



### Putting Integration on the Agenda

*Stephen Menendian and Richard Rothstein*

*Moving Toward Integration: The Past and Future of Fair Housing*  
Richard H. Sander, Yana A. Kucheva & Jonathan M. Zasloff  
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#### Introduction

*Moving Toward Integration, the Past and Future of Fair Housing*, by Richard H. Sander, Yana A. Kucheva, and Jonathan M. Zasloff<sup>1</sup> (we refer hereinafter to the book as “SKZ”), begins with a powerful indictment of the harm that racial residential segregation continues to inflict. It asserts that housing segregation is the “giant answer” to the question of why on social and economic measures such as school achievement, income, wealth, homicide rates, and out-of-wedlock births, African American outcomes lag those of whites.<sup>2</sup> We would add other measures as well: for example, shorter African American life expectancies and higher rates of cardiovascular disease that arise, in part, from life in more polluted and stressful neighborhoods; the black-white wealth gap, one of the most powerful contributors to social and economic racial inequality, attributable in significant part to the exclusion of African American homeowners from neighborhoods where housing equity appreciation far exceeded inflation; and even our dangerous political polarization, which largely tracks racial lines.

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2. RICHARD H. SANDER, YANA A. KUCHEVA & JONATHAN M. ZASLOFF, MOVING TOWARD INTEGRATION, THE PAST AND FUTURE OF FAIR HOUSING 1 (2018) [hereinafter SKZ].

At a time when the problem of race is once more in the mainstream of our national discourse and the consequences of racial inequality are increasingly manifest, it remains an uncomfortable and generally unacknowledged truth that no matter what we do or how much we try, it is unlikely that we will ever address extreme racial inequality in an extremely segregated society. No matter how many policy interventions we stage or how much effort we give or resources we dedicate to addressing the student achievement gap, health disparities, the inequities of our criminal justice system, or any other problem where racial inequality is salient, our efforts are likely to have limited effect as long as extreme racial segregation persists. But even beyond the direct role that racial segregation plays in shaping life outcomes, how can we ever develop the common national identity that is essential to the preservation of our democracy if so many African Americans and whites live so far from one another that we cannot empathize with each other or have an appreciation of each other's life experiences?

SKZ's unqualified enthusiasm and insistence on the need for housing integration are a more courageous position than may be readily apparent. Many African Americans are suspicious of arguments for residential integration.<sup>3</sup> The skepticism has in recent years been reinforced by well-educated middle class African Americans who have now successfully (though not entirely or perfectly) integrated professional and corporate workplaces. There, they frequently encounter "micro-aggressions" and reasonably desire refuge after work in predominantly black communities where neighbors will not find them a curiosity, police will not wonder if they are local residents and surveil them, and perhaps most important, their children will not be bullied or patronized by white classmates. For lower-class African Americans, there is a well-founded fear that the loss of a culturally homogenous environment—churches, street life, hairdressers—will not find sufficient compensation in more highly resourced environments, but will instead result only in exile to less-friendly and even more inadequately resourced and underserved places.

These are legitimate concerns, and, while SKZ makes no mention of the costs of integration to African Americans, the authors provide a service by

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3. This is not a new phenomenon. There have always been African Americans that were skeptical of—or opposed to—integration. See *THE HAVERFORD DISCUSSIONS: A BLACK INTEGRATIONIST MANIFESTO FOR RACIAL JUSTICE* (Michael Lackey ed., 2013). (The Haverford Group was a cohort of leading black intellectuals concerned about the emergence of a new generation of black activists ambivalent about, or oppositional toward, the project of racial integration.) But there was a wider consensus among middle class African Americans not only that integration was necessary to achieve the social and economic benefits associated with residence in integrated neighborhoods, but also the commitment to the ideal of integration as a path towards mutual understanding and racial harmony. See *DOUGLAS MASSEY & NANCY DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 88–90* (1998) (summarizing black preferences for integrated neighborhoods based upon survey research).

reminding us that any calculation of the desirability of housing integration must weigh the short-term costs against its benefits to middle class and lower-income black families, as well as to whites and to American society generally. SKZ reminds us of an aphorism that was once commonplace and is now too infrequently repeated: separate can never be equal.

Despite its sweep and scope, SKZ lacks a main, overarching thesis or argument such as is found in *The New Jim Crow*.<sup>4</sup> SKZ is primarily a historical account—bolstered by the tools of social science—of the evolution of racial residential segregation over time. This account is divided into four parts, each covering a significant period. Part I focuses on 1865 to 1968; Part II covers 1968 to 1980; Part III examines 1975 to 2000; and Part IV surfaces trends in the twenty-first century, including the Great Recession and the so-called “Great Inversion,” signaling the return of white families and young professionals from the suburbs to the urban core.<sup>5</sup>

SKZ uses restricted census data to describe evolving levels of segregation across the nation since the early twentieth century,<sup>6</sup> developing some novel, original, and sometimes contrarian perspectives along the way. For example, SKZ contests usual beliefs regarding mild pre-war integration in the North; claims that the Supreme Court’s 1948 *Shelley v. Kramer* decision prohibiting court enforcement of restrictive covenants spurred a fairly rapid opening of white neighborhoods adjoining black ones; concludes that “reverse redlining” has not been a serious problem; and, most importantly, insists that the 1968 Fair Housing Act (FaHA<sup>7</sup>) was swiftly and vigorously enforced by the federal government—by the Justice Department, not by the Department of Housing and Urban Development (HUD). Some subtle racial steering continued, but SKZ asserts that African Americans could, although with a bit more effort than whites, move to any neighborhood they chose (and could afford) after 1968.

SKZ, like many other analyses of segregation,<sup>8</sup> divides the explanations of segregation into two broad categories: structural, resulting from “racial differences in income, age, and other ‘objective’ demographic factors,”<sup>9</sup> and explicitly racial or ethnic factors, such as housing discrimination, neighborhood preferences, and race-explicit policy. This question becomes

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4. As a tacit acknowledgment of this, SKZ offers “twelve underlying themes” that reflect either key points developed through the book or ideas that recur. SKZ, *supra* note 2, at 5–13.

5. ALAN EHRENHALT, *THE GREAT INVERSION AND THE FUTURE OF THE AMERICAN CITY* (2012).

6. The authors applied for and received special access to more granular census data and benefit from this access to conduct their analysis. See *id.* at xvi–xvii.

7. SKZ calls the Fair Housing Act “FaHA” to distinguish it from the FHA that designates the Federal Housing Administration. We have not seen this terminology employed before, but it is clever and should become conventional, because the use of “FHA” to describe both the law and the agency is frequently confusing.

8. See MASSEY & DENTON, *supra* note 3, at 83–114.

9. *Id.* at 243.

especially pressing when it becomes clear that SKZ takes a skeptical view of the role of racial discrimination as a major causal force in explaining contemporary patterns of racial segregation. Given SKZ's unusually sanguine view of the decline in private and government discrimination since the mid-twentieth century and skepticism about the role that present-day discrimination plays in sustaining segregated residential patterns, it becomes incumbent upon the authors to ask why, fifty years after the Fair Housing Act was enacted, residential segregation persists nationwide in such pronounced form. As deep as Sander and his co-authors dive into the historical forces that produced a segregated nation, the precise causes of racial residential segregation—especially contemporary segregation—remain astonishingly elusive. By the end of the book, the authors essentially throw up their hands, asserting that “no model yet devised can precisely predict paths from 1990 through the mid-2010s [of segregation levels and trends].”<sup>10</sup> Little wonder the authors call for more and better research on this question.<sup>11</sup>

Nonetheless, they seem to lean toward one explanation that they term a form of “market failure”: while most blacks and whites would prefer to live in integrated settings, segregation persists in the most historically segregated metropolitan areas because the concentration of African Americans in poorly resourced neighborhoods has resulted in much greater black than white demand for housing in the previously white neighborhoods that surround urban black ones.<sup>12</sup> This, they say, has only to a small degree been the result of bigoted “white flight” (they give it a more benign term—“white avoidance”) but rather has been the inevitable supply-versus-demand consequence of black buyers outbidding whites for housing in these places. Because of this demand imbalance, even in the context of normal housing turnover without voluntary “white flight,” the black proportion of an integrated neighborhood has inexorably grown, leading eventually to its “re-segregation” (from almost all white to almost all black).

In this account, re-segregation accelerated because whites and blacks define differently the integration they each wish for. Whites deem a neighborhood desirably integrated as long as they remain a heavy majority, whereas blacks seek an integration where the racial proportions are more

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10. *Id.* at 413.

