

1 Fair Housing Yesterday, Today, and Tomorrow

Gregory D. Squires

The housing market and discrimination sort people into different neighborhoods, which in turn shape residents' lives—and deaths. Bluntly put, some neighborhoods are likely to kill you.

Logan (2003: 33)

The most standard segregation measure shows that American cities are now more integrated than they've been since 1910.

Glaeser and Vigdor (2012: 1)

Norman Rockwell's famous 1967 painting *New Kids in the Neighborhood* portrays three white children and two black children looking at each other as the movers unload the possessions of the black family into their new suburban home. The expressions on the kids' faces reflect curiosity more than concern, as well as a sense of optimism about the future of race relations. This is a well-known image reflecting a perhaps naïve optimism. Lurking behind the drapes of the house next door is the very concerned face of a man who does not appear to appreciate the changes taking place in his neighborhood. This tension, this fear of what may be lost by some, coupled with the hope for what may be gained by many, is reflected in the story of the federal Fair Housing Act signed into law by President Johnson one year later. *The Fight for Fair Housing* tells that story.

The nation's most significant fair housing civil rights law was passed at a time of turmoil, conflict, and often conflagration in cities across the nation, unlike the images Rockwell often portrayed in his work. It took the assassination of Dr. Martin Luther King Jr. to finally push Congress and the executive branch of the federal government to pass the Fair Housing Act. LBJ's National Advisory Commission on Civil Disorders, better known as the Kerner Commission, warned that "to continue present policies is to make permanent the division of our country into two societies; one largely Negro and poor, located in the central cities; the other, predominantly white and affluent, located in the suburbs and outlying areas" (National Advisory Commission on Civil Disorders 1968: 22). It was in this context that the Fair Housing Act was

passed with a dual mandate: 1) to end discrimination and 2) to dismantle the segregated living patterns that characterized most cities (Massey and Denton 1993).

In subsequent decades the causes and consequences of housing discrimination and segregation have been glaringly revealed (Carr and Kutty 2008; Feagin 1999, 2014; Rothstein 2017). At the same time, significant progress has been made. Few suburbs today are all white, and a significant share of the nation's people of color live in the suburbs (Glaeser and Vigdor 2012; Vigdor 2013). Hypersegregation in some metropolitan areas persists as barriers are breaking down in many neighborhoods, some within those very segregated regions (Logan and Stults 2011). Obstacles remain, as do challenges to those impediments on the part of fair housing advocacy groups, some foundations, faith-based organizations, government agencies (at least under some elected leaders), and others. The proverbial half full/half empty cliché certainly applies to the fair housing movement in the U.S. Perhaps Phil Ochs, the ill-fated protest folk singer/songwriter from the 1960s, best captured the nebulous state of fair housing in 1965 when he sang "I love Puerto Ricans and Negroes, as long as they don't move next door" (Ochs 1965).

Filling the Half-Empty Glass

In 2012 Harvard economist Edward Glaeser and his Manhattan Institute colleague Jacob Vigdor declared "The End of the Segregated Century." They reported that the dissimilarity index for blacks and whites, perhaps the most common measure of segregation, dropped by 25 percentage points between 1970 and 2010 from 80 to approximately 55. (The index of dissimilarity signifies the distribution of two groups across a geographic area varying from 0, indicating total integration, to 1, indicating complete segregation. The number also represents the share of either group that would have to move in order for each neighborhood to reflect the racial composition of the entire area. So, for example, a black-white index of dissimilarity of .70 would indicate that 70 percent of blacks or 70 percent of whites would have to move to realize full integration.) But if aggregate levels of segregation have declined, the most progress has been made in communities with small black populations where whites are less likely to encounter blacks even if the two groups are evenly spread throughout the area. In those large metropolitan areas where the black population remains most highly concentrated, what sociologist John R. Logan has referred to as the ghetto belt (Logan 2013: 162), segregation has declined slightly but persists at hypersegregated levels (Massey 2015). It is also the case that in 2010 the typical black family lived in a neighborhood that was 35 percent white, compared to 40 percent in 1940 (Logan and Stults 2011). And while Asians and Hispanics are less segregated than blacks, their levels of segregation from whites have been basically unchanged since 1980 (Logan 2013).

