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Nobody talks about racial integration anymore. Is it because we don't believe in it? That we never believed in it? Is it because whites think that African-Americans have turned their backs on the integrative ideal? Have blacks endured too many acts of racism to trust even the most sincere white avowals of commitment to a shared destiny in America? Is integration, in our increasingly multi-racial versus bi-racial society, too conceptually and logistically challenging? Or are we just all worn out? I think the answer is probably all of the above.

The 1954 *Brown v. Board of Education*[1] decision articulated an integrative ideal. It created a vision that children of all races would be educated together not only about reading, writing, and arithmetic but also about American democracy and the role that they were expected to play in our society. In one of its famous passages, the Court said:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.[2]

I am an integrationist. I believe that whatever our current condition with respect to race relations, the only hope for our Nation lies in the creation of a society in which people can interact across racial and ethnic lines free from constraints imposed by contemporaneous acts of racial discrimination or by

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1. 347 U.S. 483 (1954).
2. *Id.* at 493.

vestiges of prior discrimination. Central to this belief, however, is that the process of integration must manifest a respect for the human dignity of all races and ethnic groups.

Realizing *Brown*'s integrative ideal in the field of public education has not been easy. From 1955 to the 1970s there were active efforts by civil rights organizations and the federal government, particularly in the South but ultimately moving North to places like Boston[3] and Detroit[4] and West to Denver[5] and Pasadena,[6] to achieve meaningful restructuring of segregated school systems.

Early resistance in the courts and in the streets to implementation of *Brown*'s desegregation mandate was both vigorous and entrenched.[7] Despite those difficulties, in 1962, Dr. Martin Luther King, Jr. envisioned an America that would move beyond desegregation to integration within *ten* years. This was the ultimate goal of the Civil Rights Movement. He said:

> We do not have to look very far to see the pernicious effects of a desegregated society that is not integrated. It leads to "physical proximity without spiritual affinity." It gives us a society where men are physically desegregated and spiritually segregated, where elbows are together and hearts are apart. It gives us special togetherness and spiritual apartness. It leaves us with a stagnant equality of sameness rather than a constructive equality of oneness.[8]

King defined integration as "the positive acceptance of desegregation and the welcomed participation of Negroes into the total range of human activities."[9]

There was, however, a gradual waning of support in the courts in the 1970s and 1980s for large-scale school desegregation programs. It is a trend that has been reinforced by Supreme Court decisions over the past fifteen years that have emphasized the importance of federal courts' getting out of the business of overseeing school districts and leaving it to state and local authorities to carry out their educational mission.[10] This retrenchment was propelled in significant part by the fact that media attention and political debate with respect to school desegregation focused principally on the burden *white* children and their parents had to shoulder as a result of federal court rulings requiring dismantling of

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3. Morgan v. Kerrigan, 509 F.2d 580 (1st Cir. 1974).

4. Milliken v. Bradley, 418 U.S. 717 (1974).

5. Keyes v. Sch. Dist. 1, 413 U.S. 189 (1973).

6. Pasadena City Bd. of Educ. v. Spangler, 427 U.S. 424 (1976).

7. JAMES T. PATTERSON, BROWN V. BOARD OF EDUCATION: A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY 86-117 (2001).

8. MARTIN LUTHER KING, JR., *The Ethical Demands for Integration*, *in* A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR. 118 (James J. Washington ed., 1986).

9. *Id.*

10. Bd. of Educ. of Okla. City Pub. Sch. v. Dowell, 498 U.S. 237 (1991); Freeman v. Pitts, 503 U.S. 467 (1992).

racially-dual school systems. Largely ignored was the degree to which black children and their parents, teachers, and school administrators suffered significantly in the process, from the physical threats and assaults that necessitated the calling out of the National Guard to escort nine black children into Little Rock High School in the late 1950s,[11] to economic sanctions used to discourage black families from sending their children to formerly all-white schools,[12] to dismissals and demotions of black school personnel. Moreover, it was not always clear to these black families that, for all their sacrifices, the desegregation process was providing their children with the benefits that they had sought above all else: a quality education.[13] I call it the "*Brown* Blues."[14]

Given this history, it is not surprising that some blacks have appeared, in recent years, to turn away from the integrative ideal. They have, for example, urged school boards and courts to end busing programs and to reassign their children to neighborhood schools, despite their knowledge that doing so would result in the racial re-segregation of their children into all-black or virtually all-black facilities.[15] In Milwaukee and Detroit, blacks sought the creation of all-black male academies.[16] Where proposed plans for desegregation of racially-dual systems of higher education were being considered, such as in Louisiana, alumni groups from historically black institutions and state officials could be found on the same side in opposing the merger of black and white institutions.[17]

The reasoning behind these and other developments suggesting that blacks are turning away in large numbers from the integrative ideal of *Brown* are complex and more nuanced than they appear.[18] Public opinion polls and other indicators continue to show consistent support in the black community for school integration.[19] The high degree of attraction among blacks for school vouchers also points in the direction of a desire for racially-integrated rather than racially-segregated educational experiences for black children.[20] At root, what black parents seem to be saying is that racial integration is a desirable but neither a necessary nor a sufficient condition for ensuring that their children come away

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11. Cooper v. Aaron, 358 U.S. 1 (1958).

