
From the Reading Room

Tim Iglesias

*The Fight for Fair Housing: Causes, Consequences and Future
Implications of the 1968 Federal Fair Housing Act*
Routledge 2018
Edited by Gregory D. Squires

The places where we spend our time affect the people we are and can become. These places have an impact on our sense of self, our sense of safety, the kind of work we get, the ways we interact with other people, even our ability to function as citizens in a democracy.

Tony Hiss, *THE EXPERIENCE OF PLACE* (1990), p. xi.

On the occasion of the 50th anniversary of the passage of the federal Fair Housing Act (FHA), Gregory D. Squires, a professor of sociology, public policy, and public administration at George Washington University, has gathered a wide range of fair housing experts to produce an edited volume of 15 brief chapters reflecting on the state of fair housing in the United States and encouraging full enforcement so that the FHA's goals of eliminating discrimination and promoting integrated patterns of living can be realized.

The authors of the chapters include practicing attorneys, public policy experts, social science academics, law professors, and a columnist. A Forward by legendary civil rights leader Wade Henderson and an inspiring Afterward by former Vice President and Senator Walter Mondale, co-author of the FHA, bookend the chapters. All of the chapters are well grounded in a historical perspective and accompanied by extensive citations. Overall, the arguments and writing style will be accessible to most readers.

The volume's touchstone is a consistent, clear-eyed recognition of the importance of stable, decent, affordable, and well-located housing because of the demonstrated critical influence one's zip code has on one's access to a wide range of opportunities. The chapter topics include history, some legal aspects of the FHA, and experiences specific to certain protected

Tim Iglesias (iglesias@usfca.edu) is Professor of Law at the University of San Francisco School of Law and editor-in-chief of the Journal of Affordable Housing & Community Development Law.

classes, but the main focus of the book is racial residential segregation. Most of the chapters address one or more aspects of segregation, including its historical causes (with a repeated emphasis on government actions and responsibility), its consequences and legacy, its nature, or strategies to address it.

The book makes two important contributions to fair housing literature. First, some chapters (especially chapters 10, 11, 13, and 15) begin to articulate an argument that effective implementation of fair housing law is not just good for members of protected classes but valuable for everyone because it can help markets work better, promote democracy, and expand opportunity for all. The second valuable contribution is that the chapters addressing racial residential segregation (especially chapters 12 through 15) present a very dynamic and comprehensive view of the nature of racial residential segregation, which is necessary for effective action to end it and mitigate its effects.

Fair Housing Is Good for Everyone

In Chapter 10, General Counsel of the National Fair Housing Alliance Morgan Williams and Professor Stacy Seicshnaydre explain how disparate impact liability promotes best practices in zoning, lending, and property insurance while it fosters fair housing. This point demonstrates that fair housing law helps the whole society by improving how markets function. In Chapter 11, Professor Raphael Bostic and PhD student Arthur Acolin frame the duty to affirmatively further fair housing as a carrot that can promote economic development and thereby align with policymakers' other purposes. In Chapter 13, Myron Orfield and Will Stancil argue that preventing ongoing resegregation through fair housing planning is in "the clear self-interest of these communities," but because they are not aware of this, "it is essential to educate the public about the problems and costs of suburban segregation, the benefits of fair housing, and the potential of fair housing enforcement to strengthen residential markets, increase access to credit, stabilize schools, and provide jobs and opportunities." While major transformation will be required, "in a deliberately and stably integrated society, all places can prosper." Finally, in Chapter 15, Professor George Lipsitz observes: "The unifying principle in fair housing law is not the identity of the injured but the fact of injury itself and the harm it enacts on the mobility and free interactions that a democratic society requires." He supports his point using the Great Recession that was triggered by the mortgage foreclosure crisis. "It is not just that all members of society have a stake in a free and open commons, but also that the financial interests of the wealthy are directly linked to the fate of the poor." Citing research by Daria Roithmayr, he notes, "[t]he predatory exploitation of the non-wealthy mortgage holders before 2008 created a national and global credit crisis for the rich as well as the poor."

In contrast to the perception that fair housing secures special rights only for some (often disfavored) segments of the population, the framing

that fair housing is good for everyone is both legitimate and likely to attract necessary support from members of the public and decision-makers who are open and not implacably hostile to fair housing. While it is true, as Lipsitz observes, “this line of argument has always been a part of the project of fair housing law,” it seems particularly relevant and necessary to emphasize now.¹ Yet, this framing needs more elaboration and evidence to be persuasive to people who are currently on some continuum of being uninterested and indifferent to moderately resistant. Importantly, this approach is not a cure all: there are probably limits to the demonstrable benefit to all of fair housing, for example, because in any given community at any given time opportunity will be limited and distributed. However, the promise of this approach certainly warrants exploration and further development.