A similar half full/half empty story can be told about the nature of discrimination. At least the most blatant forms of housing discrimination have

declined in recent decades as documented by four national studies conducted by the Urban Institute for HUD between 1977 and 2012. In its most recent study, well-qualified minority homeseekers who contacted rental agents or real estate sales representatives about advertised units were just as likely as similar white homeseekers to get an appointment and learn about at least one housing unit during the initial visit (Turner et al. 2012). White attitudes have changed in the direction of more support for the principle of fair housing as well as, to some extent, the practice. The proportion of white respondents favoring laws prohibiting housing discrimination rose from 37 percent to 69 percent between 1972 and 2008 according to the General Social Survey conducted by the National Opinion Research Center at the University of Chicago (Freeman and Cai 2015). And the share of whites who say they oppose living in a neighborhood where half the neighbors are black has fallen (Badger 2015).

But the latest national housing discrimination study also found that whites were still told about and shown more homes than were similarly qualified blacks and Hispanics, increasing the home search costs for the latter two groups (Turner et al. 2012). And it is likely that discrimination occurs more frequently than that study reported, for many reasons acknowledged by the authors of the study itself. Many housing providers do not advertise the units they have available and there is reason to believe discrimination is more likely to occur in those cases. In some instances where homeseekers are given the same number of leads, the housing provider also offers varying levels of encouragement or help in securing a home, generally favoring the white buyer or renter. When homeseekers receive the same treatment during their initial contact with real estate agents, those agents frequently discriminate later in the process when racial and ethnic minorities follow up and express a serious interest in the property (Freiberg 2013; Freiberg and Squires 2015). Redlining has re-emerged in recent years with the share of home loans going to blacks dropping from 8.7 percent in 2006 to 5.2 percent in 2014. Comparable figures for Hispanics were 11.7 percent and 7.9 percent (Swarns 2015). Law enforcement agencies have seen a surge in cases in recent years, with the Department of Justice and Consumer Financial Protection Bureau negotiating the largest settlement ever in a redlining case, in 2014 against Hudson City Savings Bank. The lender agreed to provide \$25 million in direct loans to borrowers in affected communities, \$2.25 million in community programs and outreach, and a \$5.5 million penalty fee (Consumer Financial Protection Bureau 2016). By design, the four national studies of housing discrimination conducted by the Urban Institute for HUD did not examine the behavior of mortgage lenders, home insurers, appraisers, and others who are engaged in the homeseeking process where discrimination has been found (Massey and Denton 1993; Munnell et al. 1996; Stiglitz 2010; Immergluck 2015; Galster et al. 2001; Smith and Cloud 1997; Squires, Gilderbloom and Meares 2015). While attitudes in general have changed favorably over the years, 28 percent of whites reported in 2014 that they believed they should have the right to keep blacks out of their neighborhoods and that they would favor a law allowing such discrimination

(Badger 2015). Forty-six years after the Fair Housing Act was passed, more than 25 percent of whites rejected it and would have favored a law overturning it.

The evolution in stated fair housing attitudes, and certainly to at least some significant extent policy and practice, can perhaps best be captured by two statements from the code of ethics of the National Association of Realtors®. (Between 1916 and 1974 the title of the organization was the National Association of Real Estate Boards.) Until 1950 the following statement appeared:

A realtor [sic] should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individual whose presence will clearly be detrimental to property values in the neighborhood.

(Laurenti 1960: 17)

But today the Code of Ethics and Standards of Practice of the National Association of Realtors® states in part:

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity . . .

When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood . . .

REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

(National Association of Realtors® 2015)

Policy statements, of course, often reflect aspirations as much as current practice. But there can be little doubt that these two statements reflect important changes that have taken place in the nation's housing markets over the past few decades.

