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SPATIAL EQUALITY AND THE *KERNER COMMISSION REPORT*: A BACK-TO-THE-FUTURE ESSAY

JOHN O. CALMORE*

The goals and beliefs that Americans had about themselves are no longer tenable. And as a society, we are no longer prepared intellectually or spiritually for the world we actually live in. Our reaction is to want to go somewhere where we can hunker down and pretend we will find peace—somewhere the way we imagine things were, or should be.

—Jim Dator, a futurist at the University of Hawaii, December 1992.¹

I. INTRODUCTION

In tracing the development of race consciousness, particularly during the period from the mid-1960s to the mid-1970s, Gary Peller observed that the national commitment to a centralized policy of integration virtually ignored the integrity and health of black institutions.² In his words, “[i]ntegration of dominant institutions, rather than reparations from one community to another, became the paradigm for racial enlightenment.”³ The demand for spatial equality is a call for a paradigm shift in these terms and for a new day of racial enlightenment.⁴

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1. John Balzar, *California's Image: Fad to a Funk*, L.A. TIMES, Dec. 19, 1992, at A1, A32 (quoting Jim Dator).

2. Gary Peller, *Race Consciousness*, 1990 DUKE L.J. 758, 820-34.

Editor's Note: The contributors to this Symposium have used the terms “African American,” “black,” and “black American,” often interchangeably, in their articles. The *North Carolina Law Review* has elected to defer to its contributors' choices in the absence of any universally accepted racial or ethnic designation.

3. *Id.* at 843.

4. Peller notes that the reappearance of race consciousness in critical race scholarship partly reflects our attempt “to reopen a political discourse that was closed off in the 1960s.” *Id.* at 847. This Essay is a case in point. At least one speaker has vilified my position as “1960s retreaded black-nationalistic, black-power separatist rhetoric.” Remarks of a white liberal speaker at the Conference on Homelessness, Twenty-Fifth Anniversary of the *Villanova Law Review* (Nov. 1990). His comments really were retreaded from the 1960s, when black power advocates were called “black neo-segregationists” and “advocates of apartheid.” Then

Twenty-five years ago, the *Kerner Commission Report* concluded that the future of our cities would be enhanced only through the combination of enrichment programs designed to improve the quality of life in black communities and programs designed to encourage integration of substantial numbers of blacks into American society beyond the ghetto. The *Report* warned us that integration would not occur quickly and, therefore, that enrichment had to be an important adjunct to any program of integration.⁵ Spatial equality recognizes the continuing validity of this warning.⁶ It thus demands, as a matter of justice, that the enrichment program finally receive the policy attention and financial commitment necessary to compensate for decades of neglect and active exploitation.⁷

Dating back to Jamestown in the early 1600s, the African-American housing situation has been problematic, almost intractably so. Today, three mutually reinforcing conditions of that predicament cry out for redress: (1) extensive discrimination by government and private actors, at present and, more significantly, as a vestige of national history; (2) housing and community deprivation and exploitation in multifaceted forms; and (3) persistent stigmatic segregative disadvantage, which is now largely an urban manifestation of restricted opportunity in the con-

and now these charges are ridiculous. As Peller points out, black power troubled integrationists, in part, because one of its underlying assumptions was that power, rather than reason or merit, determined the distribution of social resources and opportunities. Peller, *supra* note 2, at 790. I, too, think this is true. Peller further states:

Integrationists saw nationalists as regressive because, in the integrationist view, progress meant transcending race as a basis of social decisionmaking. . . . With the centering of integrationism as the mainstream ideology of American good sense, nationalism became marginalized as an extremist and backward worldview, as the irrational correlate in the black community to the never-say-die segregationists of the white community.

Id. My orientation does draw on black nationalism, but I agree with Manning Marable "that the positive elements of integration be merged with the activist tradition of black nationalism." MANNING MARABLE, FROM THE GRASSROOTS: SOCIAL AND POLITICAL ESSAYS TOWARD AFRO-AMERICAN LIBERATION 15 (1980) (quoted in John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129, 2131 n.5 (1992)).

5. REPORT OF THE NAT'L ADVISORY COMM'N ON CIVIL DISORDERS 395-407 (Bantam Books 1968) [hereinafter KERNER COMM'N REPORT].

6. Today, although black movement to the suburbs has increased since the 1960s, the persistence of "central city poverty" is not likely to be diminished substantially in the foreseeable future through out migration. Thomas A. Clark, *The Suburbanization Process and Residential Segregation*, in DIVIDED NEIGHBORHOODS: CHANGING PATTERNS OF RACIAL SEGREGATION 115, 135 (Gary A. Tobin ed., 1987) [hereinafter DIVIDED NEIGHBORHOODS].

7. See, e.g., Gary Williams, "The Wrong Side of the Tracks": Territorial Rating and the Setting of Automobile Liability Insurance Rates in California, 19 HASTINGS CONST. L.Q. 845, 852-54, 856-59 (1992) (discussing the adverse racial impact of territorial rating in the context of housing segregation that is coupled with economic isolation and poverty concentration).

text of social and geographic isolation, containment, and expendability.⁸

Karl Taeuber asserts that "[t]he racial structure of housing in the United States is rooted in history."⁹ The significance of this fact cannot be overstated. The harms associated with spatial inequality and diminished opportunity now plaguing so much of black America are primarily the result of past discrimination by state and private actors who often operated in tandem. Spatial inequality's harms are reflected in persistent segregative disadvantage in education, employment, security, and residence. These harms are now increasingly superimposed on a rigid system of structural racial and economic inequality. Moreover, in a number of cities this condition is exacerbated by competition for community definition and for scarce resources, power, and opportunities. This competition is the result of urban disinvestment and demographic shifts over the last decade that have placed people of color in terrible intergroup conflicts—most recently, the multicultural nightmare of Los Angeles.¹⁰

Throughout African-American history, the quest for affordable, decent, safe, and sanitary housing—for "fair housing"—has been a Sisyphean rock, even as we have progressed in areas of cultural, educational, employment, and political attainment. This quest is complicated because people conceptualize housing in America broadly. As Emily Achtenberg and Peter Marcuse state, "[h]ousing, after all, is much more than shelter: it provides social status, access to jobs, education and other services, a framework for the conduct of household work, and a way of structuring economic, social and political relationships."¹¹ For most families, homeownership is not just the epitome of the American Dream, it is the most important source of wealth they are likely to accumulate. Housing