The Complex Nature of Racial Residential Segregation

Traditionally, racial residential segregation is defined by various statistical measures. For example, Squires describes the dissimilarity index, “which signifies the distribution of two groups across a geographic area varying from 0, indicating total integration, to 1, indicating complete segregation.” These measures demonstrate the existence of residential settlement patterns that then are named as constituting residential segregation. On this view, the legacy of racial residential segregation generally represents the fact that people of color are clustered and stuck in often disadvantaged communities separated from and thus deprived of opportunities for better education, jobs, and health that are available in other communities. For some, this is the endpoint of their understanding of residential segregation. However, this presentation and treatment of racial residential segregation tends to reify it as a static, almost merely physical, condition. It is as if segregation could be cured once and for all merely by the moving a certain percentage of members of each race into neighborhoods that would reflect a more balanced proportion of racial groups. Certain phrasing, such as “Geography of Opportunity” or “Moving to Opportunity,” can subtly support this oversimplification, as if “opportunity” was merely an objective condition that exists in some communities and not in others. Similarly, while Henderson’s metaphor—that fair housing is “the antidote for the poison of segregation in America”—is true, it also implies a static conception of segregation that can be cured by an injection. Unfortunately, the reality of racial residential segregation is not so simple.

1. This insight was beautifully articulated by the Reverend Martin Luther King Jr. in his *Letter from Birmingham Jail*: “In a real sense all life is inter-related. All men are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. I can never be what I ought to be until you are what you ought to be, and you can never be what you ought to be until I am what I ought to be. . . . This is the inter-related structure of reality.”

Identifying all the dynamics of racial residential segregation and unpacking fully the legacy of racial residential segregation is beyond the scope of this review. As Lipsitz writes: "Discrimination is systemic and structural, impersonal and institutional, collective, cumulative and continuing." But I will sample some that the book offers.

Segregation has consequences. Professor Thomas Sugrue (and others) detail the now familiar litany of consequences of extended racial residential segregation for people of color, including "racially homogenous public institutions that are geographically defined, most importantly school districts," the effects that racially coded neighborhoods or cities have on property values and real estate investment and purchase decisions, limitations on access to employment opportunities, isolation from decent health care, food deserts, vulnerability to predatory financial institutions, racial concentration of poverty, and "devastating consequences for wealth accumulation by minorities."

Segregation is self-reinforcing and self-replicating. As Sugrue writes: "Racial separation has become a self-fulfilling prophecy. Whites do not live near minorities. Their residential distance fosters misinformation and mistrust. It leads to a perpetuation of racial stereotypes that then become a basis and justification for racial segregation." Professors Douglas Massey and Jacob Rugh point out: "The growing interplay between race and class in the residential space of Metropolitan America has created divergent social worlds for affluent whites and Asians on the one hand and poor blacks and Hispanics on the other. . . . At present segregation is created and reproduced more by structured patterns of selective residential mobility along the lines of race and class than by overt or intentional discrimination." In a sense we are all in some deep ways products of persistent racial residential segregation. We co-create our environments and communities as they form us.² Or as Lipsitz puts it: "It is not that housing discrimination sadly takes place in a society also marred by racism and inequality, but rather that unfair housing is the engine that drives racial subordination and economic stratification."

Segregation is unacknowledged. Sugrue elucidates that while segregation was largely a product of government decisions and therefore was not inevitable, it is broadly perceived as natural, as a matter of free choice in the market and even desirable. Drawing on the research of Professor Patrick Sharkey, Sam Fulwood III offers one of several articulations of how and why segregation and its consequences are likely to be invisible, ignored, misunderstood, or denied: "Once poor and black Americans became permanently isolated in segregated communities locked in poverty with limited access to the levers of power or means for upward mobility,

2. Lipsitz quotes Charles Mills: "[y]ou are what you are in part because you originate from a certain kind of space, and that space has those properties in part because it is inhabited by creatures like you." [278] Mills 1997: 42

political elites easily blamed them for their own victimhood, ignoring the institutional forces that were critical to implementing and sustaining their limitations." And Lipsitz explains: "... [P]eople who live in well-off communities wall themselves off from the negative consequences of poverty and evade their obligations to combat it. They develop a self-centered, defensive localism and hostile privatism grounded in hoarding amenities and opportunities and exporting hazards and nuisances elsewhere. They come to believe that people who *have* problems *are* problems. They become inured to the suffering of others and fearful of contact with people who are not like themselves."

Because of these dynamics, merely *disrupting* segregation (to use the currently popular framing for social change) by rearranging where some people live will be ineffective because it ignores the profound economic and social aspects of segregation that make segregation self-reinforcing and self-replicating, increasing the likelihood of re-segregation.

Gentrification provides an elucidating example. Gentrification represents the relocation of whites from suburbs to poor and primarily minority communities and often the movement of some minority households to previously mostly white suburbs. On a static statistical basis, these moves make a net improvement in both communities toward better racial balance. But this view of gentrification as solving segregation would be illusory and naïve. The movement by people of color out of the city is likely to be involuntary displacement to possibly hostile neighborhoods or to already segregated neighborhoods with fewer opportunities than the city they left. And, as Professor John Powell predicted more than 15 years ago: "These neighborhoods are not in transition to become mixed income, multiracial communities; instead they are in transition to become middle- and upper-middle-class communities."