12. Green v. County Sch. Bd. of New Kent County, 391 U.S. 430, 441 n.5 (1968).

13. Derrick A. Bell, Jr., *The Burden of* Brown *on Blacks: History-Based Observations on a Landmark Decision*, 7 N.C. CENT. L.J. 25, 30-31 (1975).

14. Drew S. Days, III, Brown *Blues: Rethinking the Integrative Ideal*, 34 WM. & MARY L. REV. 53, 55 n.14 (1992).

15. Riddick v. Sch. Bd., 784 F.2d 521, 525 (4th Cir. 1986).

16. Tom Dunkel, *Self-Segregated Schools Seek to Build Self-Esteem*, WASH. TIMES, Mar. 11, 1991, at E9; Garrett v. Bd. of Educ., 775 F. Supp. 1004 (E.D. Mich. 1991).

17. United States v. Louisiana, 718 F. Supp. 499, 533 (E.D. La. 1989).

18. Days, *supra* note 14, at 53-54.

19. *See* STEVE FARKAS & JEAN JOHNSON, TIME TO MOVE ON 11 (Public Agenda Foundation ed., 1998) (stating that "nearly 8 in 10 African Americans (79%) say it is important to them that their own children's schools be racially integrated (49% say *very* important)").

20. *See* Jodi Wilgoren, *Young Blacks Turn to School Vouchers as Civil Rights Issue*, N.Y. TIMES, Oct. 9, 2000, at A1.

from their public school experiences well-grounded in reading, writing, and arithmetic, as well as in algebra, calculus, Latin, Spanish, French, and computer science. These developments also reflect a desire on their part to regain some of the black community's solidarity and to reestablish the institutions central to that community that were seriously eroded or destroyed in the desegregation process.[21] Although I am an integrationist, in Dr. King's sense, I have come to understand, I hope, the extent to which the aforementioned occurrences reflect a reaction to the burdens of *Brown*, a pragmatic recognition of the logistic limits of court-ordered desegregation and an assertion of ethnic pride in the face of many disparagements by the larger society. I view them, however, as only short-term measures that should not deter us from the ultimate goal of achieving an integrated America.

But what about housing segregation and discrimination? Have blacks been forced to rethink the integrative ideal in that respect, as well?

It is common knowledge, and the courts have consequently recognized, that the segregated character of public education is closely correlated with residential segregation.[22] The historical record is replete with evidence of the extent to which school officials have located facilities or tailored student capacities with full knowledge and intent that their enrollments would consequently be all black or all white. It also reveals that public housing officials have built projects in areas of high black residential concentration, exacerbating existing school segregation. Segregated housing caused segregated schools; communities where school children were intentionally segregated by race, also resulted in more segregated housing.[23]

It is also well-established that myriad private and public actors—realtors, state and local zoning and transportation authorities, federal lending and housing agencies, and state courts—have conspired for generations to bequeath us a contemporaneous American society that reflects a persistent, intense, and extensive pattern of racial residential segregation. Some scholars have been moved to describe this pattern of racial residential segregation as "American Apartheid."[24]

An integrative ideal has long been present, however, with respect to equal housing opportunities. In 1938, a black man brought suit challenging the legality of racially-restrictive covenants in Chicago. These covenants prohibited even willing whites from renting or selling land covered by such agreements to blacks.

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21. These concerns also seem to animate the growth of an independent black school movement. See in that regard, C.J. Clemmons, *Parents Praise Predominantly Black School for Academic Excellence, Sense of Heritage It Gives Children*, THE CHARLOTTE OBSERVER, Apr. 26, 1996, at B6.

22. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 20-21 (1971).

23. United States v. Yonkers Bd. of Educ., 624 F. Supp. 1276, 1540 (S.D.N.Y. 1985), *aff'd*, 837 F.2d 1181 (2d Cir. 1987); *see also* Drew S. Days, III, *School Desegregation Law in the 1980s: Why Isn't Anybody Laughing?*, 95 YALE L.J. 1737, 1764-68 (1986).

24. DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993).

After losing in the state courts, he sought review in the United States Supreme Court. Although the Court ruled in his favor on procedural grounds, allowing him to keep the property he had purchased, it declined there to address the constitutionality of such covenants.[25] It was not until 1948 that the Court did so, holding that judicial enforcement of racially-restrictive covenants violated the Equal Protection Clause of the Fourteenth Amendment.[26] There is some poetry in the fact that over a quarter-century later, the daughter of that same black man who challenged restrictive covenants in Chicago, Lorraine Hansberry, wrote the critically-acclaimed play, *A Raisin in the Sun.* It dealt with the desire of a black family to move out of a predominantly black area of Chicago to one of the city's neighborhoods bordering the suburbs and the local resistance it encountered after buying a home there.[27] Hansberry's play enjoyed success, in part, because it captured poignantly a longing that members of all racial and ethnic groups have felt to better their living conditions, to experience "the American Dream." I am convinced that *A Raisin in the Sun* is also very much about a black sense of the integrative ideal; the family's move was an affirmation of its members' human dignity and their desire to be a part of, not isolated from, the larger society.[28]

The Supreme Court's decision declaring judicial enforcement of racially-restrictive covenants improved slightly the ability of blacks to find housing in previously all-white residential areas. It needs to be underscored, however, that restrictive covenants were not outlawed by the 1948 Supreme Court decision.[29] Consequently, whites continued to enter into such contractual relationships so long as no judicial enforcement was sought and no state law prohibited them. Where states attempted to address racially discriminatory practices in housing, referenda and local ordinances were deployed to blunt or thwart their effectiveness. In several cases, the Court held such stratagems unconstitutional[30] but "blinked" at others that also had serious racially-segregative consequences.[31]

Moreover, well into the 1960s, courts found that municipal governments and local housing authorities systematically located and assigned tenants in public housing with the intent of creating and maintaining segregated residential areas.[32] The most notable example of such practices was in Chicago, where federal courts found that the public housing authority there had, with the knowledge and approval of the federal Department of Housing and Urban Development (HUD),

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25. Hansberry v. Lee, 311 U.S. 32 (1940).

26. Shelley v. Kraemer, 334 U.S. 1 (1948).

27. LORRAINE HANSBERRY, A RAISIN IN THE SUN (1959).

28. *See* Allen R. Kamp, *The History Behind* Hansberry v. Lee, 20 U.C. DAVIS L. REV. 481, 493 (1987).

29. Restrictive covenants were not declared illegal until passage of the Fair Housing Act of 1968. Mayers v. Ridley, 465 F.2d 630, 631 n.1 (D.C. Cir. 1972).

30. Reitman v. Mulkey, 387 U.S. 369 (1967); Hunter v. Erickson, 393 U.S. 385 (1969).

31. James v. Valtierra, 402 U.S. 137 (1971); James A. Kushner, *Apartheid in America*, 22 HOW. L.J. 548, 594-95 n.108 (1979).

32. Hicks v. Weaver, 302 F. Supp. 619, 623-24 (E.D. La. 1969).

deliberately selected family public housing sites in Chicago to avoid the placement of Negro families in white neighborhoods.[33]

Dr. King did not live to see even a desegregated society, much less an integrated one. Ironically, however, his assassination provided the final catalyst that the United States Congress needed to enact a federal law providing for "fair housing throughout the United States."[34] King was assassinated on April 4, 1968. The Fair Housing Act was subsequently signed into law by President Lyndon B. Johnson on April 11, 1968.[35] That Act, thereafter amended in certain respects,[36] generally banned discrimination on grounds of race, color, religion, or national origin in the sale or rental of housing. What is notable about the passage of the Fair Housing Act and early judicial construction of its provisions was the extent to which racial integration was viewed as one of its central objectives. Walter Mondale, a senator at the time (and later Vice-President), was a chief sponsor of the Act. After the Fair Housing Act was passed, he stated that "once and for all we have decided, as a nation, to live together, not separately" and that the new law would replace highly segregated urban areas with "truly integrated and balanced living patterns."[37]

In the first decade after the Fair Housing Act went into effect, the Supreme Court recognized explicitly something that *Brown* and its progeny in the field of school desegregation had not: that integration was a goal for the Nation as a whole—beneficial to blacks and whites alike. As I mentioned earlier, the *Brown* court clearly emphasized the importance of ensuring that black and white children were educated to live in a desegregated society in order for them to assume their status as full citizens.[38] But, for reasons that were understandably dictated by its finding that segregated black schools were categorically inferior to those attended by whites, it also stressed principally the benefits *black* students would gain from an end to state-imposed racial segregation in public education. However, little attention was given by the Court, then or later, to the damage racial segregation had done to *white* students and how they, too, would benefit from the fall of racially-dual systems.[39]

The events that occasioned these broad constructions of the Fair Housing Act grew, in contrast, out of efforts by *white* individuals and majority *white* communities to end practices by landlords and realtors that were designed to

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33. Hills v. Gautreaux, 425 U.S. 284 (1976).