Housing policy and fair housing policy in particular have long been contested terrain (Hays 2012; Schwartz 2015; Katz 2009; Satter 2009). But the moral arc of this universe has been bending toward justice. A primary force has been what might be considered an emerging fair housing and community investment infrastructure rooted in the civil rights movement, which long had an open housing component (Squires and Chadwick 2009). For many non-profit advocacy groups, fair housing and related causes have been the core of their operation. Groups like the Leadership Conference on Civil and Human Rights, National Fair Housing Alliance, National Community Reinvestment Coalition, Center for Community Change, Center for Responsible Lending, ACORN (yes, that ACORN), the newly created Consumer Financial

Protection Bureau, and many other similar organizations have fought and struggled for many victories, including the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Community Reinvestment Act, HUD's 2015 affirmatively furthering fair housing rule, many state and local laws, and most importantly the federal Fair Housing Act of 1968 and the accompanying Fair Housing Amendments Act of 1988. In 2016 the secretaries of HUD, Education, and Transportation, in an effort to break down traditional silo'd approaches to urban policy, issued a letter "calling on local education, transportation, and housing leaders to work together on issues at the intersection of our respective missions in helping to guarantee full access to opportunity across America" (Castro et al. 2016: 1). With the assistance of fair housing lawyers, supportive foundations, sympathetic elected officials, activist scholars, muckraking journalists, sympathetic faith-based groups, and many others, diverse individuals and groups have come together on a variety of fronts. Tactics include direct action and civil disobedience, policy research, litigation, education, and lobbying for legislative and regulatory reform.

A "housing first" movement has flipped much conventional wisdom and added additional firepower to fair housing advocacy. Rather than viewing housing as a product to be purchased via the market subsequent to completing one's education and securing a good job, it is argued that housing stability must be provided first, particularly for vulnerable families that are trying to pursue formal education and find employment. As Matthew Desmond (2016) demonstrates in his widely acclaimed book *Evicted*, it is difficult to conduct a job search or plan for education or training when you do not know where you and your children will be sleeping that night or later that week. He argues persuasively that eviction and housing instability generally are causes of poverty, not just consequences of poverty. Further, it is argued by Desmond along with a growing number of scholars, organizers and other advocates that housing is a right that residents have (or should have) simply as residents, regardless of their economic status, citizenship, health needs, or other group membership, and not a consumer good to be purchased through the market. Similarly, fair housing as well as access to housing is a basic right from this perspective (Bratt et al. 2006; Howell 2016; Larimer et al. 2009; Leavitt et al. 2009). The fight for fair housing has been rough, as no doubt will be future campaigns. But today there is a cadre of skilled and committed people, offering innovative approaches, with important institutional support, that provides optimism for future progress.

As American society evolves, so do fair housing challenges. While racial and ethnic discrimination and segregation persist as central organizing features of metropolitan areas today, again, the trajectory of change has been in the right direction. But the divisions in the nation's housing markets are not just those of race and ethnicity. Consequently, as a result of pressure from below, the law has evolved and the Fair Housing Act now protects those with disabilities, families with children, and other vulnerable populations, while various state and local fair housing rules protect more than a dozen additional

groups, including veterans, families receiving public assistance and other lawful sources of income, and LGBT group members. At the same time, when new victories are achieved, new challenges surface.

Surging inequalities of income, wealth, and place have changed the context in which all of these fair housing battles play out, creating new challenges and reinforcing some traditional ones. Particularly problematic has been the rising concentration of poverty. The number of people living in poor neighborhoods (census tracts where the poverty level reached 40 percent) nearly doubled between 2000 and 2013 from 7.2 million to 13.8 million, with one of every four poor blacks and one of six poor Hispanics, compared to just one of every 13 poor whites, living in such neighborhoods (Jargowsky 2015). Fair housing remains contested terrain. As Walter F. Mondale, co-sponsor of the Fair Housing Act along with Republican Senator Edward Brooke from Massachusetts, told a HUD fair housing policy conference in the fall of 2015:

When high-income black families cannot qualify for a prime loan and are steered away from white suburbs, the goals of the Fair Housing Act are not fulfilled. When the federal and state governments will pay to build new suburban highways, streets, sewers, schools and parks, but then allow these communities to exclude affordable housing and nonwhite citizens, the goals of the Fair Housing Act are not fulfilled. When we build most new subsidized housing in poor black or Latino neighborhoods, the goals of the Fair Housing Act are not fulfilled.