In Chapter 13, Orfield and Stancil dig deep into neighborhood transitions and begin with some good news: "[a] plurality of Americans in American metropolitan regions now live in racially diverse, integrated suburbs." This prevalence of statistically more integrated neighborhoods is likely more than many readers would assume, but it is not a cause for rejoicing that "the beloved community" is achieved. Rather, the chapter hastens to explain that in most regions, these patterns of integration are not stable; they have not emerged "as the product of coordinated policy, but as a consequence of expanding segregation." The sobering truth is that "segregation remains the primary organizing principle of the American city." The authors counsel that the focus our attention must be not on the outdated dichotomy of city versus suburb. "In place of monolithically white suburbs, demographic change, suburbanization, and continuing segregation has created a continuum of community types: central cities, diverse suburbs, predominantly non-white suburbs, predominantly white suburbs, and exurbs." They stress "America's integrated places must be protected and nurtured by proactive fair housing policy," which requires paying close attention to the growth, decline, stagnation, and transition of

various types of communities. Therefore, maintaining and sustaining integrated suburbs, the focus of Chapter 13, is as important as initiating integrated patterns of living in a particular geographic area where they had been lacking.

The book's analysis of the nature of segregation warrants deeper attention. It demands a high level of sophistication of fair housing advocates to understand the phenomenon for themselves and to explain it to others. Part of this challenge is identifying an appropriate image or metaphor that captures the multiple dynamics of discrimination. In Chapter 15, Lipsitz employs an ecological metaphor, *The Poisoned Fish and the Polluted River*, in which discrimination has polluted a river upstream but most fair housing work is being conducted downstream, attending to the injuries of victims of housing discrimination instead of cleaning up the ongoing pollution occurring upstream. Whether this ecological metaphor encompasses all of the multi-dimensional, complex elements should be subject to additional consideration, but we need a rich image that commands sufficient attention so someone will have the interest, and frankly the patience, to take it all in.³ Given that need, this analysis would have been a fruitful *starting* point for the book.

The book's analysis also complicates the task of identifying solutions that will be effective, because in addition to anticipating and preventing or mitigating deliberate backlash, solutions must account for the inherent dynamics of segregation that will tend towards re-segregation. Whether and how strategies should explicitly take race into account is a difficult issue within fair housing law, and one not addressed in the book. Proposing effective solutions also demands that fair housing advocates articulate a compelling vision of residential integration. For all of the volume's emphasis on the problem of segregation and the need for residential integration, none of the authors explicitly or clearly defines "integration." A careful reader will discern that they do not share a single view.⁴

3. For an alternative ecological metaphor of racism, see Camara Phyllis Jones, *Levels of Racism: a Theoretic Framework and a Gardener's Tale*, 90(8) AM. J. PUB. HEALTH 1212-15 (Aug. 2000) (proposing an understanding of racism at three levels (institutional, personally mediated, and internalized) and offering an allegory about a gardener with two flower boxes, rich and poor soil, and red and pink flowers), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446334/> (last visited Jan. 19, 2018).

4. I have argued that there are at least two competing conceptions of integration that animate the progressive community, and that it would be useful to hash out an agreement on a preferred vision. Briefly, one concept, dubbed the "traditional integration model," concerns the nature or quality of a community. It focuses on the complexion of a community as a geographical unit and the social relationships among members of different income groups or racial groups within it. This concept asks: Who lives there and how do they relate to each other? The second concept, "the individual access to the opportunity structure model," focuses on how the physical location of a household relates to the opportunity structure of a commu-

The overall effect of acknowledging the dynamism and complexity of segregation presented by the book can be sobering, perplexing, and even depressing. Still, from this reviewer's perspective, if we are serious about this work, we must engage it with the intellectual depth and vigor that it demands.

A Lack of Overarching Structure

In contrast to the two most recent nationally popular books on housing written by single authors, *Evicted* by Matthew Desmond and *The Color of Law* by Richard Rothstein, this book is an edited volume of essays. Because many of the authors are not attorneys, they bring valuable and interesting insights from their own fields, primarily the social sciences. Unfortunately, the overall effectiveness of the book is limited because it is somewhat disjointed. Every chapter expresses some version of the thesis "some important gains have been made, but much more remains to be done." However, there is no overall analysis that connects the chapters, pulling the manifold strands together to make the book cohesive and therefore more impactful. Relatedly, the volume demonstrates the importance of collaboration among attorneys, social scientists, and fair housing advocates, but it does not model this interaction because the chapters are siloed. Only Chapter 10 cross-references to other chapters. Consequently, it is not clear whether there is one "fight for fair housing" that the reader is being invited into, and, if so, what it is. It appears, by dint of the sheer number of pages dedicated to it, that the primary fight for fair housing is overcoming racial residential segregation, but the book never intones this as its overriding theme.