34. Fair Housing Act (Title VIII of the Civil Rights Act of 1968), 42 U.S.C.A. § 3601 (West 1994).

35. Jean Eberhart Dubofsky, *Fair Housing: A Legislative History and a Perspective*, 8 WASH. L. REV. 149 (1969).

36. The Act was amended in 1974 to include sex as a prohibited basis. *See* Housing and Community Development Act of 1974, 808(b), 89 Stat. 729 (1974). In 1988, coverage was extended to persons with disabilities and prohibited "family status" discrimination. 42 U.S.C.A. § 3602(k) (West 1994).

37. 114 Cong. Rec. H3422 (daily ed. Feb. 20, 1968).

38. *Supra* note 2 and accompanying text.

39. JENNIFER L. HOCHSCHILD, THE NEW AMERICAN DILEMMA: LIBERAL DEMOCRACY AND SCHOOL DESEGREGATION 187-88 (1984).

encourage and reinforce residential segregation. The specific question presented for the Supreme Court's resolution in these cases was whether these parties, rather than blacks who were targets of discriminatory practices, had standing to sue under the Fair Housing Act. The Court held that they did.[40] In one early case, brought in San Francisco, white tenants of an apartment complex claimed that they had been injured, within the contemplation of the Act, by their landlord's racially discriminatory practices. The injury, they asserted, consisted of their having (1) lost the social benefits of living in an integrated community, (2) missed business and professional advantages that would have accrued from living with members of minority groups, and (3) suffered from being "stigmatized" as residents of a "white ghetto." The Supreme Court found that their alleged injuries were within those that Congress sought to address when it passed the Fair Housing Act.[41]

In another case, officials in a town near Chicago claimed that realtors in the area were intentionally "steering" prospective white homebuyers to one part of the community and black homebuyers to another part in a way that exacerbated residential segregation. The Supreme Court found that the case was properly brought under the Fair Housing Act because, among other things, "there can be no question about the importance to a community of promoting stable, racially integrated housing."[42] The Court also recognized that "block busting" as well as "steering" violated the Fair Housing Act. "Block busting" involves exploiting—usually by realtors—fears of racial change in majority white communities by directly perpetuating rumors and soliciting sales in target neighborhoods in order to facilitate the purchase of houses of white residents cheaply only to resell them at a profit to black homebuyers.

Blacks were provided in 1968 moreover, with another federal statutory tool to challenge certain forms of housing discrimination, a provision that had been on the federal statute books since at least 1866, but only fully interpreted by the Supreme Court in 1968. The timing of that decision is interesting. The Court heard argument on April 1, 1968 and April 2, 1968 in a case brought by a black couple denied the right to purchase a lot and home in a suburb of St. Louis because it was the real estate company's general policy not to sell to blacks.[43] On April 4, 1968, King was assassinated. On April 11, 1968, the Fair Housing Act became law. Finally, in June of 1968, the Supreme Court held in the St. Louis case that the largely ignored federal statute expressed Congress' intent to ensure that "a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man."[44]

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40. Trafficante v. Metro. Life Ins. Co., 409 U.S. 205 (1972).

41. *Id.*

42. Gladstone Realtors v. Village of Bellwood, 441 U.S. 91, 111 (1979) (quoting Linmark Associates, Inc. v. Willingboro, 431 U.S. 85, 94 (1977)).

43. Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).

44. *Id.* at 443.

Courts have not found interpreting provisions of the Fair Housing Act unproblematic, however. In some instances, efforts by municipalities and landlords to address problems of residential segregation have been viewed by the courts and by some segments of the black community, as well, as restricting rather than expanding housing opportunities for blacks. In one such case, at issue was the legality of a program maintained by the operator of a large housing development in New York. Under the program, the apartment operator maintained a racial distribution of sixty-four percent white, twenty-two percent black, and eight percent Hispanic. The operator claimed that the quotas were necessary to prevent the loss of white tenants, which would transform the housing development into a predominantly minority complex. He pointed to the difficulty he experienced in attracting an integrated applicant pool from the time the apartment development opened, despite extensive advertising and promotional efforts. Once the "racial balance" plan was adopted, the respective percentages of white and black tenants remained relatively stable for almost a decade. A federal appellate court held, however, that the program violated the Fair Housing Act.[45]

In another case, a township in New Jersey enacted an ordinance that prohibited signs advertising the sale of homes within its jurisdiction in order to stem white flight and promote racial integration. The United States Supreme Court struck down the ordinance.[46] Although the Court acknowledged the importance of the township's asserted goal of promoting stable, integrated housing, it held that the objective could be achieved in ways other than by violating the First Amendment commercial speech rights of home sellers and buyers, as did the ordinance in question. As well-intentioned as both these programs and others like them might have been, they embodied (explicitly or implicitly) the notion of a "tipping point" beyond which whites would simply refuse to live in close proximity to blacks. Hence avoidance of reaching that point required, in some instances, limiting the ability of blacks to rent or buy otherwise available housing.[47] The tension between this theory and the integrative ideal is rather obvious.[48]

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45. United States v. Starrett City Assoc., 840 F.2d 1096 (2d Cir. 1988).