11. See *id.* at 435–38.

12. Although sensitive to intra-metropolitan dynamics (see, for example, Table 20.1), SKZ's primary focus is understanding segregation at the Metropolitan Statistical Area (MSA) level. Thus, SKZ measures, analyzes, and compares MSAs' overall level of segregation against others or changes within them over time. SKZ is especially interested in understanding the changing level of segregation within a metropolitan area over time (such as between 1970 and 1980), or why the level of segregation in one MSA is significantly lower than that of another. In our references to geographical units within this review, we generally refer to a census tract as “neighborhood” or “community,” a municipality as a “city,” and “metro” or “metropolitan area” as an MSA or major urban area and surrounding environs.

equal. When whites lose their overwhelming majority, they tend to leave voluntarily, although they would have wanted to stay if racial proportions stabilized at their preferred levels.<sup>13</sup> This is a more nuanced conception of “white flight” than the term typically connotes.<sup>14</sup> But SKZ says that the demand imbalance is a far more important factor than racial preference differences in causing the transformation of previously white-segregated areas into newly segregated black ones. It was not obvious to us into which of the conventional categories (structural or “ethnic residual”) their description of “market failure with some white avoidance” falls.<sup>15</sup>

Regardless of which category the “market failure” phenomenon falls, we find the use of the term problematic.<sup>16</sup> As SKZ demonstrates (e.g., “public housing . . . was increasingly concentrated in black or ‘changing’ neighborhoods after 1950”;<sup>17</sup> “regulatory barriers and land use regulations artificially raise the cost of housing” with a disparate impact on African Americans<sup>18</sup>), racial residential segregation is as much, if not more, a policy failure as a market failure. It is policy that created it and sustains it. This is not a mere semantic criticism; it goes to the heart of what to do about segregation. If market forces are primarily to blame, then the incentives and subsidies of the kind that SKZ propose may suffice to achieve a more integrated nation by redirecting those forces. But if government policy created, sustains, and perpetuates racial residential segregation, then a more coercive constitutional or statutory remedy may be justified and necessary, such as prohibiting exclusionary (aka snob) zoning or mandating inclusionary zoning.<sup>19</sup>

SKZ distinguishes among less segregated metropolises, where it asserts that the demand imbalance was not as determinative. In the mid-twentieth century, when African Americans in major Northern cities moved out of existing areas of urban racial concentration, they mostly moved into neighborhoods adjoining the ghetto, resulting in the demand imbalance that we just described. Although SKZ does not use the term, these people were African Americans whom historians describe as having come to the North

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13. Thomas Schelling in 1969 first posited and popularized the argument that resegregation is due primarily to racial differences in the preferred share of other race neighbors. Schelling was so identified with this claim that, in part because of it, he was awarded the Nobel Prize in Economics. See Thomas C. Schelling, *Models of Segregation*, 59 AM. ECON. REV. 488–93 (1969).

14. “White flight” is a term that describes the movement of white families out of large urban municipalities into smaller, suburban jurisdictions, often to escape integration mandates through racial busing. See MASSEY & DENTON, *supra* note 3, at 45.

15. Although there is some ambiguity, we assume that they classify this under the “ethnic residual” element, described *infra*.

16. For use of the term, see, for example, SKZ, *supra* note 2, at 13, 209, 301.

17. *Id.* at 91.

18. *Id.* at 442.

19. SKZ proposes variants of both of these ideas with proposals for “reducing regulatory barriers to multifamily housing” and “quantifiable fair share guidelines.” *Id.* at 440.

and Midwest in the "First Great Migration." But when African Americans later migrated in the "Second Great Migration" to Western and Southwestern metropolises like San Diego and San Antonio, they were more likely to settle throughout the community, not in the few neighborhoods adjacent to the black segregated ones where, in the industrial North and Midwest, African Americans previously lived. In the areas where black migration was more recent, not only did African Americans fail to overwhelm a few inner-ring suburbs adjacent to historic ghettos and avoid the demand imbalance that provokes white departure, but white residents of the outer-ring communities became gradually familiar with and comfortable with black neighbors and did not depart as integration gradually evolved. In SKZ's view, the challenge of "moving toward integration," therefore, is to make the more segregated metropolises more like the less segregated ones, by dispersing more widely the movement of black families out of segregated communities. The attenuation of white hostility in the less segregated metropolitan statistical area suggests that white resistance would be minimal if policy were successful in desegregating the metros that are more heavily segregated.

Despite the absence of an overarching argument, SKZ is propelled by an ambitious program for reducing the level of racial segregation.<sup>20</sup> In Part V, SKZ concludes with a carefully thought-out twelve-point plan of policy recommendations, including imagining the hard work that would be necessary to cost-out the policies and win their adoption. Some of the recommendations are quite radical. Its priority recommendation is race-conscious "mobility grants," subsidies (cash grants or interest rate reductions) to African Americans who move as renters or homeowners to predominantly white neighborhoods and to whites who move as renters or homeowners to predominantly black neighborhoods. Because SKZ worries most about the tendency of integrating neighborhoods to resegregate, the value of the mobility grants would gradually decline as a neighborhood integrates, tending to stabilize the neighborhood's racial proportions. SKZ acknowledges that such a policy would face legal challenge but avers it is "the most efficient way of achieving integration."<sup>21</sup> In truth, however radical and innovative as this proposal is, given the vast wealth gap to which segregation heavily contributed, mobility grants are unlikely to be adequate to move a sufficiently large number of African Americans to communities from which they were historically excluded and that are now unaffordable to them unless the mobility grants were far greater than SKZ suggests.

SKZ also recommends filing disparate impact claims under the Fair Housing Act that challenge facially race-neutral zoning ordinances that function to exclude African Americans from affluent neighborhoods. Other

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20. As the authors explain, "Our book is organized historically, and gradually builds up lessons that lead to our policy analysis in Part V." *Id.* at 5.

21. *Id.* at 424.

high-priority policies recommended by SKZ include counseling families about opportunities in other-race neighborhoods, reforms in the Section 8 program to create opportunities for voucher holders to obtain apartments outside low-income neighborhoods, zoning reform that removes restrictions on multi-family construction in (typically white) neighborhoods of single-family homes, and a “fair share” program that would require exclusive communities to desegregate.

SKZ’s proposals are designed to be complementary, solving unaddressed problems, and should be implemented in tandem. For example, to address the concern that new housing in gentrifying neighborhoods would accelerate displacement, the authors propose the creation of neighborhood housing trust funds, not to build new housing but to “preserve affordability . . . by purchasing neighborhood housing stock.”<sup>22</sup> In a particularly savvy turn, they argue that this program, along with tax-increment financing in these neighborhoods, would “change[] the psychology of gentrification: incumbent residents would have a reason to welcome and seek out gentrification rather than oppose it” because they would improve services and amenities without threatening their displacement.<sup>23</sup> Each of these policies, and others they mention, are important and should be placed on local and national agendas.

### I. Measuring Segregation

Clearly, SKZ cannot describe whether racial segregation has declined, increased, or stagnated without selecting a measure for segregation upon which to base its analysis. Our most serious critique of SKZ concerns the choice of “indices of dissimilarity” as that tool. The Dissimilarity Index indicates the share of a particular group, such as African Americans, who would have to move out of their existing (segregated) neighborhood in order for the share of that group in that neighborhood to reflect that group’s in the metropolitan area as a whole. Thus, if a metropolitan area was 15% black, and the typical African American lived in a neighborhood that was 100 % black, the index of dissimilarity would be .85, because 85% of African Americans would have to move out of the black neighborhood for the metropolitan area to become fully integrated. A community with a dissimilarity index value of 85 is very highly segregated. In contrast, if the metropolitan area were 15% black but the typical African American lived in a neighborhood that was 20% black, the index of dissimilarity would be

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22. *Id.* at 432.

23. *Id.* In recent years, tax-increment financing has been a tool frequently used (and abused) to accelerate uncontrolled gentrification and displacement. However, using it to generate funds for the support of neighborhood housing trust funds could have a salutary effect.

.25 (only 25% of African Americans would have to move<sup>24</sup>), a low level of segregation. If the metropolitan area consisted only of blacks and whites, it would also be the case, in the first example, that 85% of whites would have to move to the black neighborhood to achieve the same integrative result and, in the second example, that 25% of whites would have to move.

The authors enjoy access to restricted census data and thus are able to overcome some aspects of the “modifiable areal unit problem” in segregation studies,<sup>25</sup> by calculating dissimilarity scores with greater precision than is usually possible with publicly available data. Using restricted data, the authors are able to illustrate at a finer level of detail where black-white segregation has increased or decreased, and by what degree, than many other segregation researchers. They use these data to develop several contrarian narratives, including, most centrally to their arguments, a delineation between metropolitan areas in the United States that experienced “large declines” in segregation from 1970 to 1980 and those that experienced “small” or “moderate” declines.<sup>26</sup>

The authors base several subsequent arguments on this distinction, including claims about differences in outcomes between metropolitan areas that fall into the former versus the latter categories. Unfortunately, SKZ’s characterization of this delineation, and perhaps the significance attributed to it, does not survive scrutiny. While there do appear to be non-trivial differences in the degree of decline in the black/white dissimilarity index values in American cities between 1970 and 1980, the relative size of those differences is not as dramatic as the authors suggest. Recall that the

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24. Population Studies Center, University of Michigan, Racial Residential Segregation Measurement Project, <http://enceladus.isr.umich.edu/race/calculate.html> (last visited July 10, 2019).

25. This problem is actually several related problems pertaining to the fact that units of geography such as census tracts change boundaries over time, that different sized geographies are difficult to compare, and that the level of geography employed can produce different results. In general, larger geographies appear less segregated because they are more diverse. But the more detail that is visible, the more segregated an area can appear. See *SOCIAL-SPATIAL SEGREGATION: CONCEPTS, PROCESSES AND OUTCOMES*, chs. 7, 10, 13, 17 (Christopher Lloyd, Ian Shuttleworth & David Wong eds., 2014). The authors in *SOCIAL-SPATIAL SEGREGATION* creatively address this problem by using alternative indices or by standardizing their analysis by population density or size. See also MASSEY & DENTON, *supra* note 3, at 31 (“Blocks are substantially smaller than wards, and the degree of segregation that can be measured tends to increase as the geographic size of the unit falls.”). SKZ acknowledges one strain of this problem with respect to the dissimilarity index. See SKZ, *supra* note 2, at 522 n.15 (noting that “the Index of dissimilarity becomes progressively more inaccurate and misleading as either the overall population of the area analyzed, the number of geographic units, or the relative size of either of the compared groups becomes smaller”).