As a result of the lack of deliberate focus, the coverage of fair housing issues is not comprehensive. Even if comprehensiveness would not have been possible, the book would have benefited from including a basic primer on the substance and mechanics of the Fair Housing Act, explaining the protected classes, defining prohibited acts, explaining the types discriminatory legal claims, and explaining the various ways in which fair housing claims can be brought and enforced.⁵ While some of this information is included, it is scattered throughout the book. Many important and controversial contemporary issues, such as disability rights (including service animals and support animals), the scope of sex discrimination, source of income discrimination, and harassment, receive only limited and occa-

city (e.g., good schools, good jobs, decent shopping, and healthy neighborhoods). The primary focus of this model is maximizing the access of residents to opportunities so that they can improve their lives. It does not inquire into the relationships among the members of the households who live in a community, but rather into the economic and social success of the individuals and families. See Tim Iglesias, *Two Competing Concepts of Residential Integration*, in *SOCIAL EQUITY IN A TIME OF CHANGE: A CRITICAL 21ST CENTURY MOVEMENT* (Richard Gregory Johnson III ed., 2017).

5. For an introduction to the federal Fair Housing Act, see Amy Glassman and Nydia Manouchka Pouyes, *Beginner's Guide to the Fair Housing Act* (ABA, 2016).

sional attention. Most surprisingly, there is no mention of implicit bias and both the challenges and opportunities that this important issue offers to fair housing. Still, there is much to appreciate in this book.

While the book lacks an overarching structure, Chapter 1 provides an introduction, and the rest of the chapters can be roughly organized into four groups: the historical chapters (Chapters 2 and 3), chapters on protected classes (Chapters 5, 7, and 8), chapters focusing on a particular aspect or application of fair housing law (Chapters 6, 9–11), and chapters primarily on systemic discrimination and residential segregation (Chapters 4, 12–15).

In Chapter 1, “Fair Housing Yesterday, Today, and Tomorrow,” Squires rightly paints a sober but hopeful picture of the problems facing fair housing law, especially how the surging inequalities of income, wealth, and place have changed the context in which fair housing battles play out, created new challenges, and reinforced some traditional ones.

The Historical Chapters

The historical chapters are useful and interesting. In Chapter 2, “From Jim Crow to Fair Housing,” Sugrue begins with the helpful reminder that racial separation in housing was neither natural nor inevitable in the United States, but rather “the consequence of America’s long and troubled history of racial violence and exclusion.” He then offers a very readable account of the proliferation of systematic residential racial segregation, including familiar elements of the story, such as governmental endorsement of redlining; active participation by the housing industry; intentional discriminatory organizing efforts (primarily by white homeowners organizations); and the long-suffering responses to segregation, highlighting the roles of civil rights activism. Along with covering major events, he includes some interesting tidbits, such as the campaign to mail pens to President Kennedy, who had promised to eliminate housing discrimination in federally subsidized housing developments “with the stroke of a pen.” Unfortunately, his history ends sometime in the 1990s, so the last 20 years are not reviewed.

In Chapter 3, “The Legislative Battle for the Fair Housing Act (1966 to 1968),” after describing the political and social context of the legislative debates, Professor Rigel Oliveri carefully tells the story of prior unsuccessful efforts in 1966 and 1967 to enact a national fair housing law. She aptly summarizes the primary arguments against such a law (that regulating private transactions between individuals exceeded Congress’s authority under the Commerce Clause and was better left to the states and that it represented unwarranted intrusion into the property rights of ordinary citizens who had the right to choose their housing and also their neighbors) and in favor (that the legislation was consistent with the Commerce Clause because of the economic effect the cumulative and economic effect of housing transactions, and that it was necessary to provide equal access to housing as a matter of human dignity and as a method to lift the black

population out of poverty). She then digs into the details of the legislative procedural twists and turns, negotiations, and compromises that preceded the passage of the FHA in 1968. In the meantime, she reveals the role that housing discrimination against black veterans of the Vietnam War might have played in enabling passage.

In Oliveri's account, the legislative success appears to have been the result of the combination of the Kerner Commission report, Senator Dirksen's reluctant support (but at the price of an amendment weakening enforcement), deal making and arm twisting (especially President Johnson's last minute deal to secure the vote of Senator E.L. Bartlett (D-AK)), and, critically, the assassination of Dr. Martin Luther King, Jr.

The 1968 FHA covered only race, color, religion, and national origin. This chapter briefly catalogues the later expansions of FHA's coverage to include prohibitions against discrimination based on sex in 1974 and familial status and disability in 1988.

Chapters on Protected Classes

These chapters are illuminating. In Chapter 5, "More Than Just Race: Proliferation of Protected Groups and the Increasing Influence of the Act," civil rights litigators Michael Allen and Jamie Crook explore the FHA's coverage and application to religion, sex, familial status, and disability. Their brief discussion of religious discrimination includes attention to discrimination against Muslims. The examination of sex discrimination describes the historical development of these claims from initially focused on women's right to own or rent housing to encompass sexual harassment, discrimination against survivors of domestic violence, and attempts to expand the coverage to claims based on sex/gender stereotyping affecting sexual orientation and gender identity. The familial status discrimination section considers its links to racial discrimination, including residential occupancy standards, and to evolving definitions of family. On some measures disability discrimination constitutes the largest proportion of FHA claims. Accordingly, this chapter provides a useful brief overview of disability claims in four contexts: by local governments in zoning and land-use disputes; by lenders and insurers; by a variety of housing providers; and by builders and developers, including regarding accessibility.

