

The Color of Law

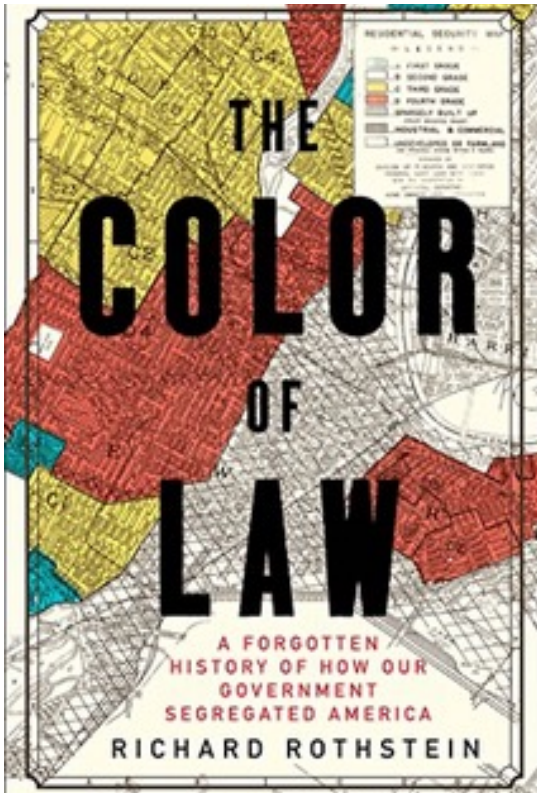
A Forgotten History of How Our Government Segregated America

Richard Rothstein

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Why is this book worth our time?



#1 – Segregation is real, lasting, and intentional. “De-jure” – by law and public policy.

#2 – This segregation was nation-wide in scope, and multi-decade in duration.

#3 – And, the effects of this perpetual creation of and maintaining of segregation are ongoing, and sadly, will be ongoing.

Quotes and Excerpts from the book – the “best of” Randy’s highlighted passages:

What is the point?

Segregation was baked into the law of the land, keeping African Americans “out” of neighborhoods, work, schools...and opportunities. It as the color of the laws we established.

(from Preface):

1. Banks discriminated with “redlining,” refusing to give mortgages to African Americans or extracting unusually severe terms from them with subprime loans.
2. 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
3. ...the de facto segregation myth has now been adopted by conventional opinion, liberal and conservative alike. ...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.
4. Residential racial segregation by state action is a violation of our Constitution and its Bill of Rights.
5. 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. ...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. ...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/

6. I reject the widespread view that an action is not unconstitutional until the Supreme Court says so. ...Rather, segregation was always unconstitutional, although a misguided Supreme Court majority mistakenly failed to recognize this.
 7. 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.
 8. "Let bygones be bygones" is not a legitimate approach if we wish to call ourselves a constitutional democracy.
 9. 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.
 10. 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.
 11. This misrepresentation of our racial history, indeed this willful blindness, became the consensus view of American jurisprudence...
 12. 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.
 13. 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.
 14. 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.
 15. 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.
 16. 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.
 17. 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.
 18. 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.
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19. Because Richmond (California) had been overwhelmingly white before the war, the federal government's decision to segregate public housing established segregated living patterns that persist to this day. Pg. 5

