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## Property, Race, Segregation, and the State

Author : Ezra Rosser

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Richard Rothstein, [The Color of Law: A Forgotten History of How Our Government Segregated America](#) (2017).

Property scholars have neither forgotten nor ignored the government's role in creating and furthering racial segregation. Scholars have written extensive work on redlining,<sup>1</sup> racially restrictive covenants,<sup>2</sup> the siting of public housing in minority poor communities,<sup>3</sup> and the resistance of wealthier white towns to affordable housing.<sup>4</sup>

Nevertheless, Richard Rothstein's book, *The Color of Law*, should be required reading for property scholars and students. Beautifully written, the book is packed with new details and stories that illustrate the many ways government—at the local, state, and federal levels—denied African-Americans equal access to space and property.

Rothstein's goal is to convince readers that contemporary segregation is not the result of market forces but reflects the operation of de jure segregationist policies. Using historical research showing the racial animus of policymakers, *The Color of Law* connects historical examples of segregation drawn explicitly along racial lines with segregation accomplished through supposedly race-neutral guidelines such as single-family zoning.

As Rothstein shows, when the Supreme Court disallowed localities from explicitly denying African-American families a right to live in protected white communities, cities responded by both ignoring the Supreme Court's commands and by adopting policies that, while not racist on their face, shared the same motivation.

I first approached *The Color of Law* as a chore. As someone who writes about race and property,<sup>5</sup> I felt I compelled to read the book, but my expectations were low. Even if the American public does not appreciate the way in which Home Owners' Loan Corporation appraisals combined with Federal Housing Administration lending practices in support of the white middle class and discriminated against African-American families, countless law review articles already tell that story. But *The Color of Law* not only makes that story come alive by showing how government policy blocked particular African-American families from acquiring property they could afford, but it also shows how a web of other policies contributed to segregation.

Borrowing a page from Jedediah Purdy's move in *The Meaning of Property* to look at labor law through a property lens,<sup>6</sup> Rothstein shows how government-supported employment discrimination suppressed incomes and made it much more difficult for African-Americans to acquire property. *The Color of Law* also highlights the ways white communities used violence, with the approval, and oftentimes involvement of, their local governments, to push out African-Americans.

Some areas that we now consider "white" are that way today because they adopted sundown policies, which forbade African-Americans "from residing or even from being within town borders after dark." (P. 42.) When African-Americans sought to integrate neighbors—such as in Levittown, New Jersey and Richmond, California—white mobs harassed incoming black families mercilessly.

Even though such mob violence is often not thought of as government action, as Rothstein argues, when police officers support the mob and fail to check those officers or prosecute white rioters who threaten African-American homeowners, such behavior cannot be written off as "rogue actions" but instead amounts to state policy. (P. 142.) The attention in recent years to disproportionate targeting of African-Americans by police for scrutiny and violence only serves to underline the importance of Rothstein's argument that, though segregation can appear to be the result of

individual choices, it instead has a de jure character.

The only real concern I had when reading *The Color of Law* is that of readership. The book seems destined to be read by those already prepared to accept its central argument and never opened by those who prefer to ignore the inexorable link between race and property.

*The Color of Law* is not the first book to highlight the ways that today's segregation and wealth disparities are the result of past government action.<sup>7</sup> But its vivid details and quality writing makes *The Color of Law* worth the attention of those already familiar with the major issues and, most importantly, of those who prefer to put blinders on when it comes to race as they think and write about property.

1. See Ta-Nehisi Coates, *The Case for Reparations*, **The Atlantic** (June 2014) (highlighting the history and significance of redlining). [?]
2. See, e.g., Richard R.W. Brooks & Carol M. Rose, **Saving the Neighborhood: Racially Restrictive Covenants, Law, and Social Norms** (2013). [?]
3. See Michael H. Schill & Susan M. Wachter, *The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America*, 143 **U. Penn. L. Rev.** 1285 (1995). [?]
4. For a great history of the fight for affordable housing in one particular white suburb, see David L. Kirp et al., **Our Town: Race, Housing, and the Soul of Suburbia** (1996). [?]
5. See Ezra Rosser, *The Ambition and Transformative Potential of Progressive Property*, 101 **Calif. L. Rev.** 107 (2013). [?]
6. See Jedediah Purdy, **The Meaning of Property: Freedom, Community, and the Legal Imagination** (2010). [?]
7. See, e.g., Thomas M. Shapiro, **The Hidden Cost of Being African American: How Wealth Perpetuates Inequality** (2005); Douglas S. Massey & Nancy A. Denton, **American Apartheid: Segregation and the Making of the Underclass** (1993). [?]

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