The chapter correctly presents the extension of FHA coverage as "demonstrating both the affordable housing act's adaptability as well as the evolving forms of invidious housing discrimination that persist in our society." Missing is the recognition that this continuous expansion of the FHA's coverage creates an important, unintended consequence for the fair housing movement: the addition of each new protected class or application to a new situation effectively moves the goalposts, rendering any comprehensive evaluation of the success of the FHA near impossible.

All of the book's chapters are national in scope, except Chapter 7, "The Rocky Road Home: Latino Immigration and Fair Housing in California," by sociologist Jesus Hernandez. This chapter explores California's long depen-

dence on Latino labor and the specific forms of housing discrimination suffered by that community, including anti-immigrant housing policies, predatory lending, gentrification, and the exposure of Latinos to hazardous environmental conditions. This chapter mixes technical information about pollution affecting Latinos' housing opportunities with brief, colorful stories and a call for HUD to implement its 2012–2015 Environmental Justice Strategy and Affirmatively Furthering Fair Housing rule.

Finally, in Chapter 8, "From the 'Perpetual Foreigner' to the 'Model Minority' to the New Transnational Elite: the Residential Segregation of Asian Americans," Professor Frank Wu explores the unique, multi-dimensional and complex evolution of housing issues faced by Asian Americans through the succession of stereotypes through which they have been viewed. The chapter incorporates detailed historical elements and geographical distinctions, along with immigration law, intermarriage statistics, and other areas of law and policy. Professor Wu provides a welcome disaggregation of data about distinct Asian ethnicities, for example, distinguishing Chinese, and first and second generation Japanese, and directly addresses potentially controversial issues. He muses about the contradictions and ambivalence inherent in the multiple social perceptions of Asian Americans, including the phenomenon of the "ethno-burb" (a community that is ethnic but affluent). Recognizing the documented self-segregation by some Asian communities, he raises the uncomfortable question of whether some members of classes protected by the FHA may embrace different conceptions of integration than others. While less directly about fair housing law's application to Asian Americans, this chapter nonetheless makes an important contribution.

Chapters on a Particular Aspect or Application of Fair Housing Law

These chapters span a wide range of issues. In Chapter 6, "The Fair Housing Act: A Tool for Expanding Access to Quality Credit," Executive Vice President of the National Fair Housing Alliance Lisa Rice brings into laser focus how "the U.S. dual-credit market entrenched by the proliferation of segregation has contributed to the country's racial wealth gap and provided the means by which people of color and other underserved groups have experienced systemic discriminatory treatment when accessing credit." She expertly walks the reader through a variety of topics, tracing the history of government support for home ownership (with its consistent favoring of whites); a detailed explanation of how redlining works; the tragic story of the Freedman's Bank; and the key roles played by restrictive deed restrictions, underwriting and real estate valuation practices, the secondary mortgage market, and government in creating and sustaining our "financial apartheid." She demonstrates how past discriminatory financial products and practices, including the harmful use of land contracts, reverse redlining, and subprime loans, have reappeared. The chapter balances a high-level national institutional analysis with the daily

life role of payday loans and check cashing businesses. She reveals the perverse phenomenon of how the positive credit behavior of low-income consumers in the non-traditional side of the system is invisible because of the bifurcation, but their negative credit behavior is visible in the traditional side of the system, trapping them in the inferior market. Her critique is accompanied by a thoughtful analysis of how fair housing law can help, including an impressive list of the types of discriminatory behavior covered by the FHA, examples of new practices and programs that some lenders have adopted to extend credit fairly, and specific recommendations to dismantle the dual credit market and broaden credit access, for example, by incorporating non-traditional credit information (such as rental payment data) into lenders' financial decisions.

Civil rights attorneys John P. Relman and Sasha Samberg-Champion offer in Chapter 9, "At the Intersection of Criminal Justice and Fair Housing," a timely and useful explication of why criminal justice is an important, cutting edge arena for the application of fair housing law. Specifically, the chapter demonstrates how the confluence of the historical disparity of incarceration of people of color and the difficulty that released prisoners have in getting housing, combined with the proven importance of stable housing as "the lynchpin that holds the reintegration process together," constitutes a systemic structural form of discrimination and exclusion. The chapter then explores the use of disparate impact litigation to challenge housing bans based on criminal history and local "crime free" programs that often include "chronic nuisance" ordinances. Citing recent HUD guidance and a current litigation they are pursuing in New York, the authors take aim at total and categorical bans that use criminal history information to deny access to housing opportunities. They call for more nuanced and individualized screening of applicants' criminal history, including the consideration of mitigating information.