26. See SKZ, *supra* note 2, at 174 tbl.7.3. Another contrarian narrative that SKZ develops, based largely on the work of other researchers, is that the post-bellum North was not nearly as integrated as many assume. *Id.* at 38.

dissimilarity index is scaled from zero to one (0–1) (or zero to one hundred (0–100)). Generally speaking, any dissimilarity score above .60 is considered “highly segregated,” and anything between .30–.60 is “moderately” segregated.<sup>27</sup> The metropolitan areas that they categorize as having “large” declines in dissimilarity had index declines ranging from .171 to .1561. In contrast, the areas that they categorize as having “small” or “moderate” declines in dissimilarity had declines ranging from .112 to .007. The overall levels of segregation are only marginally lower in the former than the latter.

To put this in perspective, consider an example from the authors’ own dataset. Using Table 7.3 as a baseline, the average level of black/white dissimilarity in 1980 in metros with what the authors describe as having undergone “large” declines from 1970 to 1980 was .748. In comparison, the average level of black/white dissimilarity in the metros where the authors described “small” or “moderate” declines was .865. While the difference between .748 and .865 may be statistically significant, it is hardly significant in the larger scheme of segregation. Both numbers describe a very high level of segregation. That even .748 represents an unacceptable degree of segregation is implicitly acknowledged by the authors’ ultimate recommendation in later chapters regarding the target for national policy: a .60 dissimilarity index score (or lower).

The authors mischaracterize the extent of desegregation, and thereby mislead readers. For instance, on the page opposite Table 7.3, a section begins with the header “Where Integration Happened.” Even taking the case of San Diego, the metro in the table where the largest decline occurred, the observed black/white dissimilarity score was still .697 as of 1980, representing a situation in which 70% of either blacks or whites would have to move to achieve perfect integration. That cannot accurately be characterized as “integration.”

The authors repeat this exaggerated claim throughout. For example, they assert, on the basis of these data, that “stable integration on a metropolitan wide scale clearly is possible.”<sup>28</sup> While we wish that statement were true, it cannot be supported on the basis of the evidence presented. Based upon SKZ’s own data, those cities were, without exception, highly segregated in 1980,<sup>29</sup> and many remain so today.

This is not to deny that dissimilarity scores have fallen in a number of cities or that differential rates of decline exist. Indeed, they have fallen even further in most cities since 1980. But that only underscores an even

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27. See MASSEY & DENTON, *supra* note 3, at 20 (“A simple rule of thumb in interpreting these indices is that values under 30 are low, those between 30 and 60 are moderate, and anything above 60 is high.”).

28. SKZ, *supra* note 2, at 199. *But see id.* at 211 (“In chapter 7, we showed that in some metropolitan areas, integration became widespread in the 1970s.”). That’s clearly not demonstrated.

29. *See id.* at 174 tbl.7.3.

more fundamental problem with this book: the almost total overreliance on dissimilarity scores to measure segregation. The authors repeatedly express concern about good social science and assert that “measurement matters,”<sup>30</sup> yet the failure to discuss, let alone investigate or analyze, alternative measures of segregation is a major gap.<sup>31</sup> Dissimilarity scores have well-known limitations.

Dissimilarity index scores—which only examine two racial groups at a time—are especially problematic in diverse areas with multiple racial or ethnic groups present in significant proportions, which the metropolitan areas with the so-called “large declines” disproportionately are. The fact of declining black-white dissimilarity scores may mask increasing white-Hispanic dissimilarity scores. Thus, even though black-white segregation may be declining as measured by dissimilarity scores, that does not mean that the *overall* level of segregation in any particular area has in fact declined.

To appreciate how misleading a binary measure such as the dissimilarity index can be in such an area, consider the first example we offered above, illustrating how a dissimilarity index number would be calculated in a community<sup>32</sup> that was 85% white and 15% black, and where the typical black lives in a 100% black neighborhood (and consequently, the typical white lives in a 100% white neighborhood). Imagine that the community gains a population of Latinos so that it becomes 70% white, 10% black, and 20% Latino, and all the Latinos settle in previously black neighborhoods. In that case, the typical African American would now live in a neighborhood that was 33% black and 67% Latino. The biracial (black-white) index of dissimilarity for blacks would fall from .85 to .69  $((.33-.10)/.33)$ , without a single African American gaining a white neighbor. We would not consider this “moving toward integration,” and, we suspect, neither would SKZ’s authors, but this is the conclusion that their choice of dissimilarity to measure segregation requires.

Since many of the cities that they say experienced more rapid desegregation are cities where Latino populations may have been growing more rapidly, and, settling disproportionately in previously heavily black neighborhoods, SKZ’s distinction between more and less rapidly desegregating cities may simply be an artifact of the index it chose to use. An index of dissimilarity that necessarily compares only two subgroups (in this case blacks and whites) when other subgroups may be present, cannot track

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30. See, e.g., *id.* at 250.

31. There is only a brief mention of exposure scores, and an equally brief section in Chapter 17 looking at entropy index scores (borrowing the scales created by a team of researchers at Mixed Metro); the authors rely entirely on the dissimilarity index to examine the question of segregation.

32. Dissimilarly generally requires a larger geographic area, but, it could be a city, a county, or an MSA. “Community” is a stand-in here for any generally defined or definable geography.

how the exposure of blacks and whites to each other has evolved, and this is the topic about which SKZ is concerned.

Another deficiency of dissimilarity as a measure of integration is that it reports on metro-wide averages; how many blacks (or other groups) would have to move to create an even distribution throughout the entire metropolitan community. But because middle class or more affluent African American have been more able to move to diverse neighborhoods than families with lower incomes, the average between the two groups may show a dissimilarity index decline, while many, if not most, black families continue to live in highly segregated, low-income places. Thus, the dissimilarity score may obscure the typical or average case.

Other indices would have been better suited for some of SKZ's purposes, and we are puzzled about why the authors did not employ them, or at least explain why they chose not to employ them. The most obvious is an exposure index, which examines the white proportion of the neighborhood in which the typical African American lives (or, conversely, the isolation index, which indicates the proportion of black residents of the neighborhood in which the typical African American lives).<sup>33</sup> Looking at the neighborhood demographics of the typical member of a particular racial group, the exposure and isolation index illustrate how segregated our nation's neighborhoods remain, although fewer neighborhoods are strictly homogenous. The authors make only brief mention of exposure scores, but do not base any conclusions about trends in desegregation on them. By focusing on the average case, an exposure (or isolation) index would indicate how pronounced or severe segregation remains even if a limited number of blacks managed to integrate previously all-white neighborhoods. A community's dissimilarity score could decline although few African Americans had greater exposure to whites, and vice-versa. In fact, this is what occurred. Even as dissimilarity scores fell nationally since 1970, black-white and white-black exposure index values have barely budged. The average African American lived in a neighborhood with 32% white residents in 1980, and 35% in 2010. Similarly, the average white person lived in a neighborhood with 5% black neighbors in 1980, but just 8% in 2010.

In addition to the exposure/isolation index, a black location quotient could have been used to focus in on the problem of black segregation. The location quotient examines under- and over-representation in an area and can be modified for any number of races.<sup>34</sup> It is a relatively simple and intuitive representation of how much more segregated a person's

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33. Both isolation and exposure measure the same phenomenon.

34. Lawrence A. Brown & Su-Yuel Chung, *Spatial Segregation, Segregation Indices and the Geographical Perspective*, 12(2) *POPULATION, SPACE & PLACE* 125-43 (2006), <https://doi.org/10.1002/psp.403>.

neighborhood (census tract) is relative to the larger overall geographic area, such as a metropolitan area or a county.<sup>35</sup>

Yet another index, more recently developed, is the divergence index.<sup>36</sup> It measures the difference between a neighborhood or community's racial composition, relative to a larger geography, such as a metropolitan area or region. The more that a neighborhood diverges from regional demographics, the higher the divergence score.<sup>37</sup> The divergence index provides a holistic measure of segregation at virtually any level of geography desired. Divergence scores may rise even as dissimilarity scores fall, suggesting nuances to the story of segregation that merit investigation as part of any comprehensive study.<sup>38</sup>

Even with a narrow focus on black-white segregation, there are novel measures that would have supported—or suggested different contours to—key points developed by SKZ. Trevon Logan and John Parman's fascinating "Neighbor-based Segregation" index draws out interesting regional and subregional patterns that have been obscured by traditional metrics.<sup>39</sup> We have little doubt that engagement with at least some of these new or alternative measures would have bolstered some of the findings in SKZ.

Given the large and growing number of indices used to measure or assess segregation, and the often nuanced differences between them—each revealing a different facet of a complex phenomenon—the virtually total reliance on the index of dissimilarity to the exclusion of all other measures is a notable weakness in SKZ. At a minimum, SKZ should have offered

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35. If the authors of SKZ had problems with the statistical underpinnings of the location quotient, they might have applied Local Moran's I or some variant of the location quotient. See, e.g., Natalia Vorotyntseva, *Measuring Segregation Patterns and Change: A Co-Location Quotient Approach* (May 3, 2016) (Ph.D. dissertation, University of Conn.), available at <https://opencommons.uconn.edu/cgi/viewcontent.cgi?article=7330&context=dissertations>. The point is not to suggest which alternative measures they might have used, but to note that the absence of explanation on why they rely so heavily on the dissimilarity index was a puzzling and troubling omission.

36. Elizabeth Roberto, *The Divergence Index: A Decomposable Measure of Segregation and Inequality* (Working Paper, 2015), available at <https://arxiv.org/pdf/1508.01167.pdf>.