46. Linmark Assocs., Inc. v. Willingboro, 431 U.S. 85 (1977).

47. *See generally* Ankur J. Goel, *Maintaining Integration Against Minority Interests: An Anti-Subjugation Theory for Equality in Housing*, 22 URB. LAW. 369 (1990) (discussing "integration maintenance" programs and their effects on the civil rights community).

48. In contrast, the courts have shown some solicitude for so-called "affirmative marketing" programs that (1) are designed to promote housing integration, and (2) do so by purposefully considering race or national origin in the provision of housing or housing related services." S. Suburban Hous. Ctr. v. Greater S. Suburban Bd. of Realtors, 935 F.2d 868 (7th Cir. 1991); Mark W. Zimmerman, *Opening The Door To Race-Based Real Estate Marketing:* South Suburban Housing Center v. Greater South Suburban Board of Realtors, 41 DEPAUL L. REV. 1271 (1992); ROBERT SCHWEMM, HOUSING DISCRIMINATION LAW AND LITIGATION § 11:8 at 11-28 (2001).

What has been the result of all of these efforts in terms of reducing the degree of residential segregation in America? One recent study concludes:

> Segregation has declined over the past twenty years, and this may be related to the elimination of formal barriers to integration. Indeed, the decline in segregation occurred mainly because formerly all-white areas now have small numbers of black residents, which is strongly suggestive of a lowering of walls against black mobility . . . At the same time, there are more completely black areas in our cities than there have ever been in the past and large amounts of segregation linger.[49]

This presents a conundrum, for public opinion polls seem to suggest that a majority of whites and blacks would prefer to live in a mixed neighborhood.[50] Nevertheless, "the reality is that more than [seventy-seven] percent of whites live in a mostly or all white neighborhood, while only [forty-one] percent of blacks live in predominantly black neighborhoods."[51] One explanation is that whites and blacks simply have different definitions of residential integration and different conceptions of what ratios fall short of the "tipping point."[52]

Why does residential segregation persist? Several possible theories have been suggested. The first is economic differences between the races. Studies have largely rejected this as an explanation. As one group of researchers pointed out, "if residential segregation were a matter of income, rich blacks would live with rich whites and poor blacks with poor whites. This does not happen."[53] The second theory is that residential segregation can be explained by the preferences of blacks and whites. According to this thesis, members of both races wish "to live in neighborhoods in which their race [is] numerically dominant."[54] A third attributes the current situation to discriminatory practices by brokers and lenders.[55] Finally, a fourth hypothesis (a variant of the second), focuses on the

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49. David M. Cutler, Edward L. Glaeser & Jacob L. Vigdor, *The Rise and Decline of the American Ghetto*, 107 J. POL. ECON. 455, 496 (1999).

50. *Poll: Whites, Blacks Differ on Quality of Race Relations*, CNN Interactive/CNN.com, June 10, 1997, *at* http://www.cnn.com/US/9706/10/gallup.poll/index.html (copy on file with the *McGeorge Law Review*).

51. *Id.* Recent analyses of the 2000 census have determined, however, that, although the Northeast and Midwest remain highly segregated, for the third straight decade, segregation between blacks and non-blacks across American metropolitan areas has declined dramatically. Edward L. Glaeser & Jacob L. Vigdor, *Racial Segregation in the 2000 Census: Promising News*, *available at* http://www.brookings.edu/dybdocroot/urban/census/glaeserexsum.htm; Earl Schmitt, *Analysis of Census Finds Segregation Along with Diversity*, N.Y. TIMES, Apr. 4, 2001, at A15.

52. See Abraham Bell & Gideon Parchomovsky, *The Integration Game*, 100 COLUM. L. REV. 1965 (2000), for a full discussion of the "tipping theory" and of policy alternatives that might offset the effects of "tipping."

53. Reynolds Farley et al., *Stereotypes and Segregation: Neighborhoods in the Detroit Area*, 100 AM. J. SOC. 750, 751 (1994).