The chapter also addresses "crime free" programs that typically require landlords to check the criminal history of prospective tenants and "chronic nuisance" ordinances that encourage or require landlords to take adverse action (often eviction) when tenants violate extremely broad definitions of nuisance, such as calling the police three times during a single month, even if the calls are made by victims of domestic violence. They explain that these practices are disproportionately applied to and affect people of color, women, and persons with disabilities, thus potentially violating the FHA. The authors point out that while public safety is the proffered justification of these laws, they may actually undercut public safety by deterring legitimate police calls.

Chapter 10, "The Legacy and the Promise of Disparate Impact," is one of the few chapters that analyze a specific fair housing legal doctrine in detail. Williams and Seicshnaydre expertly explain the disparate impact standard of housing discrimination as a method of proof relying on evidence of discriminatory effects without requiring evidence of discriminatory intent. They point out the wide application of this doctrine to a vari-

ety of housing providers' decisions, underwriting practices, insurance markets, and land use development. After briefly reviewing the doctrine's legal history, the chapter briefly describes the 2013 HUD Disparate Impact Final Rule and tells the story of the U.S. Supreme Court's recognition of the disparate impact rule in its 2015 *Inclusive Communities Project (ICP)* opinion.⁶ The Court upheld the disparate impact standard based on a textual analysis of the FHA statute as informed by the history and purpose of the FHA and Congress's later amendments to the FHA in 1988. In light of confusion about the relationship between *ICP* and HUD's Final Rule, the chapter helpfully explains the Court's application of the doctrine and its discussion of the limits and safeguards of disparate impact as consistent with HUD's rule and existing disparate impact jurisprudence. The last part of the chapter offers insightful litigation advice on using disparate impact, including challenging underwriting practices that use only traditional credit criteria.

Finally, in Chapter 11, "Affirmatively Furthering Fair Housing: The Mandate to End Segregation," Bostic and Acolin explain the element of the FHA that requires certain governmental entities to affirmatively further fair housing as a necessary and important complement to the more generally recognized enforcement of fair housing law against discreet discriminatory acts and policies and as particularly important in furthering the goal of ending segregation because of how it can "reduce disparities in access to opportunity." The authors define affirmatively furthering fair housing as "taking steps to eliminate or reduce the existing disparities in income, housing, and other areas, or to increase access to opportunity with the goal of reducing disparities in income, housing, and other areas."

Taking a step back, the chapter explains in detail the initial flawed regulatory implementation of the duty, which required an Analysis of Impediments. The authors then explain how the new HUD regulation is both improved and full of promise. The chapter describes the new Assessment of Fair Housing (AFH) tool as a planning and outcome-oriented action tool grounded in widely available data and "community performance metrics" with a regional focus. They provide a clear explanation of what the six elements of an AFH means and requires. While the chapter's articulation of the promise of the new regulation is persuasive, HUD's recent action delaying implementation of the rule makes it unclear whether the promises will be realized, especially since the authors state: "The regulation's success will depend in large degree on how well HUD plays its part."

6. *Tex. Dep't of Housing & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507 (2015).

Chapters Primarily on Systemic Discrimination and Residential Segregation

These chapters are important and substantive, albeit uncoordinated. Chapter 4, “The Costs of Segregation and the Benefits of the Fair Housing Act,” by columnist Sam Fulwood III is misnamed. While it does reference substantial social research, it does not provide an organized or complete account of its announced topics. Rather, in a sense, it partially introduces the book’s major theme of residential segregation. Focusing primarily on segregation burdening African Americans, it compares U.S. segregation to South Africa’s apartheid system because the comparison “effectively captures the problematic link between public policies that discriminate in permitting citizens unfettered housing options and structural social inequality.” The author explains housing segregation as a keystone supporting racial and economic discrimination in the United States and argues that “federal support for equitable housing is a necessary and needed protection to ensure a host of other public and private social benefits that are taken for granted by populations unburdened with restrictions on where they may live.”

Chapters 4, 11, 13, and 14 all discuss the debate over mobility versus place-based strategies to counter the effects of residential segregation. In Chapter 12, “Opportunity Communities: Overcoming the Debate Over Mobility Versus Place-based Strategies,” Professor John A. Powell and Assistant Director at the Haas Institute for a Fair and Inclusive Society Stephen Menendian make this debate the sole subject of their chapter. They aim to “cut the Gordian knot” of the longstanding debate by proposing a solution. First, they define the problem by examining patterns and trends of racial and economic segregation, re-segregation, and gentrification and the implications of those on fair housing and community development. Next, citing empirical studies, they analyze the benefits and limits of the numerous mobility and place-based strategies in solving those problems. Then they present a third strategy called “opportunity-based housing” as a synthesis of the best of both strategies. Professor Powell first articulated this approach and its accompanying implementation methodology, “opportunity mapping,” in 2002. The authors announce the use of their opportunity mapping strategy in the settlement of the important federal case *Thompson v. HUD*,⁷ in the work of other organizations, and most significantly in HUD’s Affirmatively Furthering Fair Housing tools.