8. See generally Richard T. Ford, *Urban Space and the Color Line: The Consequences of Demarcation and Disorientation in the Postmodern Metropolis*, 9 HARV. BLACK LETTER J. 117, 146 (1992) (discussing the "dynamics of racial identification and spatial organization along racial lines" in the American city); Douglas S. Massey, *American Apartheid: Segregation and the Making of the Underclass*, 96 AM. J. SOC. 329 (1990) (arguing that residential segregation by race during the 1970s played a critical role in the development of the urban underclass); Florence Wagman Roisman & Phillip Tegler, *Improving and Expanding Housing Opportunities for Poor People of Color: Recent Developments in Federal and State Courts*, 24 CLEARINGHOUSE REV. 312 (1990) (encouraging housing desegregation litigation and examining federal and state cases that achieved this goal to some extent); Karl Taeuber, *The Contemporary Context of Housing Discrimination*, 6 YALE L. & POL'Y REV. 339 (1988) (briefly examining three views on the causes and characteristics of, and possible remedies for, residential segregation by race).

9. Taeuber, *supra* note 8, at 339.

10. James H. Johnson, Jr. & Melvin L. Oliver, *Interethnic Minority Conflict in Urban America: The Effects of Economic and Social Dislocations*, 10 URB. GEOGRAPHY 449, 451-55 (1989).

11. CRITICAL PERSPECTIVES ON HOUSING xviii (Rachel G. Bratt et al. eds., 1986) [hereinafter CRITICAL PERSPECTIVES].

is really a "bundle" of disparate but inseparable components. According to Roger Montgomery and Daniel Mandelker:

Housing denotes an enormously complicated idea. It refers to a whole collection of things that come packaged together, not just four walls and a roof, but a specific location in relation to work and services, neighbors and neighborhood, property rights and privacy provisions, income and investment opportunities, and emotional or psychological symbols and supports.¹²

Throughout this Essay "housing" denotes this conception.

In considering the difficult issues of race and space twenty-five years after the *Kerner Commission Report*, Professor Dator's observation quoted in this Essay's epigraph is particularly insightful. The meaning of race in American society is not so straightforward as it was in 1968. Although racism remains at the center of so much, its form and expression are continually changing.¹³ No matter how much America runs, it cannot hide from racism. We cannot, any of us, simply "hunker down and pretend we will find peace."¹⁴

The basic truth told in the *Kerner Commission Report* is more often than not denied now: "What white Americans have never fully understood—but what the Negro can never forget—is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it."¹⁵ Until dominant society re-recognizes, acknowledges, and takes responsibility for this fact, denial and neglect will continue to stand in the way of establishing a coherent urban policy that addresses not only matters of housing and community development, but also the larger issues of social, economic, and racial justice. For now, the nation continues to run scared and time continues to run out. Remedying this problem will be one of President Bill Clinton's principal domestic challenges.

The Kerner Commission stated that America was moving toward a deepening racial division, "two societies, one black, one white—separate and unequal."¹⁶ The Commission expressed great faith, however, in the

12. HOUSING IN AMERICA: PROBLEMS AND PERSPECTIVES 3 (Roger Montgomery & Daniel R. Mandelker eds., 2d ed. 1979).

13. MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1980S, at 60-69 (1986).

14. Balzar, *supra* note 1, at A1, A32 (quoting Jim Dator).

15. KERNER COMM'N REPORT, *supra* note 5, at 2.

16. *Id.* at 1. In elaborating, the Commission stated, "Reaction to last summer's disorders has quickened the movement and deepened the division. Discrimination and segregation have long permeated much of American life; they now threaten the future of every American." *Id.* This was echoed implicitly in Los Angeles in April 1992 when, amid cries of "No Justice, No Peace," that city experienced unprecedented civil disorder that caused over \$780 million in

reversibility of this trend. In lieu of either "blind repression or capitulation to lawlessness," it urged "the realization of common opportunities for all within a single society."¹⁷ Today, the nation's growing multicultural population displaces the propriety of continuing to view race relations as simply black and white,¹⁸ but the necessary commitment described by the Commission remains pertinent: "national action—compassionate, massive and sustained, backed by the resources of the most powerful and the richest nation on this earth."¹⁹ Accordingly, the Commission called upon every American to approach the task with "new attitudes, new understanding, and, above all, new will."²⁰

The election of Bill Clinton as President and his appointment of Henry Cisneros as Secretary of Housing and Urban Development (HUD) offer the opportunity for new attitudes, understanding, and will to reorient the nation away from the racial politics of division of the last twelve years. The Reagan-Bush years removed any illusion that the redress of spatial inequality and racial injustice would be directed by the Kerner Commission's finding that "[t]here can be no higher priority for national action and no higher claim on the nation's conscience."²¹ Instead, the response—really since the "benign neglect" days of Richard Nixon—has been to establish a situation in which "conscienceless power meets powerless conscience."²²

This Essay discusses in Part II the concept of "spatial equality" and

damage and over 50 deaths. See *Special Report: Understanding the Riots*, L.A. TIMES, May 11, 1992, at C12, C15; *id.* (Wash. Ed.) May 12, 1992, at D5.

17. KERNER COMM'N REPORT, *supra* note 5, at 1. After the 1992 civil disorder in Los Angeles, Marlin Fitzwater, White House Press Secretary under former President George Bush, attributed that disorder to the Great Society programs of the 1960s. *A Great Debate on the Legacy of the Great Society*, WASH. POST, May 6, 1992, at A27. According to Fitzwater, "we're now paying a price" for the failure of these programs of the past in the big cities. The *Washington Post* editorialized, "The president's version of an urban policy is the warding off of a myth. Back to Orwell: 'And if all others accepted the lie which the Party imposed . . . if all records told the same tale—then the lie passed into history and became truth.' " *Id.* at A28.

18. Barbara Vobejda, *Asian, Hispanic Numbers in U.S. Soared in 1980s, Census Reveals*, WASH. POST, Mar. 11, 1991, at A1, A5.

19. KERNER COMM'N REPORT, *supra* note 5, at 1-2.

20. *Id.* at 2.

21. *Id.* The Report's recommendations were based on three basic principles:

To mount programs on a scale equal to the dimension of the problems;

To aim these programs for high impact in the immediate future in order to close the gap between promise and performance;

To undertake new initiatives and experiments that can change the system of failure and frustration that now dominates the ghetto and weakens our society.