54. *Id.*

55. *Id.* at 753.

special preferences of whites, namely that they result from the continued use of racial stereotypes:

> So long as whites believe that blacks lack a work ethic, are prone to criminal activity, and are less intelligent that whites, they will disparage them as neighbors. Bankers and real estate agents may share these stereotypes and then market housing consistent with such beliefs. Blacks, in turn, because they often experience discrimination in seeking housing and knowing they will be unwelcome if they enter white neighborhoods, they "prefer" locations where blacks are numerically dominant.[56]

Social scientists continue to debate the relative merits of these last three theories. However, I think it fair to say that they all have some basis in fact and experience.[57]

But what about black suburbanization and the integrative ideal? Although there have been significant increases in the movement of blacks from the cities to suburban areas, they have moved disproportionately to communities closest to the central city where the new arrivals have encountered problems like those they left behind in the inner city. Moreover, such out-migration has produced relatively insignificant increases in residential integration.[58]

Nevertheless, there has also been much media coverage in recent years of so-called "black upper- and middle-class suburban communities," usually pockets in counties that have significant white populations.[59] Prince George's County, Maryland, a suburb of Washington, D.C., is often cited in this respect. Some reports suggest that these enclaves reflect a clear preference among affluent blacks to live in predominantly black residential areas.[60] Prince George's County had a black population of twenty percent in the early 1970s. In 2000, it had a black population of sixty percent.[61] Moreover, blacks have gained political power—electing, in 1994, the County's first black County Executive, its highest ranking official.[62] The reasons for this movement, however, are complex.

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56. DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 69-70 (1993).

57. Gary Orfield, *Housing Segregation: Causes, Effects, Possible Cures*, *in* HARVARD UNIVERSITY, THE CIVIL RIGHTS PROJECT (2000), *available at* http://www.law.harvard.edu/civilrights/publications/housing/html; INGRID GOULD ELLEN, SHARING AMERICA'S NEIGHBORHOODS: THE PROSPECTS FOR STABLE RACIAL INTEGRATION (2000).

58. Mark Schneider & Thomas Phelan, *Black Suburbanization in the 1980's*, 30 DEMOGRAPHY 269-79 (May 1993).

59. For a comprehensive treatment of the development of black suburbs and their impact on racial integration, see generally, Sheryll D. Cashin, *Middle-Class Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan America*, 86 CORNELL L. REV. 729 (2001).

60. David J. Dent, *The New Black Suburbs*, N.Y. TIMES, June 14, 1992, Sec. 6 (Magazine), at 18; Lynette Clemetson, *Mixing it Up in the Burbs*, NEWSWEEK, Jan. 17, 2000, at 61.

61. Jonathan Kaufman, *In the Maryland Suburb of Bowie, Some Whites Resent Wealthier Blacks*, WALL ST. J., Feb. 8, 2001, at 1.

62. David Nakamura & Tracey A. Reeves, *Anger at Pr. George's Deepens Racial Schism, Bowie School*

Certainly, blacks have moved to Prince George's County because they feel more comfortable in communities where they are not viewed as interlopers. Others have moved because they felt that public services and other amenities could be found there that were not available in central city Washington. On a more philosophical note, some suggest that their decision to move is perfectly in keeping with Dr. King's dream because, as one black Prince George's County resident stated, "We are fighting for the right to go where we want to go, to make the choice to live where we want to live. We have the freedom of choice which we have exercised."[63]

The response to the growth in black population in the County has not been entirely positive. Black residents wonder, for example, why major commercial outlets have been reluctant to open stores in the County, despite the presence of a significant high-income population.[64] And most recently, some residents of Bowie, a majority white city within Prince George's County, demanded that it secede and join a neighboring mostly-white county.[65] In fact, one of the realities of the creation of these upper-end black suburban communities often has to do with changing demographics. Between 1970 and 1980, for example, 156,000 blacks moved into the County, but 170,000 whites moved out—a more affluent form of "white flight" but "white flight," nevertheless.

Intentional acts of racial discrimination and segregation are still part of daily life in America, as the United States Department of Justice and private housing groups across the country will readily confirm.[66] Consequently, vigorous enforcement of local, state, and federal fair housing laws must continue to be part of the corrective process. Those tools have already contributed to progress by changing not only practices but attitudes, as well, respecting equal opportunity in housing. Certainly, blacks with the economic wherewithal to afford housing in previously white residential areas will be significantly assisted as a result. It is also important to recognize that the effects of governmental actions with respect to housing and zoning are rarely neutral. They are likely to have either integrative or segregative consequences. The former should be preferred.

W.E.B. Dubois stated that "the problem of the 20th Century is the problem of the color line."[67] It might be said, insofar as housing segregation is concerned, that "the problem of the color line in 21st Century America is the problem of intense concentration of blacks in its urban centers," the difficulties of blacks in affluent majority black communities, notwithstanding. Unless this national problem

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Fight Quickly Bred Distrust, WASH. POST, Nov. 6, 2000, at A1.

