose of the 1988 Amendments was the creation of an enforcement structure that would add some muscle to the Fair Housing Act, a statute that had been little more than a "toothless tiger."[57] The new enforcement mechanism consists of an administrative enforcement procedure and an improved system that authorizes civil actions by private parties and the Attorney General. In administrative proceedings, an Administrative Law Judge is allowed to impose a civil penalty of up to $10,000 for the first offense, $25,000 if there has been a prior violation within five years, and $50,000 if there have been two or more violations within the prior seven years.[58] The private right of action that existed under the 1968 Act was retained, but the $1000 cap on punitive damages was eliminated. Courts are authorized to award injunctive relief, compensatory and punitive damages, as well as attorney fees and costs.[59]

Despite the enhanced enforcement mechanisms that the 1988 Amendments added, discriminatory practices are pervasive in the nation's housing markets. African-American families do not enjoy the residential options that are available to white families with similar incomes and credit histories.[60] Reports periodically produced by the U.S. Department of Housing and Urban Development (HUD) and other organizations document the discriminatory practices of housing providers.[61] A recent HUD report, based on data derived from a series of matched pair tests conducted over several months, found that:

54. *See* Terry W. Gentle, Jr., Comment, *Rethinking Conciliation under the Fair Housing Act*, 67 TENN. L. REV. 425, 425–26 (2000).

55. Leland B. Ware, *New Weapons for an Old Battle: The Enforcement Provisions of the 1988 Amendments to the Fair Housing Act*, 7 ADMIN. L.J. AM. U. 59, 78 (1993).

56. Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (codified as amended at 42 U.S.C. §§ 3601–3631 (2000)); *see also* Ware, *supra* note 55, at 82–83.

57. 134 CONG. REC. 19,711 (1988) (statement of Sen. Kennedy).

58. 42 U.S.C. § 3612(3).

59. *Id.* § 3613(c); *see also* Ware, *supra* note 55, at 94.

60. MASSEY & DENTON, *supra* note 1, at 85.

61. *See generally* JOHN YINGER, U.S. DEP'T OF HOUS. AND URBAN DEV., HOUSING DISCRIMINATION STUDY: INCIDENCE OF DISCRIMINATION AND VARIATIONS IN DISCRIMINATORY BEHAVIOR (1991); JOHN YINGER, CLOSED DOORS, OPPORTUNITIES LOST: THE CONTINUING COSTS OF HOUSING DISCRIMINATION (1995).

> African American homebuyers—like renters—continue to face discrimination in metropolitan housing markets nationwide. White homebuyers were consistently favored over blacks in 17.0 percent of tests. Specifically, white homebuyers were more likely to be able to inspect available homes and to be shown homes in more predominantly white neighborhoods than comparable blacks. Whites also received more information and assistance with financing as well as more encouragement than comparable black homebuyers.[62]

Discrimination occurs at every stage of housing transactions. The rates at which black home buyers are turned down for financing or charged higher mortgage rates is disproportionate to white purchasers with similar incomes and credit histories.[63] African-Americans who remain in identifiably black neighborhoods are frequently redlined out of the mainstream mortgage market.[64]

Research analyzing the 2000 census shows that high levels of residential segregation persist. Social scientists measure segregation levels using an "Index of Dissimilarity."[65] The index indicates the degree to which racial groups are evenly distributed among census tracts in a given location.[66] Evenness is defined by examining the racial composition of the city as a whole.[67] Thus, if a city has a twenty percent black population and eighty percent white population, an even distribution would reflect these percentages in each census tract. The index ranges from 0 to 100, reflecting the percentage of one group that would have to move to achieve an even distribution of racial groups in the area.[68] "A value of 60 or above is considered very high. Values of 40 to 50 are usually considered moderate levels of segregation, while values of 30 or less are considered low."[69]

The following chart indicates the current levels of segregation in the top fifty metropolitan areas in the United States:

62. U.S. Dep't of Hous. and Urban Dev., *Discrimination in Metropolitan Housing Markets: National Results from Phase 1 of the Housing Discrimination Study (HDS), at* http://www.huduser.org/publications/hsgfin/phase1.html (last modified Mar. 31, 2005).

63. U.S. Dep't of Hous. and Urban Dev., *What We Know About Mortgage Lending Discrimination In America, at* http://www.hud.gov/library/bookshelf18/pressrel/newsconf/menu.html (last visited Dec. 9, 2004).

64. *See* U.S. Dep't of Hous. and Urban Dev., *All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions, at* http://www.huduser.org/publications/hsgfin/aotbe.html (Apr. 2002).

65. Lewis Munford Center, *Metropolitan Racial and Ethic Change–Census 2000, at* http://mumford1.dyndns.org/cen2000/WholePop/WPreport/page2.html (last visited Apr. 9, 2004).