37. Although the divergence index looks at multiple groups simultaneously, for purposes of examining just black-white segregation, the authors of SKZ could have looked at tracts with high divergence scores that also have unusually large or low numbers of African Americans. And divergence scores can also be calculated at larger geographies, such as metropolitan areas. See Stephen Menendian & Samir Gambhir, Haas Institute, *Racial Segregation in the San Francisco Bay Area, Part 3* (May 28, 2019), <https://haasinstitute.berkeley.edu/racial-segregation-san-francisco-bay-area-part-3>; see also <https://haasinstitute.berkeley.edu/bay-segregation-map> (providing interactive map that toggles between six different measures of segregation, and the different information they impart).

38. *Id.* For example, we found that, in the nine-county San Francisco Bay Area, although dissimilarity scores fell from 1970 to 2010, divergence index scores rose in seven of the nine counties during the same period.

39. See Trevon D. Logan & John M. Parman, *The National Rise in Residential Segregation*, 77 J. Econ. Hist. 127 (2017).

some commentary on what measures were considered and an explanation of why alternative measures were not employed. SKZ's silence on the relative merits of various alternative measures of segregation, especially since many of the most provocative arguments developed in the book rely so heavily on the relative changes in dissimilarity, is a conspicuous and troubling omission.

## II. SKZ's Structural Segregation Experiment

Much of SKZ is a chronological review of key moments, periods, or historical junctures that shaped racial residential segregation (or integration) in the United States. Its most interesting and novel investigation into the causes of segregation attempts to answer the knotty question of exactly how much of contemporary segregation is sustained by structural factors like exclusionary zoning or demographic factors that correlate to race, rather than by racial discrimination or differential neighborhood preferences, which they term the "ethnic residual."

The authors take pains to demonstrate—or at least argue (and not without evidence)—that discriminatory attitudes and, in fact, incidences of housing discrimination, have fallen sharply since the enactment of the Fair Housing Act. Most prominently, the authors graphically display attitudinal trend lines from the General Social Survey (GSS), a longitudinal survey of thousands of Americans that tracks attitudes on race, asking a battery of questions.<sup>40</sup> For example, SKZ uses these survey data to report that although 60% of white respondents in 1973 opposed laws banning interracial marriage, by 2002 this number had risen to 90%.<sup>41</sup> It also shows that in 1973, only 33% of white Americans supported laws that prevented racial discrimination in housing, compared to 72% in 2016.<sup>42</sup> Some of this apparent progress may be superficial, or influenced by survey respondents' tendency to give socially acceptable answers. Even if credible, changes in attitudes are unlikely to be the only explanation, and the evolving standard of social acceptability is itself a noteworthy and positive development.

Less prominently, but no less important to its argument, SKZ cites a 2008 meta-study by economist Stephen Ross,<sup>43</sup> and another study by three economists published in 1999, all suggesting that racial discrimination declined, even as segregation was maintained. SKZ uses the latter study to suggest that market forces sustain segregation even as racial discrimination

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40. NORCC AT THE UNIVERSITY OF CHICAGO, GENERAL SOCIAL SURVEY, Figs. 7.3, 23.1, <http://gss.norc.org>.

41. *Id.* at 461.

42. *Id.*

43. SKZ, *supra* note 2, at 8 n.8.

declined.<sup>44</sup> All told, the authors of SKZ take a fairly restrictive view of the evidence developed from paired audit testing and other testing.<sup>45</sup>

If housing discrimination is not the main explanatory factor of contemporary patterns of residential racial segregation, then what is? The authors present and critique several theories, and, although they do not fully answer the question, they at least investigate the matter by devising a clever experiment.<sup>46</sup>

Using their restricted (and more refined and granular) census data, the authors create 1,152 bins, representing unique combinations of six housing and demographic characteristics.<sup>47</sup> Every combination of these characteristics creates a certain unique housing unit profile (or a “bin”) that is based on socioeconomic characteristics, housing tenure and type, and family size. None of these characteristics are race or ethnicity per se, and therefore are ostensibly “race neutral,” even though they are assumed to correlate with racial demographics. Using these predefined “bins,” the authors can then analyze any metropolitan area in terms of the combinations of these structural characteristics.

The experimental part of this inquiry arises when the authors randomly assign each actual household in a metro area to a new unit of housing in the bin with the same socioeconomic, housing tenure, and family size characteristics as the household itself. Having done this “random distribution,” the authors can then recalculate the dissimilarity index for the metro region at any point in time. This, according to them, provides the measure of “structural segregation.” As they explain:

If structural segregation were the dominant cause of residential segregation, then our simulated index of dissimilarity would be close to the actual, observed levels of segregation. This would occur if, for example,

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44. See *id.* at 194.

45. *Id.* at 162–65 (summary of paired audit testing), 264 (fair lending studies), 297 (rental test studies).

46. *Id.* at 243–50 (describing experiment). This chapter builds on, but in key respects is substantially different from, a 2017 study between two of the authors of SKZ. Yana Kucheva & Richard Sander, *Structural Versus Ethnic Dimensions of Housing Segregation*, 40 J. URB. AFF. 329, 348 (2018), DOI: 10.1080/07352166.2017.1360730; see also SKZ, *supra* note 2, at 8 n.8 (citing Stephen L. Ross, *Understanding Racial Segregation: What Is Known About the Effect of Housing Discrimination*, ECONOMICS WORKING PAPERS (2008), n.14 (citing David M. Cutler & Edward L. Glaeser, *Are Ghettos Good or Bad*, 112 Q. J. ECON. 827 (1997)). We believe that that article is more careful in describing the differences between the “structural” factors and the “ethnic residual.” But the significant experimental differences and scope of inquiry make it difficult for us to rely on the definitions in the article in understanding what they mean in SKZ.

47. The number 1,152 is the product of  $6 \times 3 \times 2 \times 4 \times 4 \times 2$ , with each number being the number of options for each of 6 categories of housing and demographic characteristics: Household income (6 categories), household size (3), whether the household includes children (2), education level of household head (4), age of household head (4), owns or rents (2).

neighborhoods were heavily stratified by income *and* if the vast majority of black households had lower incomes than nearly all white households. If that were the case, then eliminating all *housing* discrimination would have little effect on housing segregation.

The results were perhaps counterintuitive to those of us who believe that structural forces play a significant role in sustaining racial segregation and generating racial inequality, irrespective of how much explicit or covert discrimination exists. The authors found that, across the nation's twenty-five largest metros, structural segregation not only declined over time, but was relatively small. Specifically, they found that structural segregation explained about a quarter of racial residential segregation, with the so-called "ethnic residual" explaining the remaining three quarters of the phenomenon. The authors found, for example, that in 2000 the black-white dissimilarity index score for Houston was 0.661 (a moderately high level of segregation), but that the structural portion was only 0.177. This left an ethnic residual of 0.484 (See Table 10.2<sup>48</sup>).

Despite the cleverness of this experiment, the inferences drawn by it are misleading at best. The experimental conclusions depend on the difference between observed patterns and what occurred through a "random distribution." However, actual patterns of racial residential segregation could never be close to randomly distributed. The legacy of historical racism created a readily observed pattern out of which people move, even in the absence of significant racial discrimination, and therefore created a path dependence for the evolution of racial segregation.

In virtually every major American city, demographic maps reveal historical patterns of segregation that are racially contiguous, evolving only gradually over the decades, but retaining, in large parts, their initial shape and footprint. As the authors repeatedly acknowledge throughout the text, black "pioneers" tended to move into adjacent neighborhoods, and their search scope for new housing was often delimited by network relationships and patterns.<sup>49</sup> Therefore, measuring the results of the experiment, which randomly distributed households, against the observed patterns is not likely to give us an accurate assessment of how much contemporary racial residential segregation is actually a result of, and sustained by, structural forces versus the "ethnic residual." The structural patterns that have emerged overlay historical legacies of discrimination and segregation, and cannot be so easily disentangled from them.

The authors acknowledge that other factors, perhaps unobserved or unobservable because of data limitations, could "further increase . . . measured structural segregation," and so caution against viewing their

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48. SKZ, *supra* note 2, at 249 tbl.10.2.

49. See, e.g., SKZ, *supra* note 2, at 401 (noting that "incumbent blacks have many ties to their existing, usually segregated locations, and because most intra-metropolitan moves involve only short distances").

aggregate measure (.208 in 2000) as a “maximum value.”<sup>50</sup> They nonetheless assert that it is “probably not very far below the maximum.” Far from being the “near maximum,” we take their calculations as closer to the floor than the ceiling, considering the forces that sustain racial segregation today. At most, SKZ is technically correct about the relative ratio of structural segregation and the ethnic residual that explains resulting dissimilarity scores. But we already knew that racial discrimination played a large role in creating patterns of racial residential segregation in the first place. The relatively larger ethnic residual is more suggestive of the path dependence of racial segregation than the relative unimportance of structural forces. The experiment is misleading at best, and fatally flawed at worst, as an assessment of the role of structural forces in sustaining and perpetuating segregation today.

This experimental flaw mars much of the analysis that flows through the rest of the book and helps explain why the authors struggle to explain the causes of contemporary segregation. SKZ makes passing reference to Maria Krysan and Kyle Crowder’s research on the ++housing search process; if it had examined their work more closely on the role that social networks and background information sets play in this process,<sup>51</sup> as well as other research on the effects of jurisdictional fragmentation, SKZ may have been able to identify additional structural elements that could help explain these patterns. For example, there is research indicating that metropolitan areas with greater jurisdictional fragmentation have higher levels of income segregation<sup>52</sup> and lower levels of upward mobility.<sup>53</sup> This is a structural feature that likely contributes to the perpetuation of racial segregation. There are already well established measures of jurisdictional fragmentation that SKZ might have used to more deeply investigate and assess the structural role in the perpetuation of segregation.