As presented, opportunity-based housing appears to offer a principled solution to the debate. The key to the proposed solution is an agreement on what constitutes opportunity and access to it. But ah, there’s the rub.

7. See *Thompson v. U.S. Dep’t of Hous. & Urban Dev.*, No. CIV.A. MJG-95-309, 2004 WL 1058100 (D. Md. Jan. 29, 2004), *aff’d*, 404 F.3d 821 (4th Cir. 2005). The settlement agreement is available at http://www.naacpldf.org/files/case_issue/Thompson%20v%20HUD%20decision.pdf (last visited Jan. 20, 2018).

Opportunity mapping is replete with complex and controversial interpretive decisions. The authors do not cite any empirical validation of opportunity-based housing as meeting its articulated goals. Therefore, the debate is likely to continue, at least in some quarters. Notably, the authors recognize that in practice implementation of the opportunity-based housing approach requires the same political will, public education, and outreach that the other strategies rely on, and is still subject to the stringent limitation of resources that undergirds the debate.

Chapter 13, "Fair Housing and Stable Suburban Integration," by Orfield and Stancil offers an important corrective to common assumptions regarding the demographic situation of cities and suburbs. The authors replace the outdated dichotomy of city and suburb with a new, more detailed and dynamic taxonomy of American suburban living patterns: central cities, diverse suburbs, predominantly non-white suburbs, predominantly white suburbs, and exurbs. After defining each type of community, including its political and socio-economic characteristics, the authors trace the racial transitions that have occurred in American suburbs in the first decade of the 21st century. The authors call on fair housing advocates to recognize these trends and to incorporate them into their efforts to end discrimination and to promote sustainable integration. They propose a framework for integration that would build on HUD's Affirmatively Furthering Fair Housing rule, modified to incorporate another dimension, the "Stable Metropolitan Regional Integration" (SMRI) standards. They note that the principles underlying these SMRI standards are already articulated in HUD's Site and Neighborhood standards for public housing. They provide a list of distinct strategies appropriate to each kind of community, including for Racially Mixed Communities, the creation of "integration boards with racially inclusive membership of local officials and important community stakeholders" with the authority to "require local real estate and banking entities to cooperate by appearing before them and responding to reasonable requests for data." They worry that HUD's rule delegates too much discretion to local jurisdictions.

This chapter offers another data-driven alternative to the opportunity housing approach presented in Chapter 12. The opportunity housing model focuses on access to opportunity while this model focuses on stabilizing integrated suburbs with targeted fair housing planning based upon the nature and dynamics of the various kinds of suburbs and the community types within them. Some interaction between these two chapters would have been interesting and likely productive.

Chapter 14, "The Intersections of Race and Class: Zoning, Affordable Housing, and Segregation in U.S. Metropolitan Areas," by Massey and Rugh is a technical chapter that could appear in a journal of empirical sociology. Starting from the premise that "in the post-industrial American society segregation and the concentrated poverty it produces have emerged as the critical nexus for the production and reproduction of socioeconomic disadvantage over the life course and across generations," the authors

argue that efforts to promote residential desegregation “need to be central to any broader program of poverty reduction.” They provide an empirical demonstration that restrictive zoning regulations in suburbs function to reproduce and expand segregation. To combat this problem, they propose improving the voucher program, increasing affordable housing development, adopting inclusionary zoning programs, and effectively implementing the Affirmatively Furthering Fair Housing rule.

Finally, in Chapter 15, “Living Downstream: The Fair Housing Act at Fifty,” the most inspiring chapter in the volume, Lipsitz develops The Poisoned Fish and the Polluted River metaphor (described above) to critique the tort model of injury that informs the popular imagination about the FHA as wholly inadequate. He describes the horrific killing of Michael Brown in Ferguson, Missouri, by Officer Darren Wilson as “at its core a confrontation shaped by racialized and unequal places.” Then he takes the reader on a deep and expansive dive into the history of St. Louis, analyzing a wide array of data, including the legal cases on housing, education, and policing. He masterfully uses this history to explore the layers and interconnectedness of discriminatory policies to suggest that the killing in Ferguson is an example of what is likely to happen when pervasive and sustained housing discrimination is allowed to fester. While recognizing individual housing discrimination cases as both necessary and honorable work, he challenges fair housing attorneys to bring litigation that aims to fix the problem at its source—going upstream to clean up the river. This requires an approach that sees fair housing injuries in their full context and complexity as the “tip of an iceberg,” visible manifestations of a complex and fully linked system of racial discrimination. Such an approach also requires remedies that “address the costs of discrimination to society at large, not just by providing repair and reparation to individuals, but also by creating new democratic practices, processes, institutions, and opportunities.” He identifies a few lawsuits that exemplify this broader vision of addressing “collective injury” with “collective relief,” including *Kennedy v. City of Zanesville*,⁸ *Westchester County*,⁹ and recent cases in which cities have sued banks for injuries caused by discriminatory lending.¹⁰ Moreover, he encourages reconceiving fair housing from the tort model of injury as akin to antitrust law or hate crime law in which injuries to individuals are also considered to be crimes against the market and against the entire public sphere. He recognizes that pursuing this

8. For a summary of the case, see <http://www.relmanlaw.com/civil-rights-litigation/cases/zanesville.php> (last visited Jan. 20, 2018).