Id. The new Administration would do well to embrace these same basic principles.

22. *A Statement by the National Committee of Negro Churchmen*, in *THE BLACK POWER REVOLT* 264 (Floyd B. Barbour ed., 1968).

the need for and propriety of realizing it. It urges black America to seek spatial equality even in the absence of integration. Too often integration, as an imperative, has simply displaced an orientation toward spatial equality, equating it with the separate-but-equal doctrine of another day. Of necessity, Part III then offers a critique of residential integration as tokenistic, gradualistic, and subordinating. In Part IV, the Essay considers the impact of race and class factors on black community and cultural life. Part V assesses the federal government's historical involvement in endorsing, maintaining, and furthering spatial inequality by exploiting a black-white dual housing market. The Essay consequently supports a claim that territorial reparations would be a proper result. In light of this conclusion, Part VI offers some recommendations for legal advocacy and policy formulation.

II. THE MEANING AND SIGNIFICANCE OF SPATIAL EQUALITY

Integrationists, black and white, traditionally have focused on an individualized equality of opportunity. In an ideal world, society would be race-neutral. Individuals could transcend the race-conscious framework of our world, a framework that structures social stratification along race lines. This stratification, however, merges the race question with that of class. In most of our cities with a significant black population, the stratification has been spacialized. A unique, historical subjugation is perpetuated as race, class, and space intersect to compound the disadvantage that now determines the status of black society. Blacks occupy an inferior position that is reflected in the quantitative and qualitative differences between the respective class structures of blacks and whites. Aside from spatial containment, the inferior status of blacks is constantly regenerated by economic forces, along with the legal, cultural, political, and social apparatuses that support them.²³

Integrationists have never really accepted community enrichment as an appropriate prelude to broad-scale integration. Their early reaction to the terrible *de jure* segregation in the South extended itself to the *de facto* segregation in the urban North. They blurred the distinction between a compulsory ghetto and a voluntary black community, and accepted as true the proposition that in all areas of life separate was inherently unequal. Civil rights advocates were simply "unable to argue simultaneously against Jim Crow and for the improvement of the Negro community."²⁴ Moreover, influential white liberals argued that the ghetto enrichment

23. THOMAS D. BOSTON, *RACE, CLASS, AND CONSERVATISM* 158-59 (1988).

24. Charles E. Silberman, "*Beware the Day They Change Their Minds!*," *FORTUNE*, Nov. 1965, at 152 (emphasis omitted).

strategy was politically infeasible because the strategy incorrectly assumed sufficient white goodwill and continued willingness to commit great resources.²⁵ Ghetto enrichment and integration were viewed as competing strategies and the integrationists claimed consistently that "in a white-dominated society, separate is inevitably unequal both in terms of the resources that go into a community and in terms of the way in which society values that community, its institutions, and its people."²⁶ As time has told, however, in a white-dominated society, part of the domination has been to persist in blocking black entry into white residential areas or to flee from significant entry.²⁷

Title VIII of the Civil Rights Act of 1968 declared that it was national policy "to provide . . . for fair housing throughout the United States."²⁸ Although "fair housing" was not expressly defined in the Act, its primary objective was initially interpreted to be "the replacement of ghettos by truly integrated and balanced living patterns."²⁹ This "integration imperative" legitimated the emphasis on desegregation rather than on simple nonsegregation³⁰ and free choice as to where to live. This imperative has proven futile, especially for those who live under the double bind of racial subordination and economic class subjugation. As it has turned out, integration presupposes relatively affluent black fami-

25. Gary Orfield, *The Movement for Housing Integration: Rationale and the Nature of the Challenge*, in HOUSING DESEGREGATION AND FEDERAL POLICY 18, 20 (John M. Goering ed., 1986) [hereinafter HOUSING DESEGREGATION].

26. *Id.*

27. Gary A. Tobin, *Introduction*, in DIVIDED NEIGHBORHOODS, *supra* note 6, at 8, 11.

28. 42 U.S.C. § 3601 (1988). The Fair Housing Act should combine with the national housing policy of the Civil Rights Act of 1866, which guarantees to blacks and other colored citizens the same housing rights as those enjoyed by whites. 42 U.S.C. § 1982 (1988); see Jones v. Alfred H. Mayer Co., 392 U.S. 409, 413-17 (1968). Fair housing should also incorporate the policy of the Housing Act of 1949 that "every American family" be provided "a decent home and a suitable living environment . . . as soon as feasible." 42 U.S.C. § 1441 (1988). This nation has never been fully committed to any of these fair housing precepts. The nation should adopt what Paul Gewirtz characterizes as the "corrective ideal":

The corrective conception does not tell us exactly what to do. Rather, it insists upon an imagery and locates a source of commitment. The images are rooted in the past—the awful, deliberate wrongs inflicted on black people for so long, the brutal sweep of continuity between past deeds and present life. From that image of wrong comes the commitment to correction, the distinctive dynamic of racial justice. The corrective idea insists that racial justice not be assimilated to other distributive objectives. It affirms that, because of the past, the claims of black Americans are unique and uniquely just. It affirms, at the very least, a way of thinking about racial justice.

Paul Gewirtz, *Choice in the Transition: School Desegregation and the Corrective Ideal*, 86 COLUM. L. REV. 728, 798 (1986).

29. 114 CONG. REC. 2276 (1968) (remarks of Senator Walter Mondale, principal sponsor of the Fair Housing Act).

30. For a discussion of "nonsegregation," see *infra* note 52 and accompanying text.

lies effectively buying their way out of segregation. Success has been modest even here, however.³¹

This Essay's demand for spatial equality extends a long-standing debate. In 1969, for example, John Kain and Joseph Persky authored an influential article that revived the unfortunate "gilded ghetto" metaphor, the imagery that set integration in a direction diametrically opposed to an enrichment strategy.³² They argued that the ghetto was linked with the growing metropolis and stood in such an unfavorable position in comparison to the suburbs that it represented "institutionalized pathology."³³ At best, enrichment and development of the black community under these circumstances would present only the deceptively attractive gloss, or gilding, of the community. Kain and Persky therefore called for the breakup of black communities and the dispersal of their inhabitants: "Although there are major benefits to be gained by both the Negro community and the metropolis at large through dispersal of the central ghetto, these benefits cannot be reached and are likely to be hindered by programs aimed at making the ghetto a more livable place."³⁴ Like other white and black liberals who believed ghetto enrichment to be politically infeasible, Kain and Persky failed to see the importance of maintaining a centralized black community.