### III. Reverse Redlining

A contrarian argument developed by SKZ concerns “reverse redlining.” The term “redlining” refers to denial of credit or insurance to residents of non-white neighborhoods. It derives from maps drawn by a federal agency, the Home Owners Loan Corporation (HOLC), during the 1930s to indicate neighborhoods where borrowers were presumed more likely

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50. *Id.* at 246–47.

51. MARISA KRYSAN & KYLE CROWDER, *CYCLE OF SEGREGATION: SOCIAL PROCESSES AND RESIDENTIAL STRATIFICATION* (2017).

52. Rebecca Hendrick & Yu Shi, *Macro-Level Determinants of Local Government Interaction: How Metropolitan Regions in the United States Compare*, 51 *URB. AFF. REV.* 414–38 (2015).

53. Raj Chetty, Nathaniel Hendren, Patrick Kline & Emmanuel Saez, *Where Is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States* 36 (NBER Working Paper No. 19843, 2014).

to default on mortgages that the agency proposed to refinance.<sup>54</sup> Neighborhoods were shaded red on these maps if residents were poor, ethnic immigrants, or African American, regardless of their actual propensity to default. The redlining term was popularized by a sociologist in the 1960s to describe this broader denial of services or credit.<sup>55</sup> It would seem implausible that such maps were drawn for no purpose, but the SKZ authors assert that “neither the maps’ design nor purpose was driven by racial considerations.”<sup>56</sup> They examined 1930s credit data and conclude that they “don’t know” if discrimination against borrowers in such neighborhoods was “mild or substantial.” They quote with approval a scholar who found that in Philadelphia from 1940 to 1960 “race did not significantly predict where mortgages were made” and whose work “contradicts the notion that systematic redlining practices pervaded the lending community.”<sup>57</sup> This fits SKZ’s contrarian narrative. Later in the book, the authors temper this just a bit: “Redlining was common, but as far back as the 1930s blacks in the ghetto had significant access to conventional credit.”<sup>58</sup>

“Reverse redlining” refers to a more recent phenomenon in the period leading to the Great Recession of 2008. Lenders targeted these same neighborhoods or communities with predatory credit instruments such as exploitative and deceptive subprime refinance loans—for example, loans with initial low teaser rates followed by excessively high rates a few years later, or high prepayment penalties to prevent borrowers from escaping the products once they realized what they had been tricked into signing. Not all subprime loans are exploitative: it is a legitimate business practice to charge a higher interest rate to borrowers who are at higher risk of default. But frequently, subprime marketing to black and Hispanic homeowners targeted borrowers who, based upon non-racial objective lending criteria, should have fully qualified for conventional loan terms and lower interest rates.

But SKZ insists that reverse redlining did not exist: “There is . . . little empirical support for the claim that conventional lenders systematically pushed minority customers into defective mortgage products through

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54. The HOLC did not issue mortgages to new homeowners but only to existing homeowners at risk of foreclosure. The HOLC replaced these homeowners’ existing mortgages, which typically required interest-only payments with no equity accumulation, and required full repayment at the end of a short term (typically five to seven years), with a longer term mortgage whose amortization provision left the mortgagee with unencumbered ownership and no debt at the end of that term.

55. WILLIAM NORTON, MARGARET WALTON-ROBERTS, *CULTURAL GEOGRAPHY: ENVIRONMENTS, LANDSCAPES, IDENTITIES, INEQUALITIES* (3d ed. 2012) (citing Northwestern University sociologist John McKnight); see also *The Glass Half Full*, INST. POL’Y RES., Summer 2003, at 8 (describing McKnight’s work).

56. SKZ, *supra* note 2, at 100.

57. *Id.* at 254, 254–55.

58. *Id.* at 389.

reverse redlining.”<sup>59</sup> Yet the existence of such predatory practices has been well documented, for example by affidavits for and settlements of lawsuits alleging such discriminatory practices.<sup>60</sup> Not only is SKZ’s presentation of the evidence incomplete and somewhat one-sided, but its analysis is somewhat incoherent.

The authors acknowledge that “the evidence is strong that African-Americans (and Hispanics) often ended up with subprime or predatory loans.”<sup>61</sup> But they suggest that this was not discriminatory because African Americans simply lacked access to the traditional or ordinary credit institutions that whites enjoyed. (If the practices were not discriminatory, why does SKZ describe the loans as “predatory”?) SKZ concludes that “a series of small differences, rooted in the fundamentally ‘underbanked’ character of minority, segregated neighborhoods, produces large cumulative effects of market segmentation.”<sup>62</sup>

This “solution” to the paradox slices the matter ever too finely. Lack of access to credit is an important component of reverse redlining, which is not just about denying credit—it is also about the absence of traditional institutions or services that provide conventional credit, and the unregulated actions of unscrupulous lenders to fill that gap by lending on exploitative terms that would not be offered were the borrowers white, or that should not have been offered to anyone.<sup>63</sup> Thus, only the authors’ overly

59. *Id.* at 385.

60. *See, e.g.,* Relman Dane & Colfax, Case Profiles: *Saint-Jean v. Emigrant Mortg. Co.*, No. 11 CV 2122 (SJ) (E.D.N.Y.), <https://www.relmanlaw.com/cases-emigrant> (last visited July 11, 2019); *see also* Relman Dane & Colfax, Case Profiles: *Mayor & City Council of Baltimore v. Wells Fargo Bank and City of Memphis v. Wells Fargo Bank*, <https://www.relmanlaw.com/cases-36> (last visited July 11, 2019); ACLU, *Adkins, et al. vs. Morgan Stanley—Complaint*, <https://www.aclu.org/legal-document/adkins-et-al-vs-morgan-stanley-complaint?redirect=racial-justice/adkins-et-al-vs-morgan-stanley-0> (last visited July 11, 2019).

61. SKZ, *supra* note 2, at 385.

62. *Id.* at 388. As readers, we are puzzled about how this explanation fits into other aspects of the SKZ account. SKZ, it will be recalled, found in their “experiment” that racial segregation was one part structural and three parts the “ethnic residual.” Is market segmentation part of the structural or part of the racial residual explanation? So far as we can tell, SKZ does not say.

63. Perhaps the most egregious practice was bank payments by banks and mortgage companies of bonuses (“yield spread premiums,” or YSPs) to mortgage brokers to reward the selling to unsuspecting homeowners of mortgages with interest rates that were higher than those recommended by the banks for borrowers with identical characteristics. The practice was finally outlawed by the Dodd-Frank legislation of 2010, but the legislation provided no recourse for borrowers who had been victimized before law was passed, many of whom then defaulted, creating a foreclosure epidemic that depressed home values in the neighborhoods where vacant properties were located. “YSPs are present in 85 to 90 percent of subprime mortgages. . . . Fannie Mae estimates that fully 50 percent of those who were sold ruinous subprime mortgages would have qualified for prime-rate loans.” Elizabeth Warren, *Unsafe at Any Rate*, DEMOCRACY, Summer 2007, at 8–19, <https://democracyjournal.org/magazine/5/unsafe-at-any-rate>. A suit by the City of Memphis

parsimonious definition of “redlining” allows their argument to make sense. In fact, one of the policy proposals that SKZ offers at the book’s end, the creation of more community development banks, effectively acknowledges the existence of a dual credit market.<sup>64</sup>

#### IV. The *Shelley* Argument

One of SKZ’s contrarian arguments concerns *Shelley v. Kraemer*,<sup>65</sup> the 1948 Supreme Court decision holding racially restrictive covenants unenforceable. SKZ argues that *Shelley* did more to open all-white neighborhoods to African Americans than is generally appreciated. Drawing on a 2014 article by two SKZ authors,<sup>66</sup> SKZ finds that African Americans were able to move into neighborhoods covered by racially restrictive covenants on a “fairly large scale” in the 1949–50 year after *Shelley* was decided, compared to such movement during the prior decade.<sup>67</sup> SKZ attributes this change to *Shelley* itself.

The significance ascribed to *Shelley* is provocative, but not entirely persuasive because additional contemporaneous factors arose around the same time. This was the period of white suburbanization, where white families moved out of urban districts and into newly constructed suburban housing by the millions.<sup>68</sup> Thus, the changing patterns of residential life may have had as much of a role in increasing the housing supply in previously restricted neighborhoods as the enforcement of a judicial opinion.

The authors try to account for this possibility by examining population growth, showing that the neighborhoods that blacks were moving into were gaining population despite white suburbanization. But even controlling for this variable cannot establish what the authors seek to prove, due to another parallel development: the baby boom.<sup>69</sup> SKZ’s data are consistent with an increase in housing vacancies that blacks might have accessed,

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against Wells Fargo Bank was supported by affidavits of bank employees stating that they referred to subprime loans as “ghetto loans” and were instructed by bank supervisors to target their solicitation to heavily African-American zip codes, because residents there “weren’t savvy enough” to know they were being exploited. Elderly African Americans were considered by bank employees to be particularly good prospects for being pressured to take out high-cost loans. Relman, Dane & Colfax PLLC. Case Profiles. *Mayor & City Council of Baltimore v. Wells Fargo Bank and City of Memphis v. Wells Fargo Bank* (2012), <https://www.relmanlaw.com/cases-36>. A copy of the complaint in this case is available upon request from the authors.

64. SKZ, *supra* note 2, at 433.

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

66. Richard H. Sander & Yana Kucheva, *The Misunderstood Consequences of Shelley v. Kraemer*, 48 Soc. Sci. Res. 212 (2014).