9. See, e.g., *United States ex rel. Anti-Discrimination Ctr. v. Westchester Cty.*, 495 F. Supp. 2d 375 (S.D.N.Y. 2007); *United States ex rel. Anti-Discrimination Ctr. v. Westchester Cty.*, 668 F. Supp. 2d 548 (S.D.N.Y. 2009).

10. For a summary of two of these cases, see <http://www.relmanlaw.com/civil-rights-litigation/cases/baltimore-wells-fargo.php> (last visited Jan. 20, 2018).

vision requires not just strategic litigation but also full implementation of the Affirmatively Furthering Fair Housing rule and legislation coordinated with effective social movement mobilization. He suggests a law, similar to the Home Mortgage Disclosure Act in the lending arena, that requires the property insurance industry to make its activities in minority communities publicly available. And he lifts up the work of numerous inspiring grassroots groups, including the Los Angeles Community Action Network, Causa Justa (Oakland, California), and Project Row Houses (Houston, Texas). He concludes with a hopeful twist on the river metaphor imagining how the river could become a source of great power for transformation by generating energy and new resources that will benefit everyone.

In a rousing Afterward, Mondale, one of the co-authors of the FHA, retells the story of its passage, calling on HUD to implement its Affirmatively Furthering Fair Housing rule and to use disparate impact litigation as provided in the ICP case. He criticizes a “color blind approach” to fair housing and advocates a broad view of the FHA as a tool for restoring justice to entire communities. He issues an urgent and expansive call to action proclaiming: “Everybody can play a role in building an integrated society.”

Conclusion

This book is primarily a call to action, aimed at reinvigorating those already committed to fair housing and encouraging others to join “the fight for fair housing.” Like fair housing itself, the book has many fine accomplishments, but much important work is yet to be done. Ideally, this book would articulate a clear, shared, coherent vision as well as an agenda and strategies to conduct that struggle. On this standard, the book is a missed opportunity. Still, it includes a number of excellent essays and other quite good ones that will educate and inspire many readers.

While it is obviously appropriate to mark the 50th anniversary of the enactment of the FHA, the timing of the book is complicated by the results of the 2016 election, which were known to the authors before finalizing their contributions. To date, the Trump administration and Secretary Ben Carson appear to be unenthusiastic or perhaps hostile to vigorous enforcement of fair housing law, as evidenced by their attempt to suspend the Small Area Fair Market Rent program¹¹ and their decision to delay im-

11. Notice for Suspension of Small Area Fair Market Rent (Small Area FMR) Designations, A Notice by the Housing and Urban Development Department on 12/12/2017, 82 Fed. Reg. 58439 (Dec. 12, 2017), *available at* <https://www.federalregister.gov/documents/2017/12/12/2017-26695/notice-for-suspension-of-small-area-fair-market-rent-small-area-fmr-designations-solicitation-of> (last visited Jan. 20, 2018). For an analysis of what this new program does, see *How Do Small Area Fair Market Rents Affect the Location and Number of Units Affordable to Voucher Holders?*, Data Brief, Furman Center, January 2018, http://furmancenter.org/files/NYUFurmanCenter_SAFMRbrief_5JAN2018_1.pdf (last

plementation of the Affirmatively Furthering Fair Housing Rule.¹² This is particularly ominous because so many of the authors place heavy reliance on HUD's role in using disparate impact litigation and the Affirmatively Furthering Fair Housing Rule as essential to future progress.

Yet perhaps this is only to be expected after 50 years of struggle. Quoting Dr. Martin Luther King Jr.'s close confidant Vincent Harding, Lipsitz wisely reminds us that the fair housing movement's work to date has transformed the problem: "You move into a struggle with certain kinds of visions and ideas and hopes that transform the situation, and then you can no longer go on with the same kind of visions . . . because you have created a new situation yourself."

visited Jan. 20, 2018). HUD's action was successfully challenged in *Open Communities Alliance v. Ben Carson*, Civil Action No. 17-2192 (BAH) (D.D.C. Dec. 23, 2017) (granting preliminary injunction for HUD to implement the rule on January 1, 2018).

12. Affirmatively Furthering Fair Housing: Extension of Deadline for Submission of Assessment of Fair Housing for Consolidated Plan Participants, Notice by the Housing and Urban Development Department on 01/05/2018, 83 Fed. Reg. 683 (Jan. 5, 2018), available at: <https://www.federalregister.gov/documents/2018/01/05/2018-00106/affirmatively-furthering-fair-housing-extension-of-deadline-for-submission-of-assessment-of-fair> (last visited Jan. 20, 2018).