A few years prior to the Kain and Persky article, Frances Fox Piven and Richard Cloward said what had to be said then and what must be said now: "The myth that integrationist measures are bringing better housing to the Negro poor comforts liberals; it placates (and victimizes) the Negro masses; and it antagonizes and arouses the bulk of white Americans."³⁵ Piven and Cloward correctly saw white backlash as a significant part of the desegregation legacy: "While turmoil rages over integration, housing conditions worsen. They worsen partly because . . . the energies and attention of reformers are diverted from attempts to amelio-

31. Blacks of all income levels are highly segregated from similar whites. In a 1980 study of 16 metropolitan areas, the segregation index for families with incomes of \$50,000 or more was equal to that of families in poverty. A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY 144 (Gerald D. Jaynes & Robin M. Williams, Jr. eds., 1989) [hereinafter A COMMON DESTINY].

32. John F. Kain & Joseph C. Persky, *The Future of the Ghetto: Alternatives to the Gilded Ghetto*, 14 PUB. INTEREST 74 (1969).

33. *Id.* at 78.

34. *Id.* at 82. A sample of responses to Kain and Persky include Joel Bergsman, *Alternatives to the Non-Gilded Ghetto: Notes on Different Goals and Strategies*, 19 PUB. POL'Y 309 (1971); Robert Browne, *Toward an Overall Assessment of our Alternatives*, 1 REV. BLACK POL. ECON. 18 (1970); and Peter Labrie, *Black Central Cities: Dispersal or Rebuilding—Part I*, 1 REV. BLACK POL. ECON. 3 (1970).

35. Frances F. Piven & Richard A. Cloward, *Desegregated Housing: Who Pays for the Reformer's Ideal?*, NEW REPUBLIC, Dec. 17, 1966, at 20.

rate housing in the ghetto itself."³⁶

Although history confirms the Piven-Cloward analysis, I am not arguing that integration be abandoned as a means of social mobility and betterment. I challenge, however, the integration imperative's tendency to sacrifice attention and reform directed toward ameliorating housing problems and furthering community development in black communities. Fair housing must be reconceptualized to mean not only increased opportunity for blacks to move beyond their socio-territorial disadvantage but also to mean enhanced choice to overcome opportunity-denying circumstances while continuing to live in black communities. Spatial equality is a group-based remedy that focuses on opportunity and circumstances within black communities and demands that both be improved, enriched, and equalized. Short of this, blacks, as a group, will be left with the inadequate "remedy" of individuals choosing, or being forced, to move to "better" space somewhere else.

Spatial equality compensates for past discrimination by legitimately combining the most effective features of affirmative action with expanded housing opportunity and choice. In many ways, it is analogous to educational equity advocacy. If we really care about a more effective fair housing policy, we must expand its scope. Remedies limited to nondiscriminatory free access to housing and to desegregating the ghetto are insufficient given the intersectional features of race and class oppression, the extensive and persistent segregation with which we live, and the historical legacy of denied opportunities associated with that oppression and segregation. Redefining fair housing would include providing housing "in forms and locations that address the special situation of oppressed groups, including the right to remain in place or to move to other neighborhoods of choice."³⁷ While we certainly must attempt to control and eliminate finally the housing market's pervasive discrimination and exclusion, we certainly must also target housing resources to revitalize existing communities of color "in order to protect and affirm the right of minority residents to enhance their social and political cohesiveness by remaining in place if they choose to do so."³⁸ The expansion of increased housing opportunity in other neighborhoods cannot diminish the "prior commitment to neighborhood revitalization."³⁹

36. *Id.* A similar critique has been made regarding education in Derrick A. Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976).

37. Emily Paradise Achtenberg & Peter Marcuse, *Toward the Decommodification of Housing*, in CRITICAL PERSPECTIVES, *supra* note 11, at 474, 480.

38. *Id.*

39. *Id.*

III. A CRITIQUE OF THE INTEGRATION IMPERATIVE

In August of 1963, Martin Luther King, Jr. expressed a wonderful dream—"With this faith we will be able to transform the jangling discords of our nation into a beautiful symphony of brotherhood."⁴⁰ But King's hope for racial integration has died its hardest death in the area of housing. As one observer noted in July of 1991, "[r]ace fatigue grips America as the fight over a once-revered value . . . [and] ideal has been overwhelmed by forces that either sharply slowed integration or are resegregating the land."⁴¹ In June of 1992, the *New York Times* reported that in a growing number of black suburbs, like Prince George's County, Maryland, even "affluent blacks are choosing to live among themselves."⁴²

It is now time to rethink integration and examine its fundamental context-setting assumptions. In examining the progress of black-white integration since World War II, the National Research Council characterized "integration" as a broad term that refers to "the nature of inter-group relations, to the quality of group treatment or interaction that exists."⁴³ In an interracial or multiracial context, integration means that each group is (1) significantly represented, (2) broadly distributed, and (3) sharing power and equality.⁴⁴

After World War II, integration theory was influenced by a contact hypothesis that integration would be optimal when there was equal status between blacks and whites who pursued common, mutually supportive goals and when there was authoritative sanction and support for this process.⁴⁵ This hypothesis was implicit in Dr. King's dream. In the early

40. Harrison Rainie et al., *Black and White in America: The Integration Ideal of a Generation Ago is Vanishing As Intellectual and Social Forces Pull the Races Apart*, U.S. NEWS & WORLD REP., July 22, 1991, at 18.

41. *Id.*

42. David J. Dent, *The New Black Suburbs*, N.Y. TIMES, June 14, 1992, § 2 (Magazine), at 18.

43. A COMMON DESTINY, *supra* note 31, at 57.

44. *Id.*; see also Rose Helper, *Success and Resistance Factors in the Maintenance of Racially Mixed Neighborhoods*, in HOUSING DESEGREGATION, *supra* note 25, at 170, 171 (distinguishing "integrated" and "racially mixed" neighborhoods).