20. Federal officials approved bank loans to finance construction, requiring that none of Rollingwood's 700 houses be sold to an African American. The government also specified that each Rollingwood property must have an extra bedroom with a separate entrance to accommodate an additional white war worker. Pg. 6
21. the city's police stopped African American men on the street and then arrested and jailed them if they couldn't prove they were employed. Pg. 8
22. the United Auto Workers (UAW) had forced Henry Ford to the bargaining table, and at the war's end, a union contract prevented Ford Motor from firing African Americans to make way for returning white veterans or for white workers who had been laid off from military production in places like the shipyards. Pg. 8
23. As in Rollingwood ten years earlier, one of the federal government's specifications for mortgages insured in Milpitas was an openly stated prohibition on sales to African Americans. Pg. 10
24. The FHA would not insure loans to a cooperative that included African American members. Pg. 11
25. He and other agents warned that a "Negro invasion" was imminent and that it would result in collapsing property values. Pg. 12
- 26. At the time, the Federal Housing Administration and Veterans Administration not only refused to insure mortgages for African Americans in designated white neighborhoods like Ladera; they also would not insure mortgages for whites in a neighborhood where African Americans were present. Pg. 13**
- 27. In ways like these, federal, state, and local governments purposely created segregation in every metropolitan area of the nation. Pg. 13**
28. in contrast to metropolitan areas like Chicago, Detroit, Cleveland, or Baltimore, northern California had few African Americans before migrants like Frank Stevenson arrived during World War II in search of jobs. The government was not following preexisting racial patterns; it was imposing segregation where it hadn't previously taken root. Pg. 15
29. THE PURPOSEFUL USE of public housing by federal and local governments to herd African Americans into urban ghettos had as big an influence as any in the creation of our de jure system of segregation. Pg. 17
30. The PWA's goal was to alleviate a national housing shortage while creating jobs in construction. Pg. 20
31. A Miami civic leader explained to federal administrators that the sites were chosen to "remove the entire colored population" from places that had been reserved for white occupancy. Pg. 21
32. The first USHA-funded projects were built in Austin, Texas, largely because of aggressive promotion by its congressman, Lyndon Johnson. Pg. 23
33. In some cities, the government provided war housing only for whites, leaving African Americans in congested slums and restricting their access to jobs. ...By the war's end, the Lanham Act had combined with PWA and USHA programs to create or solidify residential racial segregation in every metropolitan area they had touched. Pg. 25
34. This combination of vacant white units and waiting lists for black units increasingly characterized public housing nationwide. Pg. 28

35. But with the segregated projects, African Americans became more removed from mainstream society than ever, packed into high-rise ghettos where community life was impossible, where access to jobs and social services was more difficult, and where supervision of adolescents and even a semblance of community policing was impractical. Pg. 31
36. The administration formally abolished a policy (it had never been enforced) that African Americans and whites receive public housing of equal quality. Pg. 33
37. In 1984, investigative reporters from the Dallas Morning News visited federally funded developments in forty-seven metropolitan areas. The reporters found that the nation's nearly ten million public housing tenants were almost always segregated by race and that every predominantly white-occupied project had facilities, amenities, services, and maintenance that were superior to what was found in predominantly black-occupied projects. Pg. 34
38. "No criterion, other than race, can plausibly explain the veto of over 99½% of the housing units located on the White sites which were originally selected on the basis of CHA's expert judgment and at the same time the rejection of only 10% or so of the units on Negro sites." Pg. 35
39. The condition of public projects rapidly deteriorated, partly because housing authority maintenance workers and their families had to leave the buildings where they worked when their wages made them ineligible to live there, and partly because the loss of middle-class rents resulted in inadequate maintenance budgets. Pg. 37
40. 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. Pg. 39
41. 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. Pg. 45
42. This, he added, was "a sufficient justification for race zoning. . . . A reasonable segregation is normal, inevitable and desirable." Pg. 46
43. 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. Pg. 48
44. 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. Pg. 56

45. 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. Pg. 56
46. Yet until 1970, sixteen years after *Brown v. Board of Education*, the IRS granted tax exemptions to private whites-only academies that had been established throughout the South to evade the ruling. Pg. 102
47. In Los Angeles, the Reverend W. Clarence Wright, pastor of the fashionable Wilshire Presbyterian Church, led efforts to keep the Wilshire District all white. Pg. 104
48. In its legal action against Countrywide, the government alleged that the statistical relationship between race and mortgage terms was so extreme that top bank officials must have been aware of the racial motivation. And if top bank officials were aware, so too must have been the government regulators. Pg. 112
49. 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. Pg. 134
50. It can be presumed that if a police department in which twenty officers were Klan members wanted to identify the perpetrators, it could have done so. Pg. 151
51. We cannot understand the income and wealth gap that persists between African Americans and whites without examining governmental policies that purposely kept black incomes low throughout most of the twentieth century. Once government implemented these policies, economic differences became self-perpetuating. Pg. 153
52. Noncompliance with the president's nondiscrimination order did not affect companies' federal contracts, partly because the Roosevelt administration's enthusiasm for racial equality, while genuine, was lukewarm. Pg. 167
53. THE CREATION of racial ghettos was self-perpetuating: residence in a community where economic disadvantage is concentrated itself depresses disposable income, which makes departure more difficult. Pg. 172
54. From 1957 to 1968, Congress adopted civil rights laws prohibiting second-class citizenship for African Americans in public accommodations and transportation, voting, and employment. Although not without challenges, these laws were effective. Ending segregation in housing, however, is much more complicated... But ending de jure segregation of housing requires undoing past actions that may seem irreversible. Pg. 177
55. Most African American families—who were denied the opportunity to buy into Levittown or into the thousands of subdivisions like it across the country—remained renters, often in depressed neighborhoods, and gained no equity. Pg. 182
56. The advantage that FHA and VA loans gave the white lower-middle class in the 1940s and '50s has become permanent. Pg. 183