63. Dent, *supra* note 60, at 18.

64. Marcia Slacum Greene, *Moving In and Moving Up, Blacks Transform a County*, WASH. POST, Nov. 22, 1999, at A1.

65. Kaufman, *supra* note 61; Nakamura & Reeves, *supra* note 62.

66. United States v. Big D Enters., Inc., 184 F.3d 924 (8th Cir. 1999); United States Department of Justice, *Civil Rights Division Housing & Civil Enforcement Section Caselist, at* http://www.usdoj.gov/crt/housing/caselist/htm#race.

67. WILLIAM E.B. DUBOIS, THE SOULS OF BLACK FOLK: ESSAYS AND SKETCHES 13 (1953).

can be solved, I fear all other efforts to address residential segregation will be for naught. Various solutions have been advanced, from those that focus on addressing the depressed economic conditions of inner city segregated communities by bringing job training and jobs into those areas, to more radical approaches that one advocate described as follows: "The walls that confine those who live within the ghetto must be torn down . . . [W]e must provide those who now live there with the economic means to move into middle- or upper-class neighborhoods."[68] This proposal, while focused primarily on moving inner city blacks to predominantly white middle- and upper-class neighborhoods, hence strongly integrative, would also include "stable middle-class black communities" in the process. The receiving communities would be defined by class "which will itself mean enhanced access to jobs, betters schools and social services, nicer housing and higher-quality retail establishments."[69]

All of these proposals, as the foregoing examples suggest, attempt to respond to one central and undeniable fact, namely that there has been a spatial mismatch between where black inner city residents live and where true economic opportunities can be found. Simply put, such residents have relatively low levels of employment skills whereas the major source of employment for that work force exists outside the inner city and increasingly outside of even close-in majority black suburbs.[70]

For those who advance proposals to address the plight of inner city blacks, much of their inspiration comes from the results of an open housing program, the "*Gautreaux* Program," that was launched as part of the remedy for the federal court orders finding, and a history of segregative practices by the Chicago Housing Authority and HUD.[71] Under that program, which operated from 1976 to 1998 and involved over seven thousand public housing tenant families, residents were randomly assigned to white, middle-class suburban communities and given rent subsidies to allow them to meet market rates in those areas for private housing. It was a mobility program with clearly articulated "integrationist goals."[72] Longitudinal studies done of families who moved to the suburbs as compared with black families that remained in inner city neighborhoods have

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68. Owen Fiss, *What Should Be Done for Those Who Have Been Left Behind?*, BOSTON REV. (2000), *available at* http://bostonreview.mit.edu/BR25.3/fiss.html. Fiss' article produced an intellectually rich collection of responses to his proposal from a group of prominent academics and practitioners familiar with the daunting problems of inner city poverty and racial segregation.

69. *Id.*

70. Michael A. Stoll, Harry J. Holzer & Keith R. Ihlanfeldt, *Within Cities and Suburbs: Racial Residential Concentration and the Spatial Distribution of Employment Opportunities Across Sub-Metropolitan Areas*, J. POL. ANALYSIS & MGMT., at 207 (2000); Samuel Cohn & Mark Fossett, *The Other Reason Job Suburbanization Hurts Blacks*, 34 URB. AFF. REV. 94 (1998); Keith R. Ihlanfeldt & Madelyn V. Young, *The Spatial Distribution of Black Employment Between the Central City and the Suburbs*, 34 ECON. INQUIRY 693 (1996).

71. *See* WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR 200-01 (1996); LEONARD S. RUBENSTEIN & JAMES E. ROSENBAUM, CROSSING THE CLASS AND COLOR LINES: FROM PUBLIC HOUSING TO WHITE SUBURBIA (2000).

72. RUBENSTEIN, *supra* note 71, at 39, 67-69.

shown quite positive results, not only in terms of the quality of their housing, but in other important respects as well. For example, one study followed children in the program and found that "by the time that they were young adults, those who moved to the suburbs were much more likely to graduate from high school, attend college, attend four-year colleges and (if not in college) were employed and had jobs with better pay and with benefits than those who remained behind."[73] And, despite assertions of some critics of the program at its outset that most families assigned to the suburbs would not remain for long, recent studies have found that over two-thirds of suburb-movers remained in the suburbs seven or more years after entering them.[74]

The Chicago program helped motivate the development by HUD in 1994 of an experimental housing mobility program in Baltimore, Boston, Chicago, Los Angeles, and New York, that explicitly uses random assignment of a sub-group of families in both public housing, as well as private assisted housing in poor residential areas, to wealthier communities.[75] Early returns suggest very positive outcomes for those families as compared with the control groups.[76] In 1998, Congress enacted a major restructuring of the federal public housing and assisted private housing programs.[77] Its aim is to meet the national objective of providing safe, affordable homes in healthy environments to low-income families by "facilitating mixed income communities and decreasing concentrations of poverty in public housing."[78]