45. Ankur J. Goel, *Maintaining Integration Against Minority Interests: An Anti-Subjugation Theory for Equality in Housing*, 22 URB. LAW. 369, 387 (1990). The problem with the hypothesis is that blacks and whites seldom share equal status, which must precede white acceptance of integration. *Id.* at 388. It is a common perception that "an interracial . . . neighborhood is a step up for most Negroes. Any white who is appreciably concerned for his status in the larger white world . . . may conclude that for him such a community is a step down." BRIAN J.L. BERRY, *THE OPEN HOUSING QUESTION* 377 (1977). This partly explains the phenomenon of "tipping" or "resegregation." See Bruce L. Ackerman, *Integration for Subsidized Housing and the Question of Racial Occupancy Controls*, 26 STAN. L. REV. 245, 254-55 (1974). Because of white flight fueled by prejudice, and the resultant resegregation

1960s, integration was responsive to both political demands and moral claims. Today, it is antagonistic to political demands, and its moral claims are rejected by whites who deny responsibility for segregation.

Because of the extent of exclusion of blacks from dominant institutions, integration packaged itself in a comprehensive way. Integrationists early on assumed a linear, coherent, and symbiotic process whereby integrated schooling would provide children with a better education and training, which would in turn enable them to secure good jobs in an integrated labor market, which would in turn provide them sufficient economic resources to buy good housing in an integrated residential neighborhood. As the races got to know each other under these circumstances, they would come to appreciate each other as individuals who would be judged on the content of their character rather than the color of their skin. This process then would be enhanced and repeated for subsequent generations. What has occurred, however, is not coherent and packaged integration, but rather segmented integration. By this I mean that fragments of integration in education, primarily at the college and graduate level, in politics and governance, in the employment and business sectors, and in social interaction have been attained in most cases without having been linked to residential integration.

Although it is frequently paid lip service, integration cannot be said to have been a broadly shared value within dominant America.⁴⁶ Integration has always been a tight, forced fit; too much so for the whole notion to work. For instance, when the school busing controversy raged during the 1970s, those advocating racially balanced public schools may have feared that to abandon busing would constrict the expanding civil rights movement.⁴⁷ To these people, the debate over busing as a means to desegregate schools was viewed as a test of national commitment to

when blacks enter white apartments or neighborhoods, three negative results can occur: (1) entry quotas are imposed to limit blacks and to maintain stable integration; and realtors are encouraged to indulge in (2) blockbusting or (3) steering. See respectively, Rodney A. Smolla, *Integration Maintenance: The Unconstitutionality of Benign Programs that Discourage Black Entry to Prevent White Flight*, 1981 DUKE L.J. 891; *United States v. Starrett City Assocs.*, 660 F. Supp. 668 (E.D.N.Y. 1987), *aff'd*, 840 F.2d 1096 (2d Cir.), *cert. denied*, 488 U.S. 946 (1988); Note, *Blockbusting*, 59 GEO. L.J. 170 (1970); and Note, *Racial Steering: The Real Estate Broker and Title VIII*, 85 YALE L.J. 808, 809-12 (1976).

46. Probably the shift from an emphasis on issues of principle to those of practical social policy "was the decisive change in racial issues in the 1970s." A COMMON DESTINY, *supra* note 31, at 124. Although blacks and whites share consensus on an abstract goal of achieving an integrated and equalitarian society, "their images of what constitute integrated, equalitarian, and racially harmonious conditions are often different or contradictory . . . and [their] perceptions of the genesis and reproduction of group inequality are sharply divergent." *Id.*; see Thomas F. Pettigrew, *New Patterns of Racism: The Different Worlds of 1984 and 1964*, 37 RUTGERS L. REV. 673 (1985).

47. DERRICK A. BELL, JR., RACE, RACISM, AND AMERICAN LAW 414 (2d ed. 1980).

continued civil rights progress. To sound a retreat on busing was deemed to be an abandonment of the commitment to integration and a re-embracing of the evils of segregation.⁴⁸ Under a kind of "domino theory," establishment civil rights leaders feared that failure on the busing issue would trigger a string of defeats that would curtail the civil rights quest for integrated jobs, housing, public accommodations, and so on.⁴⁹

Today, given the recognition of integration as a segmented rather than as a coherently packaged process, the domino theory should be rejected. Blacks of all socio-economic classes still are forced to measure their progress in all areas of life primarily within the context of segregated housing and public education for their children. Each area of life must be analyzed separately to evaluate the connection between integration and concrete payoffs. We can no longer presume the linear progress that leads from an integrated neighborhood, to integrated school, to integrated workplace.

Although the meaning of integration and its value in various contexts are contested matters, most blacks remain committed to it as a pragmatic matter.⁵⁰ The integration imperative still drives many civil rights strategies, social and public policy deliberation and formulation, and moral and ethical discourse. It does so, however, primarily through wishful thinking and excessive loss of faith in black institutional and community capacity.⁵¹ Spatial equality does not presume that benefits automatically are associated with integration, and it does not denigrate black capacity. It sees "nonsegregation" as an alternative to integration: "Nonsegregation implies both the right of people to remain indefinitely where they are, even if in ghetto areas, and the elimination of restrictions on moving into other areas. . . . Only white ethnocentrism could lead to the belief that all blacks would want to live in predominantly white areas."⁵²

48. *Id.*

49. *Id.*

50. Wilhelmina A. Leigh & James D. McGhee, *A Minority Perspective on Residential Integration*, in HOUSING DESEGREGATION, *supra* note 25, at 31, 39 ("The overriding issue here is better, more affordable housing for minorities, not housing integration.").

51. Henry W. McGee, Jr., *Afro-American Resistance to Gentrification and the Demise of Integrationist Ideology in the United States*, 23 URB. LAW. 25, 40 (1991) (discussing black resistance to integration of their neighborhoods when it results in gentrification); Michael R. Tein, Comment, *The Devaluation of Nonwhite Community in Remedies for Subsidized Housing Discrimination*, 140 U. PA. L. REV. 1463, 1502 (1992) (explaining how emphasis on neighborhood integration stigmatizes nonwhite community).