57. But if we—the public and policy makers—acknowledge that the federal, state, and local governments segregated our metropolitan areas, we may open our minds to considering how those same federal, state, and local governments might adopt equally aggressive policies to desegregate. Only if we can develop a broadly shared understanding of our common history will it be practical to consider steps we could take to fulfill our obligations. Pg. 198
58. Fifty years of experience has shown that mobilizing the funds and support for revitalizing low-income communities is as politically difficult as integrating suburbs, so we continue to have more tax credit projects, and more Section 8 housing in segregated neighborhoods, without the surrounding community improvements that were promised. Pg. 210
59. If government had declined to build racially separate public housing in cities where segregation hadn't previously taken root, those cities might have developed in a less racially toxic fashion, with fewer desperate ghettos and more diverse suburbs.
60. If state courts had not blessed private discrimination by ordering the eviction of African American homeowners in neighborhoods where association rules and restrictive covenants barred their residence, middle-class African Americans would have been able gradually to integrate previously white communities as they developed the financial means to do so.
61. If police had arrested, rather than encouraged, leaders of mob violence when African Americans moved into previously white neighborhoods, racial transitions would have been smoother.
62. If federal and state highway planners had not used urban interstates to demolish African American neighborhoods and force their residents deeper into urban ghettos, black impoverishment would have lessened, and some displaced families might have accumulated the resources to improve their housing and its location. Pg. 217
63. When we become Americans, we accept not only citizenship's privileges that we did not earn but also its responsibilities to correct wrongs that we did not commit. Pg. 222
64. What's important is that until we arouse in Americans an understanding of how we created a system of unconstitutional, state-sponsored, de jure segregation, and a sense of outrage about it, neither remedies nor reparations will be on the public agenda. Pg. 238

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Some of the Key Content and Ideas from the Book

The Color of Law is concerned with consistent government policy that was employed in the mid-twentieth century to enforce residential racial segregation.

- **Why Michael Brown was killed in Ferguson, Missouri, in 2014...**
 - maybe start with...segregation, slums, separation... and a long-term lack of police protection for African Americans
 - *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.*
- **Start here:**
 - there weren't enough houses... period!
 - (and – private home ownership was significantly championed to combat the idea of communism).
- **What kind of segregation?**
 - we said “de facto segregation” – a result from private practices
 - but, actually, it is almost all...
 - “de jure segregation” -- *Segregation by intentional government action is not de facto. Rather, it is what courts call de jure: segregation by law and public policy.*
- **When there were/are no housing options:**
 - slums; ghettos; too many people crowded into too few square feet; subdividing the square feet...
 - *A result of the government program, therefore, was the increased population density that turned the African American neighborhoods into slums.*
- **A conspiracy of exclusion:**
 - zoning laws
 - lending laws, and practices (loans would not be insured for African American buyers – not even for veterans) – don't forget the “no down payment” home buying loans for (white) veterans
 - lenders; and regulators...
 - withholding of public services (like – water and sewer)
 - police “protection” – i.e., utter lack of police protection
 - an African American family would move into a home in a white neighborhood; crowds would gather; they would throw bricks through the windows; burn crosses on the lawn; and, burn some of the houses down; the police would do...nothing...