In response to this fundamental change in federal housing law, the Chicago Housing Authority is implementing a $1.5 billion overhaul of its public housing program that calls for the demolition of scores of high-rise structures, and the redevelopment or rebuilding of twenty-five thousand housing units over the next five to seven years. Residents will be offered relocation within their own development, relocation to another development or relocation with vouchers that will permit them to find housing at market rates both inside and outside of Chicago.[79] Those receiving vouchers will be provided with counseling by a network of public and private organizations with the aim of avoiding the

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73. James E. Rosenbaum, *Relocation Works*, BOSTON REV. (2000), *available at* http://bostonreview.mit.edu/BR25.3/rosenbaum.html.

74. *Id.*

75. *See* Lawrence F. Katz, Jeffrey R. Kling & Jeffrey B. Liebman, *Moving to Opportunity in Boston: Early Results of a Randomized Mobility Experiment*, Working Papers 7973 (2000), *available at* http://www.nber.org/papers/w7973.

76. *Id.*

77. The Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, tit. V, 112 Stat. 2461, 2518-2670 (codified as amended in scattered sections of 42 U.S.C.).

78. *Id.*; *see generally* Terry A.C. Gray, *De-Concentrating Poverty and Promoting Mixed-Income Communities in Public Housing: The Quality Housing and Work Responsibility Act of 1998*, 11 STAN. L. & POL'Y REV. 173 (1999) (providing in depth analysis of the Quality Housing and Work Responsibility Act of 1998).

79. *Making Reality of Daley's CHA Plan*, CHI. TRIB., Feb. 8, 2000, at 12; Melita Marie Garza, *CHA Gives Go-Ahead to 1.5 Billion Overhaul of Public Housing*, CHI. TRIB., Jan. 7, 2000, Metro Chicago Sec., at 1.

reinstitution of centralized impoverished areas proximate to the location of the demolished public housing facilities.[80]

This second Chicago experiment is likely to serve as the critical test of the government's capacity to effectively address the intractable problems of poor, predominantly black population concentrations in urban America. It may also provide valuable evidence to confirm or challenge the thesis that economic and social advancement for inner city blacks depends upon their out-migration. According to recent census figures, Chicago has reversed fifty years of population decline.[81] Hispanic and Asian populations have increased and the percentages of blacks and whites have declined only slightly. Chicago is described as a city now with large numbers of hospitals and health care businesses that provide both entry-level and higher paying jobs; a variety of tourism- and convention-related jobs; and traditional manufacturing jobs. City officials contend that the population decline vindicates their efforts directed at "improving neighborhoods, renovating old buildings, luring businesses with tax incentives and other economic benefits, supporting cultural programs and improving public spaces with trees, flowers and wrought-iron accents."[82] Given these circumstances, it is not unreasonable to ask why all black inner city residents should have to leave a city with distinguished institutions of higher education, world-class museums and art galleries, public transportation systems, a vibrant economic environment, and multiple sources of recreation and entertainment and move out to the suburbs to realize the integrative ideal.[83]

Dr. King said that he could never come to understand his total capacity until he was able to live in, not just a desegregated society, but an integrated society. He asserted that "I cannot be free until I have had the opportunity to fulfill my total capacity untrammeled by an artificial hindrance or barrier."[84] Clearly, many of those hindrances and barriers in the field of housing will continue to retard progress in race relations in the short-term. The long-term goal, however, must be to see to their permanent removal.

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80. Garza, *supra* note 79.

81. Pam Belluck, *Chicago Reverses 50 Years of Declining Population*, N.Y. TIMES, Mar. 15, 2001, at A16.

82. *Id.*

83. Several years ago, the notion of the economic revitalization by the private sector of inner cities gained a prominent advocate in Harvard Business School professor Michael E. Porter. *See* Michael E. Porter, *The Competitive Advantage of the Inner City*, HARV. BUS. REV., May-June, 1995. For a comprehensive discussion of Porter's thesis, see the collection of essays in THE INNER CITY: URBAN POVERTY & ECONOMIC DEVELOPMENT IN THE NEXT CENTURY (Thomas D. Boston & Catherine L. Ross eds., 4th prtg. 2001); *see also* Jennifer Hochschild, *Creating Options*, BOSTON REV. (2000), *available at* http://www.bostonreview.mit.edu/BR25.3/hochschild.html (suggesting a mixed strategy for improving the conditions of black inner city residents that would embody "exit" opportunities as well as significant investment in schools, day-care, and job creation within their home neighborhoods).

84. KING, *supra* note 8, at 121.