(*New York Times* 2015: Sunday Review 8)

But there is more than a little light at the end of the tunnel, and it is not just a train coming the other way. Perhaps the greatest challenge today is to identify strategies and tactics that will enable us to shine an even brighter light.

The Future of Fair Housing

The Fight for Fair Housing brings together the nation's leading fair housing activists and scholars (many of whom are in both camps) to tell the stories that led to the passage of the act, its consequences, and the implications of the act going forward. It examines the critical longstanding issues that have prevailed since the law was enacted and emerging issues that have arisen over the past 50 years, all of which, unfortunately, are almost certain to persist for years after this anniversary. The 2016 elections suggest that few victories are permanent absent eternal vigilance. The following chapters delineate the strengths of past policies and victories that have been won, the limitations and challenges that remain, and most importantly key lessons for future fair housing enforcement and advocacy.

American communities, contrary to conventional wisdom, have not always been characterized by racial and ethnic segregation. In the next chapter, "From Jim Crow to Fair Housing," New York University historian Thomas J.

Sugrue delineates how the segregated patterns we have become accustomed to were created by a range of public policies and private practices that blossomed in the middle years of the 20th century. Those policies and practices, along with the consequences that followed, generated many calls for open housing laws. The Fair Housing Act was one significant culmination of that advocacy.

Despite longstanding discrimination and patterns of segregation, however, and the enactment of other significant civil rights legislation in the 1960s, the Fair Housing Act was by no means a foregone conclusion as the decade was coming to an end. In the following chapter, “The Legislative Battle for the Fair Housing Act (1966–1968),” University of Missouri law professor Rigel C. Oliveri reviews the many debates, demonstrations, and, ultimately, compromises that led to passage of the Act. Enacted at a time of racial controversy, the initial law lacked key enforcement provisions, many of which were remedied when the Fair Housing Amendments Act of 1988 was passed.

Housing discrimination and segregated living patterns did not simply limit housing choices for vulnerable populations. These housing policies and practices had serious consequences for their victims by limiting their educational options, access to jobs, availability of health care, and virtually all amenities available to more privileged populations. In “The Costs of Segregation and the Benefits of the Fair Housing Act,” Sam Fulwood III of the Center for American Progress assesses these costs and shows how enactment of this law did more than just create housing opportunities. It also created educational and job opportunities, access to safer streets, and exposure to cleaner environments, along with opportunities to secure many other public and private goods and services.

The Fair Housing Act has long focused on the experiences of African Americans, Latinos, and other people of color. But other vulnerable populations are also protected by this law. In their chapter, “More Than Just Race: Proliferation of Protected Groups and the Increasing Influence of the Act,” Michael Allen and Jamie Crook, with the law firm of Relman, Dane & Colfax, examine the Fair Housing Act’s prohibitions against discrimination on the basis of religion, sex, LGBT status, familial status, and disability. Enforcement agencies receive many complaints of such discrimination, which has increasingly become the subject of much advocacy and enforcement. Fair housing initiatives have become a complex mosaic of issues and interest groups.

A major fair housing issue has long been, and continues to be, access to credit, particularly for home mortgage loans. In her chapter, “The Fair Housing Act: A Tool for Expanding Access to Quality Credit,” Lisa Rice, Executive Vice President of the National Fair Housing Alliance, provides the history and current implications of the longstanding dual credit market in the United States and its intricate intersections with patterns of residential segregation. That pattern made it easier both for the mainstream lending industry to avoid minority and low-income households and neighborhoods for decades and for predatory and fringe lenders to target these very same borrowers in recent years. One constant is that there has never been a time when the financial

mainstream has been the primary source of credit for consumers of color. Rice offers a new way forward that may have already presented itself in a number of recent innovative products, underwriting tools, and financial programs. She shows how the Fair Housing Act and recent fair lending rules may be forcing the industry to examine these solutions and adopt meaningful changes to dismantle the dual finance system.