- in fact, many police officers, in the South, were members of the Ku Klux Klan, and the perpetrators of violence were their “brothers” in the Klan; thus, the police turned a very deliberate blind eye
 - perpetual threat of collapsing property values for white home owners
 - overt exclusion (i.e., segregation) and “removal” to make way for “whites only” housing developments
 - physical walls were built separating black areas from white areas
 - sundown laws
 - deed restrictions
 - toxic neighborhoods (e.g., think Flint, Michigan).
 - and churches were complicit
 - the intentional use of highway placement for segregation enhancement
 - and, obviously, the intentional use of school placement for segregation enhancement
 - and, don't forget the power of the mortgage deduction in building wealth (thus, helping the white families; *hurting* the black families)
 - oh... and about school textbooks...
- **And – a conspiracy of “deprivation” – definitely not equal**
 - for African American developments, no parks; community centers; landscaping beauty... as contrasted with developments for whites only
 - **and, more than a little outright ugliness:**
 - *Rosewood Courts, Austin's Eastside project for African Americans, was built on land obtained by condemning Emancipation Park, the site of an annual festival to commemorate the abolition of slavery.*
 - **Redlining – and reverse redlining**
 - from no loans – to too many subprime loans -- *By failing to ensure that banks fulfilled the public purposes for which they were chartered, regulators shared responsibility for reverse redlining of African American communities.*
 - **The evolution of public housing:**
 - *Public housing's original purpose was to give shelter not to those too poor to afford it but to those who could afford decent housing but couldn't find it because none was available.*
 - **About white flight...**
 - *The authority seemed to follow a principle that if a neighborhood had even a few African American residents, it should become an African American neighborhood.*
 - **About education**
 - if there was true integration – then the “few” students (frequently the black students) needing help would be part of a larger group not needing such help; making it possible for teachers to give the extra attention to the few students to help “lift” them up. But, when the entire class is in such need, there is very, very little “lifting up...”
 - **Oh... and realtors were complicit – it was “unethical” to sell to African Americans**
 - *“a realtor should never be instrumental in introducing into a neighborhood . . . members of any race or nationality... whose presence will clearly be detrimental...”*
 - **Yes there were a few bright spots; a few “champions” – but not enough, and never with enough “power”**
 - e.g., Harold Ickes; Thurgood Marshall; Lyndon Johnson
 - *Noncompliance with the president's nondiscrimination order did not affect companies' federal contracts, partly because the Roosevelt administration's enthusiasm for racial equality, while genuine, was lukewarm.*
 - **What was going on here?**
 - #1 – White people did not want black people to have housing of any quality.
 - #2 – White people sure did not want black people to have housing anywhere near white people.
 - #3 – White people used every means possible – from laws, to lack of police protection – to perpetuate this “otherness” in/with living conditions.
 - **The result –**
 - a seemingly permanent asset-deprived underclass

- **One Needed Solution:**

- scattered site, not high rise -- truly integrated

- **a word about “reparations”** – this author prefers “remedies” but the answer is – Yes! (with an acknowledgement that this is unlikely to actually happen)...

- **What to do about deed restrictions:**

- *We, [your name], owners of the property at [your address], acknowledge that this deed includes an unenforceable, unlawful, and morally repugnant clause excluding African Americans from this neighborhood. We repudiate this clause, are ashamed for our country that many once considered it acceptable, and state that we welcome with enthusiasm and without reservation neighbors of all races and ethnicities.*

- **The book:**

Preface

1.If San Francisco, then Everywhere?

2.Public Housing, Black Ghettos

3.Racial Zoning

4.“Own Your Own Home”

5.Private Agreements, Government Enforcement

6.White Flight

7.IRS Support and Compliant Regulators

8.Local Tactics

9.State-Sanctioned Violence

10.Suppressed Incomes

11.Looking Forward, Looking Back

12.Considering Fixes

Epilogue

Appendix: Frequently Asked Questions

Some Lessons and Takeaways

#1 – The “default” preference among white people is segregation. We are going to have to work hard against the default.

#2 – The strategy is to maintain segregation through every means possible. We are going to have to say – “no – this leads to unlawful segregation.”

#3 – Let’s just admit the obvious; the underlying motivation is outright racism. Let’s call it what it is; and let’s call it out for what it is.

#4 – Who we elect, and who serves on the courts, really matters!

#5 – And, maybe, we need to pay more attention to the motivation of greed.

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