67. SKZ, *supra* note 2, at 77.

68. See, e.g., KENNETH T. JACKSON, *CRABGRASS FRONTIER* (1985).

69. The rate of live births surged in the late 1940s, and the birth rate rose from 20 births per 1000 people in 1945 to 27 per 1000 in 1947. See [https://www.cdc.gov/nchs/data/statab/natfinal2003.annvol1\\_01.pdf](https://www.cdc.gov/nchs/data/statab/natfinal2003.annvol1_01.pdf).

even as the white population was growing due to an increase in family size, without a corresponding increase in the number of white households in those neighborhoods. Relative per-unit white demand could have dropped significantly in many of these neighborhoods, easing the way for black migrants despite the presence of restrictive covenants, while those neighborhoods still experienced overall population growth.

And even if the argument were true that *Shelley* played a larger role than is generally appreciated, SKZ acknowledges that overall levels of segregation did not appreciably fall after the *Shelley* decision. Thus, whatever micro-level of integration may have occurred and however border neighborhoods may have transitioned as a result of *Shelley*, these developments were hardly enough to disrupt the overall pattern of persistent and entrenched racial residential segregation.

SKZ's claim that *Shelley* had an almost instantaneous effect is also implausible in view of what we generally know about the role of racially restrictive covenants and their evolution. The *Shelley* decision itself was not as discontinuous with the past as SKZ implies. Prior to 1948, the restrictive covenant regime surrounding black neighborhoods was already falling apart. SKZ refer to this indirectly by noting that, because of the greater demand of blacks than whites for housing (the housing available to blacks was in such shorter supply), African-American homebuyers were often willing to pay more for homes of similar quality than whites were willing to pay. This resulted in many white homeowners who desired to sell for whatever non-racial reason (better job opportunities, wanting a larger home for a growing family, etc.) having an incentive to sell to African Americans rather than to whites, because a higher price could be charged. As a result, in 1948, many "white" neighborhoods surrounding black ones were already integrating or on their way to transitioning to heavily black neighborhoods, notwithstanding their coverage by deed restrictions. *Shelley* was not entirely typical of restrictive covenant litigation in the 1940s. Many courts refused to enforce restrictive covenants, not on constitutional grounds but because the neighborhood from which white homeowners were seeking the eviction of an African-American homebuyer already had enough black residents to make the covenant's general restriction unenforceable.<sup>70</sup>

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70. In 1945, D. O. McGovney described recent cases in several states (California, Kansas, Maryland, and Missouri) in which courts found that the racial covenants in question were constitutional but could not be enforced on equitable grounds inasmuch as the purpose of the covenants—to preserve property values from falling because Negroes lived in the neighborhood—no longer applied because Negroes already lived in the neighborhood. In 1942, a similar case was decided by the U.S. Court of Appeals for the District of Columbia. D. O. McGovney, *Agreements, Covenants, or Conditions in Deeds Is Unconstitutional*, 33 CAL. L. REV. 5 (1945). Courts found other technicalities as well to justify refusal to enforce a covenant prior to the *Shelley* decision. Lorraine Hansberry's play, *A Raisin in the Sun*, was inspired in part by a case that her father successfully took to the

Following *Shelley*, the Federal Housing Administration continued to subsidize all-white developments covered by restrictive covenants, although it acknowledged that they could no longer be enforced in court. Two weeks after the Court announced its decision, the FHA commissioner stated that the *Shelley* decision would “in no way affect the programs of this agency.”<sup>71</sup> Six months later when Thurgood Marshall, then director of the NAACP Legal Defense Fund, protested that the FHA was continuing to insure mortgages on new homes in Levittown, New York, that had racial deed restrictions, the commissioner responded: “I find nothing in [*Shelley*] to indicate that [the government] is authorized to withdraw its normal protection and benefits from persons who have executed but do not seek judicial enforcement of such covenants.”<sup>72</sup> Another year passed before the FHA announced it would no longer insure mortgages on racially restricted homes, but then gave builders two and a half months’ advance notice to enable them to add new racial restrictions before the policy went into effect. Possibly, these openly defiant policies of the FHA were mere posturing, and homeowners and builders suddenly became more willing to sell to African Americans once *Shelley* was announced, but such a conclusion should be examined skeptically. Few controversial Supreme Court opinions have an immediate impact on popular opinion. It may not always take a long time for society to adjust, but instant compliance is rare.

And *Shelley* itself only ended court enforcement of racial covenants that provided for the *eviction* of black homeowners from properties that they purchased in violation of the restriction. Following the ruling, many developers wrote (or rewrote) covenants to provide not for court-ordered evictions, but court-enforced assessments of burdensome penalties against homeowners who sold to African Americans in violation of a covenant. At least two state courts rejected challenges to the practice (Missouri, the state from which *Shelley* itself arose, and Oklahoma), and it was followed elsewhere as well. For example, the FHA-financed development of Westlake, California (described in the Malvina Reynolds song about “little boxes on the hillside . . . made of ticky tacky”), had a covenant recorded a year *after* the *Shelley* decision that required any homeowner who sold to a non-Caucasian to pay a penalty of \$2,000 (subsequently adjusted for inflation)

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U.S. Supreme Court in the late 1930s. The Court ruled that Mr. Hansberry could not be evicted from a home he purchased in violation of a neighborhood covenant because only a majority of neighborhood property owners had signed the agreement and the seller of the home to the Hansberrys was not one of them. HANSBERRY V. LEE, 311 U.S. 32 (1940).

71. Arnold R. Hirsch. *Choosing Segregation. Federal Housing Policy Between Shelley and Brown*, in JOHN F. BAUMAN, ROGER BILES & KRISTIN M. SZYLVIAN. FROM TENEMENTS TO THE TAYLOR HOMES. IN SEARCH OF AN URBAN HOUSING POLICY IN TWENTIETH CENTURY AMERICA 206, 211 (2000).

72. Marshall 1949, 8.

to each of his eight closest neighbors.<sup>73</sup> The total exceeded the entire value of the property itself. Court enforcement of such penalties was prohibited by the Supreme Court in 1953 (*Barrows v. Jackson*).<sup>74</sup> It might have been worthwhile for the SKZ authors to test whether their data showed a similar acceleration of integration in 1954–55 following the *Barrows* opinion, compared to the previous five or ten years.

Post-*Shelley* (and *Barrows*), white resistance to black neighbors did not suddenly abate in the way SKZ suggests, although we would not allege that no abatement occurred. Even after *Brown v. Board of Education* in 1954, the general counsel of the Housing and Home Finance Agency (the umbrella organization to which the Federal Housing Administration was then subordinate) advised federal housing officials that the desegregation ruling did not apply to housing and that those housing officials should feel free to continue to deny support for subdivisions that would admit African Americans. Were it not for these continued policies, it would have been superfluous for President John Kennedy to issue a 1962 executive order that federal support for housing segregation must henceforth cease.

After *Shelley*, police protected, even promoted, mob violence against African-American homebuyers in white neighborhoods into the 1950s and beyond. In 1952, an African-American family bought a home in a federally financed subdivision not far from Berkeley, California, and a mob of over 300 angry whites threw rocks through the windows, burned a cross on the lawn, and threatened the family's children; the state attorney general eventually ordered the local police to provide protection to the black family, not to the mob, and, after another month, the police finally did so. In 1954, a black family bought a suburban Louisville, Kentucky, home that was dynamited and firebombed by a police-protected mob; the white man who sold the home was convicted of sedition for having incited the violence by selling to an African American. In 1957, two months of mob violence greeted an African-American family's purchase of a home in Levittown, Pennsylvania. Not only did police officers encourage it, a police sergeant was demoted for attempting to restrain the mob.<sup>75</sup> Although the frequency of such incidents diminished as time passed, what cannot show up in a dataset is the threat that such violence communicated to other potential black movers who were intimidated by mob and state action from exercising the right *Shelley* purportedly granted them.

SKZ cites the growing number of states and localities that passed fair housing laws in the period after *Shelley*, while acknowledging that a far greater number openly refused to enact or remained hostile to such laws.

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73. Henry Doelger Builder, Inc., Declaration of Restrictions of Henry Doelger Builder, Inc., Recorder's Office, San Mateo County, Vol. 1797, p. 685 (1950).

74. *Barrows v. Jackson*, 346 U.S. 249 (1953).

75. See RICHARD ROTHSTEIN, *THE COLOR OF LAW* 139–40 (describing a federally-financed subdivision not far from Berkeley, CA); *id.* at 148–50 (Louisville, KY); *id.* at 141–42 (Levittown, PA).

In 1963, for example, the California legislature adopted a fair housing law. But the following year, a statewide voter referendum cancelled it by a 65% margin, amending the state constitution to protect the right to discriminate by race. The California Supreme Court then, in turn, nullified the referendum result in a ruling that was subsequently upheld in 1967 by the U.S. Supreme Court (*Reitman v. Mulkey*).<sup>76</sup> SKZ is certainly correct that, on balance, support for non-discriminatory housing grew post-*Shelley* (as it began from a very low base), but whether this balance was sufficiently strong to remove most actual barriers to integration, leaving market forces the chief cause of ongoing segregation is, in our view, questionable though not impossible.