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

Black-White Segregation in Top 50 Metropolitan Areas

2000 Rank	AreaName	2000 Segregation	1990 Segregation	1980 Segregation
1	Detroit, MI	85	88	88
2	Milwaukee-Waukesha, WI	82	83	84
3	New York, NY	82	82	82
4	Chicago, IL	81	84	88
5	Newark, NJ	80	83	83
6	Cleveland-Lorain-Elyria, OH	77	83	86
7	Cincinnati, OH-KY-IN	75	77	79
8	Nassau-Suffolk, NY	74	77	78
9	St. Louis, MO-IL	74	78	83
10	Miami, FL	74	73	81
11	Birmingham, AL	73	74	76
12	Philadelphia, PA-NJ	72	77	78
13	Indianapolis, IN	71	75	80
14	New Orleans, LA	69	69	72
15	Kansas City, MO-KS	69	73	78
16	Memphis, TN-AR-MS	69	69	70
17	Baltimore, MD	68	72	75
18	Los Angeles-Long Beach, CA	68	73	81
19	Houston, TX	68	67	76
20	Pittsburgh, PA	67	71	73
21	Baton Rouge, LA	67	67	71
22	West Palm Beach-Boca Raton, FL	67	76	84
23	Boston, MA-NH	66	70	77
24	Atlanta, GA	66	69	77
25	Tampa-St. Petersburg-Clearwater, FL	65	71	79
26	Louisville, KY-IN	65	71	74
27	Mobile, AL	64	68	70
28	Columbus, OH	63	68	73
29	Washington, DC-MD-VA-WV	63	66	70
30	Oakland, CA	63	68	74
31	Fort Lauderdale, FL	62	71	84
32	Jackson, MS	62	70	71
33	Fort Worth-Arlington, TX	60	63	78
34	Dallas, TX	59	63	78
35	Greensboro—Winston-Salem—High Point, NC	59	62	67

36	Minneapolis-St. Paul, MN-WI	58	62	68
37	Shreveport-Bossier City, LA	57	62	65
38	Orlando, FL	57	61	74
39	Nashville, TN	57	61	66
40	Richmond-Petersburg, VA	57	61	65
41	Charlotte-Gastonia-Rock Hill, NC-SC	55	56	62
42	San Diego, CA	54	58	64
43	Jacksonville, FL	54	59	69
44	Columbia, SC	52	56	59
45	Charleston-North Charleston, SC	47	51	57
46	Greenville-Spartanburg-Anderson, SC	46	50	54
47	Riverside-San Bernardino, CA	46	45	55
48	Norfolk-Virginia Beach-Newport News, VA-NC	46	49	60
49	Raleigh-Durham-Chapel Hill, NC	46	49	52
50	Augusta-Aiken, GA-SC	46	46	49

Source: Lewis Mumford Center, University at Albany[70]

As this data shows, thirty-three of the top fifty metropolitan areas are highly segregated. The remaining seventeen are moderately segregated. *None* is within the range that social scientists would consider integrated.

V. THE CONSEQUENCES OF CONTINUING PATTERNS OF SEGREGATION

An improvement in a family's economic circumstances is typically accompanied by advancement in its residential status. A family's residence is usually its most valuable asset. Moving up to more expensive homes is the normal progression for individuals advancing in their careers. Housing discrimination interferes with African-American families' participation in the normal progression.[71] This is not a matter of architecture or aesthetics. The quality of schools, property values, exposure to crime, and the quality of public services are all affected by the location in which a family resides. Black families that are confined to segregated neighborhoods by discriminatory practices reside in areas where schools are inferior, home values are lower, and routine services such as grocery stores and pharmacies are scarce.[72] Access to gainful employment is difficult. Many of the industrial occupations that lured

70. Lewis Mumford Center, *Ethnic Diversity Grows, Neighborhood Integration Lags Behind*, *at* http://mumford1.dyndns.org/cen2000/WholePop/WPreport/page6.html (last modified Dec. 18, 2001).

71. *See supra* notes 4–5 and accompanying text.

72. MASSEY & DENTON, *supra* note 1, at 130–42.

African-American families to urban communities have been moved to suburban areas or have disappeared altogether.[73]

The extreme isolation of African-Americans residing in the nation's inner-cities has produced, in some cases, a form of oppositional behavior.[74] The research of social scientists suggests that middle-class notions of hard work, delayed gratification, and family stability are not reasonable expectations in an environment that is physically dangerous, where few adults are employed, and those who work cannot earn enough to support a family.[75] What may be seen as anti-social behavior in other settings is a logical reaction to the danger that pervades most inner-city communities.[76] The persistence of segregated housing patterns makes it difficult for black families to climb out of the poverty and extreme isolation of urban ghettoes.