52. ROBERT F. FORMAN, *BLACK GHETTOS, WHITE GHETTOS AND SLUMS* 46 (1971); see also John O. Calmore, *Fair Housing v. Fair Housing: The Problems with Providing Increased Housing Opportunities Through Spatial Deconcentration*, 14 CLEARINGHOUSE REV. 7, 12 (1980); Comment, *Black Neighborhoods Becoming Black Cities: Group Empowerment, Local*

Integrationists too often see segregation as a result of mere discrimination; I see it as primarily a result of domination and exclusion. The evil of Jim Crow segregation began with the fact that whites chose to impose the separation on blacks. The invidious nature of the discrimination stemmed not simply from individual perpetrators engaged in the disparate treatment of individual blacks, but from a white group disposition to dominate and exclude blacks. The white desire to exercise this power remains strong today, especially when directed to poor, urban blacks. Hence, large gaps exist between black and white perceptions on the degree of integration that is acceptable. According to Reynolds Farley, even when whites endorse the ideal of integrated housing, they would be uncomfortable if more than a token number of blacks was to enter their neighborhood.⁵³ In other words, whites accept integration only if black representation is minimal. Twenty-five percent of the whites surveyed by Farley in 1978 stated that they would feel uncomfortable if blacks constituted just seven percent of the area population. Additionally, if the black percentage were twenty, then over forty percent of the whites would feel uncomfortable, and twenty-four percent would try to move.⁵⁴ Blacks, by contrast, viewed integration as desirable only if they constituted a sizeable percentage—"a number that [would] not only make whites uncomfortable, but [would] terminate white demand for housing in the neighborhood."⁵⁵

Since Farley's 1978 study, racial polarization has increased greatly, and the prospects for integration are less promising. Consider a 1985 study of white, working-class defectors from the Democratic Party.⁵⁶ The study's findings indicate the following:

These . . . defectors express a profound distaste for blacks, a sentiment that pervades almost everything they think about government and politics. Blacks constitute the explanation for their vulnerability and for almost everything that has gone wrong in their lives; not being black is what constitutes being middle class; not living with blacks is what makes a neighborhood a decent place to live. . . . These sentiments have important implications, . . . as virtually all progressive symbols and

Control, and the Implications of Being Darker than Brown, 23 HARV. C.R.-C.L. L. REV. 415, 422-25 (1988) (discussing the black community of Roxbury's attempt to separate from Boston and to incorporate itself).

53. REYNOLDS FARLEY & WALTER ALLEN, *THE COLOR LINE AND THE QUALITY OF LIFE IN AMERICA* 154 (1987).

54. A COMMON DESTINY, *supra* note 31, at 141.

55. *Id.*

56. The poll focused on suburban Detroit and was conducted by Stanley Greenberg. Thomas B. Edsall & Mary D. Edsall, *Race*, ATLANTIC MONTHLY, May 1991, at 53, 56.

themes have been redefined in racial and pejorative terms.⁵⁷

Among liberal integrationists, Gary Orfield is a consistently articulate voice. In 1988, however, two years after concluding that integration was the only real alternative to ghettoization, even he had harsh words for his own white liberal tradition.⁵⁸ Orfield claimed that white liberals failed to develop a coherent program of reform in response to the urban ghetto crisis that was brought into sharp focus during the mid-1960s.⁵⁹ By the beginning of the 1970s, each branch of the federal government rejected efforts to make structural changes in the ghetto, and racial separation was accepted as natural. Anyone who suggested more than incremental changes was subjected to intense political and intellectual attack. Liberals thus focused on other issues.⁶⁰

As liberals turned away from a structural analysis of urban inequality and racial oppression, the conservatives captured the policy agenda. They recharacterized compensatory programs as being based on the fact that the ghetto's inhabitants were in a subordinate position because of their own inherent personal behavior and group inferiority.⁶¹ In the urban North during the early 1970s, and within a few years after the *Kerner Commission Report* found that white institutions were fundamentally responsible for urban racial inequality, there developed a totally different dominant understanding—the black community was responsible for its own problems, and significant governmental action was no longer necessary: “[T]he perception of the late 1960s that America faced a fundamental racial crisis was replaced by the belief that everything reasonable had been done and that, in fact, policies had often gone so far as to be unfair to whites.”⁶² Those who held these views included the officials who took charge of the principal social policy and civil rights agencies in the federal government.⁶³

The acceptance of the ghetto system as natural was accompanied by the denunciation of policies aimed at challenging the color line, including aggressive fair housing enforcement and the dispersion of subsidized,

57. *Id.*

58. Gary Orfield, *Race and the Liberal Agenda: The Loss of the Integrationist Dream, 1965-1974*, in *THE POLITICS OF SOCIAL POLICY IN THE UNITED STATES* 313 (Margaret Weir ed., 1988) [hereinafter *THE POLITICS OF SOCIAL POLICY*].

59. *Id.* at 315.

60. GARY ORFIELD & CAROLE ASHKINAZE, *THE CLOSING DOOR: CONSERVATIVE POLICY AND BLACK OPPORTUNITY* 206 (1991).

61. *Id.*

62. *Id.*

63. *Id.* at 210. “A key assumption in the entire argument was that discrimination was no longer structural but only a secondary problem that could be dealt with by taking action against those few individuals who discriminated.” *Id.* at 207.

low-income housing to the suburbs. The Nixon, Ford, and Reagan Administrations adopted as a basic policy of the federal government the preservation of the racial status quo in metropolitan areas.⁶⁴ As the next section in this Essay discusses, this preservation of the racial status quo has adversely affected blacks of varied socio-economic classes.

IV. RACE AND CLASS INTERSECTION IN THE QUEST FOR COMMUNITY

Communities are based on things people hold in common. A community implies that its members' relationships are solidified by ties providing a feeling of collective identity, self-awareness, and affiliation. Because of persistently high levels of residential segregation, community cohesion is based primarily on racial homogeneity.⁶⁵ In the years following the *Kerner Commission Report* there has been a growing division within the black class structure which has raised questions about whether black inequality is attributable to race or class factors. Because of the growing concentration of ghetto poverty in areas from which the black middle class has moved, it is argued that black communities cannot really overcome class differences to build a community that incorporates the interests of the poor and the middle class.⁶⁶

According to William Wilson, "today the ghetto features a population, the underclass, whose primary predicament is joblessness reinforced by growing social isolation."⁶⁷ Wilson cites various economic and demo-

64. *Id.* at 210.

65. Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 441 (1990). This is most clearly manifested in suburban communities where local politicians generally attempt to maintain class and ethnic homogeneity. *Id.* According to Briffault, "[l]ocal homogeneity is attained by separate incorporation, often followed by the adoption of exclusionary land-use policies." *Id.* This exclusion is not practiced only by affluent communities, since "less well-to-do communities are just as concerned about maintaining community status against the deterioration usually attributed to the influx of racial and ethnic minorities and poorer people." *Id.* An important feature of suburban politics is "[t]he protection of turf through the prevention of internal racial or income differentiation." *Id.* Finally, the forces of homogeneity drive an insistence on separate suburban and city schools, which "reflects a determination to shield local children from exposure to economic, social and cultural differences that are perceived as a threat to family values." *Id.* at 441-42. Integration becomes not merely infeasible, but impossible.

66. Richard Bernstein, *Twenty Years After the Kerner Report: Three Societies, All Separate*, N.Y. TIMES, Feb. 29, 1988, at B8.

67. William J. Wilson, *Public Policy Research and The Truly Disadvantaged*, in THE URBAN UNDERCLASS 460, 462 (Christopher Jencks & Paul Peterson eds., 1991) [hereinafter Wilson, *Public Policy Research*]. The full thesis is set forth in WILLIAM J. WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY (1987). Wilson focuses on the poor who live in metropolitan areas, or census tracts, where 40% of the population was poor according to 1980 data. As of that date, only 1% of the nation's population lived in these areas of concentrated poverty. While the percentage of poor people living in

graphic factors as contributing to this situation, such as deindustrialization and the decline in manufacturing jobs, particularly in the Northeast and Midwest, the movement of blue-collar employment to the suburbs, and the growth of service jobs that replaced jobs formerly held by unskilled but well-paid blacks. Additionally, these economic changes have reduced the pool of black men deemed to be marriageable, thereby contributing to the substantial number of poor, black, female-headed families that are largely dependent on welfare.⁶⁸

Most relevant to this Essay is Wilson's argument that developing at the same time as the above-noted changes was a movement of black middle-class families from the ghetto, generated in part by the expansion of civil rights opportunities in housing and employment. The outmigration of middle-class blacks has concentrated the adverse effects of living in impoverished neighborhoods. Such effects, according to Wilson, include "inadequate access to jobs and job networks, the lack of involvement in quality schools, . . . and the lack of exposure to informal mainstream social networks and conventional role models."⁶⁹

Wilson's claim that black middle-class flight has caused the increased concentration of inner-city poverty is controversial. According to Douglas Massey and Mitchell Eggers, "affluent and poor blacks are likely to live in the same neighborhoods, and only in communities with relatively low numbers of blacks has there been a trend toward segregation of blacks from each other according to income."⁷⁰ Farley also re-

these neighborhoods was 9%, it was 21% for blacks, 16% for Latinos, and only 2% for whites. Paul A. Jargowsky & Mary Jo Bane, *Ghetto Poverty in the United States, 1970-1980*, in *THE URBAN UNDERCLASS*, *supra*, at 235, 252. Within metropolitan areas, approximately three in ten blacks lived in these areas of concentrated poverty. According to Jargowsky and Bane, "the 2.4 million ghetto poor were 65 percent black, 22 percent Hispanic, and 13 percent non-Hispanic white and other races. Thus ghettos are predominantly populated by blacks and Hispanics, and black and Hispanic poor are much more likely than white poor to live in a ghetto." *Id.*

68. Wilson, *Public Policy Research*, *supra* note 67, at 462-63.

69. *Id.*

70. Douglas S. Massey & Mitchell L. Eggers, *The Ecology of Inequality: Minorities and the Concentration of Poverty, 1970-1980*, 95 AM. J. SOC. 1153, 1153-86 (1990). Massey has authored or coauthored numerous instructive articles, not only on black segregation, but also on Latino and Asian segregation. See, e.g., Douglas S. Massey & Eric Fong, *Segregation and Neighborhood Quality: Blacks, Hispanics, and Asians in the San Francisco Metropolitan Area*, 69 SOC. FORCES 15 (1990); Douglas S. Massey & Nancy A. Denton, *Trends in Residential Segregation of Blacks, Hispanics, and Asians*, 52 AM. SOC. REV. 94 (1987); Douglas S. Massey & Brendan Mullen, *Processes of Hispanic and Black Spatial Assimilation*, 89 AM. J. SOC. 836 (1984); Douglas S. Massey & Nancy A. Denton, *Suburbanization and Segregation in U.S. Metropolitan Areas*, 94 AM. J. SOC. 592 (1988); Douglas S. Massey et al., *The Effect of Residential Segregation on Black Social and Economic Well-Being*, 66 SOC. FORCES 29 (1987).

It appears that Massey would focus on removing the barriers to residential integration, rather than on striving for spatial equality:

but Wilson, arguing that the residency of poor blacks in impoverished neighborhoods "occurred because of overall increases in black poverty rather than because of higher levels of residential segregation by social class or a new outmigration of prosperous blacks."⁷¹

Wilson focuses on ghetto poverty in neighborhoods where the poverty rate is over forty percent.⁷² In such neighborhoods, I think Wilson is correct in seeing the poor as segregated from the middle class. I believe the ghetto poor are not as isolated as Wilson may argue, however, because the black middle class often resides close to the neighborhoods of ghetto poverty. Although upwardly mobile blacks, like whites, have sought to carve out neighborhood enclaves that contain only members of their own class, they have been relatively unsuccessful.⁷³ For example, Bart Landry found that in the Northeast, the average percentage of middle class blacks in a neighborhood was only thirty-eight percent as compared to sixty-two percent for whites.⁷⁴ He concluded that "[t]he idea of a black middle class living in social isolation from the other classes is largely a myth."⁷⁵ Even though the black middle class may not live in ghetto neighborhoods, they often share neighborhoods with the black working poor and near-poor.⁷⁶

It is important to keep in mind that black segregation is concentrated uniquely in cities.⁷⁷ Massey has characterized as "hypersegrega-

I think that a group that raises residential segregation to be an ideal is going to cut itself off from many of the benefits of society. You make it easier for the larger white population to eventually decapitalize it, and it basically becomes an easy target for racist attitudes. It becomes isolated politically.

Dent, *supra* note 42, at 24.

71. Reynolds Farley, *Residential Segregation of Social and Economic Groups among Blacks, 1970-1980*, in *THE URBAN UNDERCLASS*, *supra* note 67, at 274, 293.

