

The Color of Law: A Forgotten History of How Our Government Segregated America

By Richard Rothstein. New York: Liveright Publishing Corporation, W. W. Norton & Company, 2017. 346 pages, hardcover.

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In 2020, amid a reckoning with the racial disparities of the COVID-19 pandemic and state-sponsored anti-Black violence, the Trump Administration terminated the Affirmatively Furthering Fair Housing (AFFH) Final Rule (80 Fed. Reg. 42290, 2015). Then-Secretary of the U.S. Department of Housing and Urban Development (HUD) Ben Carson asserted that “Washington has no business dictating what is best to meet your local community’s unique needs” (HUD 2020). In the new regulation (85 Fed Reg. 47899, 2020), Carson’s HUD described the evolution of the AFFH obligation, outlined but undefined in the Fair Housing Act of 1968, noting the “aggressive” and “burdensome and costly” nature of the 2015 rule. They included a quote from a Congressional amendment to block the AFFH regulation which states, “Every American should be free to choose where to live, and every community should be free to zone its neighborhoods and compete for new residents according to its distinct values” (Lee 2015).

This seemingly uncontroversial and principled position for individual liberty in the face of government overreach belies a history of explicit *de jure* discrimination and racist government policy. Legal scholar Richard Rothstein outlines this history in his modern classic *The Color of Law: A Forgotten History of How Our Government Segregated America*. In this book, he demonstrates how housing policy has structured and proscribed communities’ and individuals’ choices, produced a lasting racial wealth gap, and created inequities in neighborhood resources. Rothstein (2017) asserts:

Today’s residential segregation[...] is not the unintended consequence of individual choices and of otherwise well-meaning law or regulation but of unhidden public policy that explicitly segregated every metropolitan area in the United

States. The policy was so systematic and forceful that its effects endure to the present time. Without our government’s purposeful imposition of racial segregation, the other causes—private prejudice, white flight, real estate steering, bank redlining, income differences, and self-segregation—still would have existed but with far less opportunity for expression. (vii–viii)

The book’s strength is its detailed descriptions of the multiple policy venues and tools that intersect with neighborhood segregation: government-subsidized public housing, local zoning ordinances, racially restrictive covenants, racially-motivated homeownership incentives, and tax policies.

Rothstein also uses powerful personal narratives, beginning with an account of Frank Stevenson, a Black man born in Louisiana in 1924 who migrated to the California Bay Area to work at a Ford Motor plant in Richmond in the 1940s. This story sets the tone for how, even in progressive enclaves, segregationist government policies—alongside the discriminatory attitudes of private citizens and companies—shaped long-term inequities for Black Americans.

The Color of Law begins not with the New Deal but starts from the “violent suppression of reconstruction after 1877” (75), drawing parallels through American history to the recent predatory lending of the 21st century, in which “excessive marketing of exploitative loans in African American communities [...led to the subprime mortgage crisis], an important cause of the 2008 financial collapse” (109). Rothstein traces this throughline in the intervening decades: from the propaganda campaign for single-family homes of the 1920s—directed at white, middle-class, male-headed households; the redlining maps to provide government-backed mort-

gage insurance and financial support only in segregated, white neighborhoods; to the local zoning ordinances, blockbusting, and “slum clearance” in which middle- and upper-class Black communities were destroyed.

While Rothstein does not use the explicit language of Critical Race Theory, his analysis centers an explicit racial justice framework necessary for equitable public administration (Blessett and Gaynor 2021; Riccucci 2022). Beyond the text of the law, policy guidance, or court decisions, Rothstein demonstrates how governments ardently strove to circumvent constitutional imperatives of the Civil Rights Amendments and judicial oversight to uphold their decisions rooted in anti-Blackness and racial animus. He demands that public administrators confront how government policy has been “culpable in creating and maintaining racist, white supremacist policies and institutions through which Black, Indigenous, and other communities of color disproportionately experience prejudice and discrimination and, therefore, inequities and injustices” (McCandless and Blessett 2022, 91).

One striking example, echoing Lee’s (2015) argument for community-led zoning reflecting distinct local values, was the federal policy guidance which sought to remain in line with the Supreme Court’s prohibition on racial zoning ordinances in 1917 (*Buchanan v. Warley*). The 1921 Advisory Committee on Zoning under the Commerce Department developed a manual to promote the adoption of local zoning laws that avoided *explicit* mention of their goal—“racially homogenous neighborhoods” (51)—while upholding segregation through “neutral” or color-blind tools of single-family zoning alongside a prohibition on more affordable multiunit developments anywhere within a community except adjacent to commercial or industrial zones. As Rothstein notes, “The advisory committee was composed of outspoken segregationists whose speeches and writings demonstrated that race was one basis of their zoning advocacy” (51). Rothstein’s legal examination and precise historical accounting reveal the public administrators involved in policy design and implementation. While he scrutinizes how the interplay of many stakeholders led to segregation and lasting inequality, the book’s strength is its focus on the role of the government in supporting, promoting, and upholding inequitable and unconstitutional policies both explicitly and tacitly.

Rothstein (2017) ultimately argues that “as cit-

izens in this [American] 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” (xv). A potential critique is that, due to Rothstein’s focus on the systemic issues and federal policy failures, blame is so diffuse as to make individual action and choices seem inconsequential—or, at the very least, insufficient in the face of decades and centuries of government policy. His assertion that we must all “enforce our Constitution” feels amorphous and overwhelming without tangible individual actions that would, when taken together, accomplish such a feat.

Additionally, while Rothstein illustrates the multilayered complexity of housing policy, his focus on federal policy failures could be twisted in the service of arguments to *curtail* government action in the service of equity. Urban historian Destin Jenkins (2021) adds to Rothstein’s recounting of federal failures by demonstrating how private market forces—bondholders, bankers, and private equity experts—also shaped the urban landscape and manipulated local government officials in unjust ways. Jenkins underscores a weakness of this book, in asserting that a metanarrative of urban policy, which centers on federal public policy failures, is often twisted to pernicious ends. He notes that such an emphasis:

might prove a “gift” to the political right. Showing that public policies fueled the growth of the ghetto or the racial wealth gap between cities and suburbs could [lead to a...] project of austerity and privatization [which] has proven successful in part because the master narrative of urban history makes it difficult to demand the use of federal financial power to circumvent the local inflections of racism. (6)

Opponents have argued that new government interventions, such as AFFH, are “costly and burdensome” at best, and ineffective or even counterproductive, at worst.

This book offers public administration scholars, practitioners, and students a deeper understanding of how a history of explicit government-supported racist and unjust housing policy has shaped America’s inequitable, segregated present. In turn, it calls upon all citizens to correct the injustices of past policies. However, to do so, we must confront the counterarguments—including those for “local control” and against fed-

eral action—by applying nuanced lens and a *both / and* approach. Yes, governmental policies supported and created injustice, *and* the “distinct values” of local residents, private businesses, and corporate banking interests upheld prejudice. Both governmental policy *and* individual choices impact patterns of segregation and persistent inequities (Trochmann 2021). Federal policies undeniably contributed to the racial wealth gap and inequities in our communities today as Rothstein shows, and, as Rothstein rightly contends, the government and public administrators now have a constitutional duty to rectify these injustices.

References

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