### V. The Role of Government

SKZ asserts that government's responsibility for racial segregation is "perhaps the most rancorous discourse in the fair housing realm." It singles out for criticism one of the co-authors of this review, noting that in his "book, *The Color of Law*, Richard Rothstein claimed that government efforts to promote racial segregation were the driving force behind the ghettoization of African Americans." SKZ disputes this claim, asserting that it "relies heavily on highly selective anecdotes and broad assertions."<sup>77</sup> In addition, SKZ takes issue with the emphasis on the role of *federal* government policy in contributing to racial residential segregation, since, as SKZ notes, "by 1930, black segregation was firmly established throughout urban America."<sup>78</sup>

This review is not the place to engage in a nuanced disputation with the SKZ authors regarding *The Color of Law's* account of government's responsibility for segregation. We nonetheless offer two counterpoints for consideration. First, although SKZ is undoubtedly correct that black urban segregation was already an undeniable fact by 1930, ample evidence indicates that federal policy amplified and extended this trend. National dissimilarity index scores suggest that black-white segregation peaked somewhere between 1950 and 1970, depending on the source and cities measured. For example, Douglas Massey and Nancy Denton found that for thirty large American cities, black-white dissimilarity averages peaked in 1960, at .92.<sup>79</sup> Furthermore, they found that black spatial isolation doubled between 1930 and 1970 in Northern cities.<sup>80</sup> In 1970, blacks were more likely to live with other blacks than with whites. That was not the case

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76. *Reitman v. Mulkey*, 387 U.S. 369 (1967).

77. SKZ, *supra* note 2, at 83.

78. *Id.* at 84.

79. MASSEY & DENTON, *supra* note 3, at 47, tbl. 2.3. Specifically, they found that dissimilarity scores peaked in the South in 1950 and in the North in 1960.

80. *Id.* at 48 tbl.2.4 (noting that spatial isolation could double while dissimilarity scores remain stable illustrates yet another reason to be skeptical of overreliance on the index of dissimilarity).

in 1930, no matter how evidenced black segregation was. Federal policy played an important role in the deepening of racial residential segregation.

Second, any historical account, except for mere statistical reports, relies on selective anecdotes and broad assertions. Good historical writing is distinguished by the representativeness of the anecdotes that it selects to highlight and by the broad assertions that it develops to summarize the representative anecdotes.

Whether, even if the anecdotes were representative of government actions, these actions may be characterized as a “driving force” behind residential segregation is a more difficult question. Perhaps *The Color of Law* was not clear enough on this point. In any case, the “driving force” argument of Rothstein’s work is a constitutional one. Certainly, government action to promote segregation rested on a powerful bigoted consensus among the white population, a consensus that originated in the failure to confront the legacies of slavery that left emancipated slaves in a subordinate class, especially after the end of Reconstruction. Government reflected this bigotry by implementing policies of segregation that were politically popular, and these policies further reinforced the racial stereotypes to which policy was responding.

But white bigotry cannot be simply contrasted with government policy in an effort to determine which was “the driving force,” because private discrimination and government policy do not have equivalent constitutional status. The Fifth, Fourteenth, and even, as Rothstein’s book claims, the Thirteenth Amendments to the Constitution require government to override private discrimination, not to embrace, or even acquiesce, to it. For example, as SKZ and *The Color of Law* both describe, the National Association of Realtors had a code of ethics that prohibited brokers or their agents from selling homes to African Americans in white neighborhoods. Was this private activity? Not once state government real estate licensing agencies embraced this code and enforced it. If state agencies had declined to license brokers who adhered to this code, or even lifted the licenses of brokers who did so, the entire history of racial steering would have been different. In embracing this code, state licensing agencies violated their Fourteenth Amendment responsibilities. In this way, government policy sanctioned, condoned, and helped extend and amplify local residential segregation.

Likewise, William Levitt, developer of the Levittowns, stated that he would never willingly sell a home to an African American. He claimed that if he built an integrated subdivision, no white family would purchase a home from him. Thus, it is tempting to say that it was superfluous for government policy to prohibit him from selling to black families. Yet the Federal Housing Administration was required by the Fifth Amendment to condition its bank guarantees on a commitment by Levitt to sell homes on a non-discriminatory basis. Had the FHA followed its constitutional obligation, Levitt would have had to accede because no bank would lend him the necessary funds without a federal guarantee. Some whites might

have refused to move to an integrated development, but not all would have done so—in the early 1950s, some residents of Levittown (NY) even formed a “Committee to End Segregation in Levittown.” Further, the housing shortage for returning war veterans was so enormous that for every bigoted white who might have declined the opportunity to live in Levittown, many others were in line to take its place. It is in this sense that government policy was the “driving force” behind segregation.

But it was not simply that federal policy institutionalized local norms or private practices or that state licensing authorities acquiesced in the development of residential segregation. The federal role was more proactive, which helped cement and extend the segregationist regime. Local segregationist ideologies were met and amplified through their federal counterparts. Without the federal role, it is unlikely that segregation would have taken such deep root or extended itself quite as far.

SKZ’s insistence on downplaying the government’s role is curious because their priority recommendation for future policy is a race-conscious subsidy for African Americans to move to white neighborhoods, and for whites to move to black ones. The authors acknowledge that contemporary Supreme Court doctrine would probably make such a policy “vulnerable to legal challenge,” even if it became politically desirable. They are likely correct, depending on how such a program was designed and implemented. But it is unlikely that even a future more progressive Supreme Court would allow such a policy unless the Court was persuaded that the policy constituted legislative remedial action responding to past government violations, not merely a market malfunction. Acknowledgment of government responsibility, therefore, is vital to the SKZ scheme.

## VI. The Importance of Replication

Most readers, as we suggested above, must take the statistics of SKZ on faith, having neither access to its restricted dataset nor the skills to critically evaluate or replicate its analysis. This undertaking would not be a problem if SKZ were aimed only at other professionals who did have such access and abilities. But the combination of SKZ’s statistics with its ambitious policy recommendations suggests that they have a different policy-oriented audience in mind. And this audience must be cautious of the analysis presented in SKZ for several reasons.

SKZ’s proposals and several key arguments share striking similarities with a law review article that Richard Sander, the first-named SKZ author, wrote in 1988 when still a graduate student.<sup>81</sup> The market failure argument, the claim that the FaHA and federal court decisions swiftly accomplished their purposes, even specific policy recommendations like the call for mobility grants—subsidies for African Americans moving to white neighborhoods—appeared first in the 1988 article. We are not critical of the

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81. Richard H. Sander, *Individual Rights and Demographic Realities. The Problem of Fair Housing*, 82 Nw.U. L. REV. 874 (1988).

fact that Sander's views are unchanged over thirty years. Certainly, few scholars would initiate a multiyear data-dive and research project like SKZ without having an idea of what they will find, and we would not have expected Sander and his colleagues to initiate the research leading to SKZ without a hypothesis they hoped to test.

But it is important for readers of any scholarly work to be aware of the authors' preconceptions or expectations (in academic discourse, a shorthand term for these is authors' "priors") because there is always a danger that the hoped-for result may have influenced the selection of evidence or choice of analytic tools. We do not suggest that this happened here, but only that it is a possibility that readers should be expected to consider. Yet, we can find no reference to the 1988 article in SKZ.<sup>82</sup> The closest that it comes to such a hint is a statement that the book "had its origins" in a report Sander read as a graduate student in 1985, describing the success of a program to support black housing voucher recipients who located in white neighborhoods.<sup>83</sup> Sander suggests that the absence of resistance by whites to their new black neighbors led him to suspect that white resistance was not a significant explanation of continued segregation. That acknowledgment hardly reveals the extent to which, in 1988, the theories developed in SKZ were already present.

Moreover, Sander's statistical work in the past has not been without controversy. In response to a Supreme Court amicus brief he authored, similarly based on statistical analysis (the brief was critical of affirmative action in the University of Texas admission policies), eleven nationally prominent legal statisticians filed an opposing brief critical of his methods.<sup>84</sup> They stated that Sander's work

fails to satisfy the basic standards of good empirical social-science research. Sander's failure to set up proper controls to test his hypothesis and his reliance on a number of contradictory assumptions lead him to draw unwarranted causal inferences. At a minimum, these basic research flaws call into question the conclusions of that research.<sup>85</sup>

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82. The 1988 article itself has a footnote (n.193) indicating that a comparison of segregation in Chicago and San Antonio—a theme of SKZ—will be found in Sander's forthcoming doctoral dissertation. We assume that the themes and ideas in SKZ also draw out of this common source, but have not consulted the dissertation to confirm this suspicion.

83. The program was implemented as part of a settlement agreement in *Hills v. Gautreaux*, 425 U.S. 284 (1976). For a discussion of the program's outcomes, see, for example, LEONARD S. RUBINOWITZ & JAMES E. ROSENBAUM, *CROSSING THE CLASS AND COLOR LINES: FROM PUBLIC HOUSING TO WHITE SUBURBIA* (2000).

84. The eleven were a distinguished group, including, for example, Harvard statistics professors Donald R. Rubin and Gary King. Rubin developed the modern approach to thinking about causality and causal inference in statistics. They may not be correct about Sander, but they can claim the right to be taken seriously in such matters.

85. Brief of Empirical Scholars as Amicus Curiae Supporting Respondents at 27–28, *Fisher v. Univ. of Tex.*, 570 U.S. 297 (2013), 2012 WL 3418837, available at <http://www.utexas.edu/vp/irla/Documents/ACR%20Empirical%20Scholars.pdf>. Another economist

Sander, in turn, showed that other statisticians supported him. We do not propose to mediate this dispute regarding what the statistics tell us about the value of affirmative action, and we do not at all suggest that because Sander's previous statistical work in support of a counterintuitive conclusion—that affirmative action harms African Americans—has not been widely accepted, the provocations and various arguments found within SKZ must be based on flawed statistical analysis. Our only point here is that SKZ has not been in print long enough for other experts to access its restricted dataset and report on efforts to replicate its findings.

Given the heavy reliance on both a restricted dataset and the dissimilarity index, for any researchers' claims on any topic based on sophisticated statistical analysis, we would urge a degree of caution until other experts have reported on efforts to replicate or evaluate it, and until there is something approaching a professional consensus regarding whether the statistical evidence and SKZ's analysis are reliable and can be established with alternative measures of segregation as well. That does not mean that we think the proposals or policy program offered by SKZ is lacking in merit either. Quite the contrary. But given the number of contrarian or novel claims, some of the more provocative arguments bear further scrutiny before being accepted as established fact in the field of segregation studies.