Immigrants have long encountered unique challenges in securing a decent home and a suitable living environment in the U.S., as Jesus Hernandez, a sociologist at the University of California, Davis, documents in his chapter, "The Rocky Road Home: Latino Immigration and Fair Housing in California." Immigrants are members of groups that are protected under the Fair Housing Act even though nativity itself is not a protected group. Recent debates over immigration policies have increased the complexity of these issues. Paradoxically, seemingly progressive "smart growth" and "sustainable development" policies have often adversely affected housing opportunities in rural California communities and other immigrant enclaves. These policy initiatives and the structural changes they nurture are becoming as important, if not more important, than explicit discrimination on the part of housing providers as barriers to housing opportunities. And as Hernandez demonstrates, how we treat immigrants in the nation's housing market will go a long way toward determining their life chances generally in their new home.

Asian Americans, now the fastest-growing racial minority group, have also faced various forms of discrimination and residential segregation despite their stereotype as a "model minority." After Asian immigrants were recruited as laborers, they were excluded and expelled at U.S. borders and subjected to wartime internment. Chinese Americans and Japanese Americans, as well as communities arriving later, have sought to form ethnic enclaves such as Chinatowns and Nihonmachi, respectively. With contemporary white flight from predominantly Asian ethnoburbs, Asian Americans remain socially isolated, to a lesser extent than African Americans and Hispanics, but still at great cost. One constant, however, is that the Asian American experience has long been shaped with race in mind, as Frank H. Wu, Chancellor and Dean of the University of California Hastings College of Law, demonstrates in his chapter, "From the 'Perpetual Foreigner' to the 'Model Minority' to the New Transnational Elite: The Residential Segregation of Asian Americans."

A long overlooked group that experiences widespread discrimination in the nation's housing markets is the large number of people returning to their communities from incarceration, as John P. Relman, founder and managing partner of Relman, Dane & Colfax, and Sasha Samberg-Champion, an attorney with the law firm, establish in their chapter, "At the Intersection of Criminal Justice and Fair Housing." Among the many challenges returning citizens face is finding a place to live. Discriminatory policing and related criminal justice practices exacerbate these problems. Bans on those with criminal records in public housing and by rental agents, local nuisance standards that often lead to evictions disproportionately in minority communities, and related practices

have a disparate impact on African Americans in housing markets. Relman and Samberg-Champion reveal how the Fair Housing Act, particularly the “disparate impact” standard, provides tools for dealing with these obstacles.

A particularly critical legal tool in fair housing enforcement is the disparate impact standard under which violations of the Fair Housing Act can be shown even if no racial intent is proven. The Supreme Court confirmed in 2015 in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project* that disparate impact liability is an appropriate tool for eliminating practices that are neutral on their face but result in a negative discriminatory effect against members of a protected class. In their chapter, “The Legacy and the Promise of Disparate Impact,” Morgan Williams of the National Fair Housing Alliance and Tulane University Law School professor Stacy Seicshnaydre show how certain policies or practices which may not be implemented for a discriminatory reason still perpetuate the effects of prior racial discrimination. Housing, lending, and insurance markets were once bastions of overt discrimination that directly contributed to segregation and served as barriers to the achievement of residential integration. Perhaps more subtle public policies like exclusionary zoning rules have also been major contributors to these patterns. If the overt practices have faded, more subtle ones have perpetuated inequities in these markets. Disparate impact litigation has been, and will continue to be, an effective tool to counter these practices. This chapter examines how housing discrimination cases involving violations of the Fair Housing Act based on disparate impact have played a critical role in addressing discriminatory policies and practices and will continue to be an important tool in realizing the promise of the Fair Housing Act.

Creating more vibrant and inclusive communities, the second mandate of the Fair Housing Act, has been lost amidst the many other controversies over housing and community development policy and practice. As University of Southern California economist Raphael W. Bostic and his student Arthur Acolin note in “Affirmatively Furthering Fair Housing: The Mandate to End Segregation,” the Fair Housing Act requires recipients of federal housing and community development dollars to affirmatively further this objective of fair housing and create more inclusive communities. While this has been, at best, an uneven effort, Bostic and Acolin show how new tools may provide reason for optimism on this front in the near future.