In the early 1990s, the Supreme Court in the "resegregation" decisions, *Board of Education of Oklahoma City v. Dowell*,[77] *Freeman v. Pitts*[78] and *Missouri v. Jenkins*,[79] established a far more relaxed threshold for finding that a school system has achieved unitary status. Under the original standard, school officials were obligated to convert to systems in which all vestiges of the segregation had been eliminated "root and branch."[80] The new standard requires courts to hold that the desegregation obligation has been satisfied, even when individual school populations are largely African-American and Latino as a result of segregated housing patterns.[81]

It should be noted that physical proximity to whites is not necessary for African-Americans to have a complete and meaningful existence. In Atlanta, Georgia, Prince Georges County, Maryland, and elsewhere, large numbers of affluent African-Americans are choosing to reside in upscale, all-black residential enclaves.[82] Many of the residents of these communities believe that their wealth, electoral strength, control of educational institutions (including historically black colleges and universities), their levels of educational attainment, and representation among the entrepreneurial and professional

73. *See generally* WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR (1997).

74. ELIJAH ANDERSON, CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE INNER CITY 107 (1999).

75. WILSON, *supra* note 73, at 140–49.

76. ANDERSON, *supra* note 74, at 323.

77. 498 U.S. 237 (1991).

78. 503 U.S. 467 (1992).

79. 515 U.S. 70 (1995).

80. Green v. County Sch. Bd., 391 U.S. 430, 437-38 (1968).

81. *See supra* note 15 and accompanying text.

82. SHERYLL CASHIN, THE FAILURE OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM 134 (2004); ANDREW WIESE, PLACES OF THEIR OWN: AFRICAN AMERICAN SUBURBANIZATION IN THE TWENTIETH CENTURY 269–84 (2004).

classes provides a basis for black self-determination that cannot be replicated elsewhere.[83]

Whatever the merits of this view, upscale, all-black enclaves are not available to less affluent families. The critical issue for them is how restrictions on individual liberty caused by severe spatial isolation undermine their social and economic well-being. African-Americans, including those with middle-class incomes, tend to reside in segregated areas where schools are inferior, crime is high, and services are marginal.[84] Compared to whites with similar incomes, African-Americans are less likely to be homeowners, and the homes they own are of relatively poor quality, with lower value than homes in non-segregated areas.[85]

VI. CONCLUSION

Prior to the Civil Rights Act of 1964, conditions for African-Americans were oppressive in the extreme. Laws and customs regulated every aspect of race relations. There were white neighborhoods and black neighborhoods, white jobs and black jobs. African-Americans were disenfranchised throughout the South and invariably relegated to the lowest paying, least desirable occupations. The criminal justice system in the South had two standards: one for blacks, another for whites. Such a system weighted heavily against African-Americans. Failure to comply with any of the official and unwritten strictures was met with violence, incarceration and other forms of intimidation.

Describing conditions in the South, the Swedish economist, Gunnar Myrdal explained in his groundbreaking 1944 study, *An American Dilemma,* "[e]very Southern state and most Border States have structures of state laws and municipal regulations which prohibit Negroes from using the same schools, libraries, parks, playgrounds, railroad cars, railroad stations, sections of streetcars and buses, hotels, restaurants and other facilities as do the whites."[86] Interpersonal interactions were regimented by an unwritten code of conduct. Myrdal observed that:

> [t]he Negro is expected to address the white person by the title of "Mr.," "Mrs.," or "Miss[]". . . From his side, the white man addresses the Negro by his first name, no matter if they hardly know each other, or by the epithets

83. William J. Stanley, III, Presentation at the University of Delaware (Sept. 30, 2004) (transcript on file with the author).

84. *See supra* notes 4–5 and accompanying text.

85. *See* Florence Wagman Roisman, *Teaching About Inequality, Race, and Property*, 46 ST. LOUIS U. L.J. 665, 669–70 (2002).

86. MYRDAL, *supra* note 9, at 628.

> "boy," "uncle," "elder," "aunty," or the like, which are applied without regard to age.[87]

Myrdal concluded that "[t]he apparent purpose of this etiquette of conversation is the same as that of all the etiquette of race relations. It is to provide a continual demonstration that the Negro is inferior to white man and 'recognizes' his inferiority."[88]

The raw oppression that Myrdal described has largely disappeared. The Civil Rights Act of 1964, the Voting Rights Act of 1965,[89] and the Fair Housing Act of 1968 ended the official regime of state sponsored subordination. Conditions for African-Americans are immeasurably better now than they were in the pre-Civil Rights era. For those in a position to take advantage of the elimination of Jim Crow laws, tremendous gains have been made in education, employment, and economic status.[90] There are, however, lingering vestiges of segregation which operate to the detriment of African-Americans, especially those residing in inner-city neighborhoods. One of the most critical of these involves the discriminatory practices of housing providers that perpetuate segregated neighborhoods. Without a change in the operation of the nation's housing markets, African-Americans will never realize full equality

87. *Id.* at 611.

88. *Id.* at 612.

89. 42 U.S.C. § 1973 (2000).

90. For example, in 2002, "over one-half (52 percent) of all Black married-couple families had incomes of $50,000 or more." JESSE MCKINNON, US CENSUS BUREAU, CURRENT POPULATION REPORTS: THE BLACK POPULATION IN THE UNITED STATES 5 (2003), *available at* http://www.census.gov/prod/2003pubs/p20-541.pdf.