### VII. Sander's Other Scholarship and Advocacy Undermines SKZ's Case for Integration Policies

As readers may infer from the previous section, Richard Sander occupies an unusual and almost unique place in scholarly discussions of racial inequality. On the one hand, he has for long been an advocate of residential integration, the subject of SKZ. As a citizen and activist, he has participated in, even led, pro-integration and fair housing groups. On the other hand, as we alluded to above, he has been a prominent critic of affirmative action in higher education, having written extensively to advance a "mismatch hypothesis," the claim that if African-American students were not given an admission preference to the most competitive law schools and instead had attended lower-ranked schools where academic expectations were lower, they would be more likely to graduate and pass the bar.<sup>86</sup>

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who has been critical of Sander's mismatch theory is Jesse Rothstein, son of one of the co-authors of this article. The father, however, is in no way involved in any of the son's work, including the son's authorship of the critical paper, Jesse Rothstein & Albert Yoon, *Affirmative Action in Law School Admissions: What Do Racial Preferences Do?*, 75 U. CHI. L. REV. 649 (2008), and the son is not at all involved in the father's work. SKZ fails to distinguish the two, as they appear as one entry in the SKZ index.

86. E.g., Richard H. Sander, *A Systemic Analysis of Affirmative Action in American Law Schools*, 57 STAN. L. REV.: 367 (2004); RICHARD SANDER & STUART TAYLOR, JR., *MISMATCH: HOW AFFIRMATIVE ACTION HURTS STUDENTS IT'S INTENDED TO HELP, AND WHY UNIVERSITIES WON'T ADMIT IT* (2012). One of us (Rothstein), in a review of Randall Kennedy's *For Discrimination* (2013), praised Kennedy's view that even if Sander's statistics were valid, African Americans in particular and the nation overall would not be better off

Yet, while on its face, this argument presents itself as in the interests of African Americans themselves, in pursuing his claim Sander has supported the most prominent and dangerous advocates of rolling back the civil rights gains of the twentieth century. He submitted amicus briefs in support of the legal attack against affirmative action at the University of Texas (*Fisher v. University of Texas*) and at Harvard (*Students for Fair Admissions*, currently being litigated). These cases have been initiated and litigated by Edward Blum's "Project on Fair Representation"<sup>87</sup> and frame affirmative action not, like Sander, as a program that harms African Americans but as one that discriminates against whites or Asians. The Blum attack on affirmative action in education is part of a broader campaign that Blum leads against civil rights generally. For example, he organized and represented the plaintiff in *Shelby v. Holder* that successfully persuaded the Supreme Court to eviscerate the Voting Rights Act by overturning the preclearance requirements for voting rule changes in communities that have historically suppressed African-American votes.<sup>88</sup>

We do not here make an argument of guilt by association. We raise it for a different reason. Sander has not only taken the lead in authorship of *SKZ*; he has also followed the book's publication by organizing a group of scholars to promote the book's policy recommendations—he calls this effort an "integration moonshot initiative" (which we strongly applaud). It may not be logically inconsistent to claim that affirmative action in education harms black students, while an even more radical form of affirmative action in housing is necessary both to meet the housing needs and desires of African Americans and to satisfy whites' desires for integrated living. Yet while these positions may not be logically inconsistent, they are certainly politically so. As Sander supports Edward Blum's campaign to chip away at the civil rights victories of the twentieth century, he helps to establish political as well as legal precedents that cannot help but undermine his proposals to expand opportunities for African Americans in integrated housing. Sander thus contributes to a new constitutional framework summarized in Chief Justice John Roberts's assertion that "[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis

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if we produced more black lawyers who graduate from less competitive schools to do wills and divorces at the cost of fewer who graduate from more competitive schools and wind up in corporate suites, on the bench, and in other positions of leadership. Kennedy refers to Charles Hamilton Houston, Thurgood Marshall's mentor and Howard University Law School dean who deliberately reduced the number of Howard University Law School graduates to make admission to the school more competitive, believing that his policy would result in elite graduates who would be "capable of reforming the American racial order." *FOR DISCRIMINATION, supra*, at 128–34; Richard Rothstein, *THE COLORBLIND BIND, AM. PROSPECT* (June 22, 2014), <http://prospect.org/article/race-or-class-future-affirmative-action-college-campus>.

87. Project on Fair Representation, <https://www.projectonfairrepresentation.org>.

88. *Shelby County v. Holder*, 570 U.S. 529 (2013)

of race.<sup>89</sup> Yet in his 1988 article (mentioned above) that previewed some of the conclusions of SKZ, graduate student Sander favorably cited Justice Harry Blackmun to support the necessity of affirmative action in housing; Sander praised Blackmun's view: "In order to get beyond racism, we must first take account of race."<sup>90</sup>

Is it logically inconsistent to say that we must ignore race in education, but take explicit account of it in housing? Perhaps not, for example, if one believed that housing and education are and have been completely independent sectors. However, most scholars and the United States Supreme Court itself understand that housing and education are mutually reinforcing and interdependent sectors. But, if not logically inconsistent, it certainly is politically and constitutionally so. SKZ is not only a scholarly book but an opening salvo of Sander's campaign to advance the book's policy recommendations. His support for "race-blind" policies in education certainly undermines his advocacy of race-conscious policies in housing.

At times, SKZ stretches to be needlessly contrarian about conventional (and accurate) understandings of the history and evolution of segregation, sometimes taking gratuitous swipes at other respected scholars and commentators. One such instance occurs in the discussion over the enactment of the Fair Housing Act, and subsequent enforcement. Contrary to the conventional narrative that the Fair Housing Act was weak by design until strengthened with amendments in 1988, and weakly enforced,<sup>91</sup> SKZ claims that Justice Department immediately enforced it with vigor.<sup>92</sup> SKZ asserts that Matthew Desmond, the highly regarded author of *Evicted*, wrote "nonsense" when he repeated the conventional view that only the assassination of Martin Luther King, Jr., and the subsequent riots that it provoked created the political pressure that forced Congress to adopt the Fair Housing Act. Desmond, not SKZ, is correct. SKZ supports its "nonsense" charge by noting that the Senate filibuster against the Act was broken a month before King was killed.<sup>93</sup> Yet SKZ ignores that even after cloture was invoked in the Senate, the Fair Housing Act languished in the House Rules Committee with the likelihood that it would die there; only the riots following King's assassination created sufficient public anguish to force the bill out. As Sander wrote in his 1988 article, "The House approved the Senate version in the tense days following the assassination of Martin Luther King, Jr.," and further reported that the worry was "widespread"

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89. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007).

90. Sander, *supra* note 81, at 914.

91. See, e.g., MASSEY & DENTON, *supra* note 3, at 195–200.

92. SKZ, *supra* note 2, at 145–51.

93. Even the vote to invoke cloture offers little support for the SKZ analysis. The vote (by a margin of one) was obtained not because support for non-discrimination in housing was widespread, but only after President Lyndon Johnson bribed a senator from Alaska to switch his vote with a promise to fund a public housing project that the senator had been seeking.

among liberal Republicans that they would be accused of “rewarding rioters” by voting for fair housing.<sup>94</sup> Regardless of who is right, this sort of sniping seems unnecessarily gratuitous, distracts from the flow of the narrative, and undermines the persuasive force of the text by alienating sympathetic readers.<sup>95</sup>

### Conclusion

SKZ joins a welcome spate of books published in the last year or so that tackle the enduring problem of racial segregation.<sup>96</sup> There is much to commend in SKZ, both for its substantive account as well its effort to recenter the problem of segregation on the political agenda. SKZ may stand as one of the best chronological examinations of the problem of racial residential segregation in the United States, from the late nineteenth century to the present. While many books delve into the causes or consequences of segregation, no other book examines the issue so comprehensively, or offers such a carefully thought-out and ambitious program of government policy to tackle it.

Yet as we noted, this book is not without flaws. In an effort to develop contrarian narratives, at times the authors overreach. Moreover, the nearly exclusive reliance on dissimilarity scores at a time when the quality and quantity of alternative measures of segregation has blossomed is especially puzzling. Had SKZ applied alternative sets of metrics to develop or bolster its arguments or to investigate different facets to the story of the evolution of segregation, its arguments would have been more persuasive and its analysis more powerful.

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94. Sander, *supra* note 81, at 880, 920 n.361.

95. For example, SKZ devotes two pages to criticizing Douglas Massey for making “sweeping generalizations,” and not “undertak[ing] anything like a ‘scientific’ investigation” for Congressional testimony, not for his scholarly work. SKZ, *supra* note 2, at 290–91. Such a critique of Massey’s scholarly work is fair game, but to criticize his congressional testimony on this ground seems unnecessarily churlish to us. And we note that Massey (in *American Apartheid*) lends strength to his analysis of the persistence of segregation by using not only a dissimilarity index but an exposure/isolation index as well.

96. See, e.g., JESSICA TROUNSTINE, *SEGREGATION BY DESIGN: LOCAL POLITICS AND INEQUALITY IN AMERICAN CITIES* (2018); ALEX SCHAFFRAN *THE ROAD TO RESEGREGATION: NORTHERN CALIFORNIA AND THE FAILURE OF POLITICS* (2018); MARIA KRYSAN & KYLE CROWDER, *CYCLE OF SEGREGATION: SOCIAL PROCESSES AND RESIDENTIAL STRATIFICATION* (2017).