A longstanding debate among progressive community development advocates has been the extent to which efforts should focus on mobility programs that give residents of distressed neighborhoods more opportunities to move out or on investments to improve those communities. While most observers at least pay lip service to the need for both strategies, debates still rage over the merits and demerits of both approaches. Does mobility undercut traditional support networks? Does investment in distressed communities lead to gentrification and displacement of longstanding but relatively poor residents? The challenge is to find complementary ways to enhance choice and create more inclusive and vibrant communities. Families who want to move should

be able to do so, while those who want to stay put should have that option. In “Opportunity Communities: Overcoming the Debate Over Mobility Versus Place-Based Strategies,” John Powell, University of California law professor and Executive Director of the Haas Institute for a Fair and Inclusive Society, and his Haas Institute colleague Stephen Menendian, offer an opportunity-based housing program for cutting through this Gordian knot.

The suburbs have long been a battleground of fair housing struggles, but in recent years many have become diverse communities. For some, however, the diversity they currently exhibit may simply constitute a temporary stage as they transition to predominantly non-white and poor communities. As Myron Orfield, a University of Minnesota law professor, and Will Stancil, Research Fellow at the Institute on Metropolitan Opportunity at the University of Minnesota, show in their chapter, “Fair Housing and Stable Suburban Integration,” suburban diversity is more a reflection of resegregation than integration. They make the case that creating stable metropolitan regional integration is critical to realizing the objectives of the Fair Housing Act and lay out the planning necessary to do so. HUD’s new rule to affirmatively further fair housing (particularly because of its regional focus) is one of several planning tools that they note can be used to undercut current trends towards resegregation and create stable, integrated, and prosperous communities for all.

The surging inequality of income and wealth of recent years, and the skewed politics that follow, create a challenging environment in which to achieve fair housing goals. If it is a cliché to say that race and class both matter, this is still no doubt the case. And all too often housing providers hide behind decisions purportedly based on income as a pretext for racial and ethnic discrimination. In their chapter, “The Intersections of Race and Class: Zoning, Affordable Housing, and Segregation in U.S. Metropolitan Areas,” Princeton University sociologist Douglas S. Massey and Jacob S. Rugh, a sociologist at Brigham Young University, demonstrate how restrictive zoning and land use practices perpetuate racial and ethnic segregation, contributing to the concentration of poverty. More importantly, they offer strategies that can reduce racial segregation and concentrated poverty, and nurture more balanced, inclusive communities increasing opportunities for upward mobility for all.

Housing discrimination and segregation persist and have serious consequences (sometimes life and death consequences) for all communities, and not just the immediate victims of illegal behavior. At the same time, the federal Fair Housing Act has had significant positive impacts on many communities and residents who have long paid many of these costs. In the concluding chapter, “Living Downstream: The Fair Housing Act at Fifty,” University of California, Santa Barbara sociologist George Lipsitz shows how the fair housing movement must change, as society has changed, by challenging emerging structural and institutional forms of discrimination in order to build on these victories.

Walter F. Mondale, who along with Massachusetts Republican Senator Edward Brooke co-sponsored the Fair Housing Act, reminds us what the world

looked like in 1968, how different it is today, and how far we still have to go to achieve the reality of fair housing. In his afterword, “Ending Segregation: The Fair Housing Act’s Unfinished Business,” he drives home the importance of integration as the key for creating equal housing opportunity and for ameliorating many other challenges that face the nation’s metropolitan areas.

Fair housing advocates, lawyers, housing providers, elected officials, and many others have been directly involved in fair housing debates and related struggles for social justice. But all residents are affected by these policies and practices. The following chapters lay out pathways for addressing the nation’s continuing challenges in fair housing, race and ethnic relations generally, surging inequality, the future of our increasingly diverse cities and metropolitan areas, and the many other schisms that are dividing us, if we so choose. As Norman Rockwell would no doubt attest, new kids in neighborhoods everywhere, if not all their neighbors, hope we do.

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