72. See Wilson, *Public Policy Research*, *supra* note 67, at 61.

73. L. BART LANDRY, *THE NEW BLACK MIDDLE CLASS* 185 (1987). There is some evidence, however, that black yuppies, or "bubbies," are a demographic exception. According to one report, over 65% of blacks with four or more years of college who moved during the 1970s moved to suburban census tracts that had less than 10% black residents. WILLIAM P. O'HARE ET AL., *BLACKS ON THE MOVE: A DECADE OF DEMOGRAPHIC CHANGE* 86 (1982). The extent of black affluence, however, is small; only one of seven black households in 1989 had incomes of \$50,000 or more, whereas one of three white households had incomes of \$50,000 or more. William P. O'Hare et al., *African Americans in the 1990s*, 46 *POPULATION BULL.* 29 (1991).

74. LANDRY, *supra* note 73, at 184.

75. *Id.* at 185.

76. *Id.*

77. George C. Galster, *More than Skin Deep: The Effect of Housing Discrimination on the Extent and Pattern of Racial Residential Segregation in the United States*, in *HOUSING DESEGREGATION*, *supra* note 25, at 119 (noting that black segregation in metropolitan areas "is characterized both by the large extent of residential racial separation within and between neighborhoods and by the pattern of black concentration in central city areas").

tion" that segregation which is multidimensional, or which exists in four of the following five ways: (1) uneven distribution of blacks in neighborhoods, (2) black isolation in neighborhoods, (3) concentration of blacks within small, physically compact areas, (4) black neighborhood clustering that forms one large ghetto, or (5) restriction of blacks to centralized neighborhoods close to the urban core.⁷⁸ In ten metropolitan areas, blacks are highly segregated in this hypersegregated sense: Baltimore, Chicago, Cleveland, Detroit, Gary, Los Angeles, Milwaukee, Newark, Philadelphia, and St. Louis.⁷⁹ Roughly twenty-five percent of the black population in the United States lives in these areas.⁸⁰ In contrast, no other ethnic or racial group is hypersegregated in any urban area.⁸¹

Another aspect unique to black residential segregation is the lack of significant change in its level as one climbs the socio-economic ladder.⁸² Regardless of occupational status, income, or educational achievement, blacks are highly segregated from similar whites.⁸³ According to the National Research Council, the average segregation index in 1980 for sixteen metropolitan areas was seventy-five for families with incomes of \$10,000-\$14,999; seventy-six for those with incomes of \$35,000 to \$49,999; and seventy-nine for those with incomes of \$50,000 or more.⁸⁴ While the average segregation index for blacks is eighty, it is only about forty-five for Latinos and Asian-Pacific Americans; indeed, it would take almost sixty years for the black-white index to reach current index figures for Latinos and Asian-Pacific Americans.⁸⁵ Massey concludes that "as long as public policies ignore the impact of involuntary racial segregation and focus exclusively on class-related problems among blacks, they will fail because these problems are caused, in large part, by the persistence of racial segregation in American society."⁸⁶

It is rare for blacks and whites to experience both integrated housing and a sense of community. Blacks demonstrate a history of integrating for a better housing package, not in quest of community. Integrated

78. Douglas S. Massey & Nancy A. Denton, *Hypersegregation in U.S. Metropolitan Areas: Black and Hispanic Segregation Along Five Dimensions*, 26 DEMOGRAPHY 373, 373 (1989).

79. *Id.* at 378-79.

80. *Id.* at 377.

81. *Id.* at 388.

82. Farley, *supra* note 71, at 286-89.

83. Douglas S. Massey, *Racial Segregation Itself Remains a Corrosive Force*, L.A. TIMES, Aug. 13, 1989, at V5.

84. A COMMON DESTINY, *supra* note 31, at 144.

85. *Id.* at 90.

86. Massey, *supra* note 83, at V5.

housing seldom represents "a path to belonging."⁸⁷ It is usually at the expense of community that blacks improve their housing package in integrated settings dominated by whites. The integration imperative is predicated on white dominance and virtual assimilation by blacks as preconditions to whites accepting blacks into their communities.⁸⁸ When these preconditions are not met, blacks who serve as the agents of integration risk living a life that lacks context and community. As Blair Stone indicates, "[t]o be a part of a community one must feel 'at home' there. One must have a sense of attachment, both emotional and physical."⁸⁹ In the absence of these circumstances, affluent blacks who maximize the quality of their housing bundle do so at the expense of finding a home and community in the same space.

In light of the difficulty of linking home and community in the context of residential integration, there is evidence that even middle-class

87. Kenneth Karst, *Paths to Belonging: The Constitution and Cultural Identity*, 64 N.C. L. REV. 304, 337-38 (1986).

88. BENJAMIN B. RINGER & ELINOR R. LAWLESS, RACE-ETHNICITY AND SOCIETY 134-36 (1989). By 1970, an increasing number of African Americans rejected integration as assimilation and opted to define it in terms of cultural pluralistic acculturation. Faustine C. Jones, *External Crosscurrents and Internal Diversity: An Assessment of Black Progress, 1960-1980*, 110 DAEDALUS 71, 79 (1981). Today, that view is probably the prevalent view of black self-identity. A COMMON DESTINY, *supra* note 31, at 200. Integration has come to mean something very different from the melting pot notion of the Kerner Commission's hope for a single society; now integration's social meaning refers to "a process whereby a group with a distinctive culture both adapts to and is accepted by a larger group without being forced to change its culture and associated practices in favor of those of the majority." DICTIONARY OF RACE AND ETHNIC RELATIONS 146-47 (E. Ellis Cashmore ed., 2d ed. 1988). Because cultural pluralism, in these terms, assumes mutually accepted coexistence of multiple cultures within American society, it is at war with the process of assimilation, "which refers to a process whereby a group changes its cultural beliefs and practices in favor of those of the group with which it comes into social contact." *Id.* at 147; see Sharon O'Brien, *Cultural Rights in the United States: A Conflict of Values*, 5 LAW & INEQ. J. 267, 283-87 (1987). In some ways, "wild black power" and "nationalist nonsense" has come to be seen as common sense among many African Americans. For example, Malcolm X saw integration as "a manifestation of white supremacist ideology." Peller, *supra* note 2, at 783. In 1968, Robert Browne said that

it was the black masses who first perceived that integration actually increases the white community's control over the black one by destroying institutions, and by absorbing black leadership and coinciding its interests with those of the white community. . . . Such injurious, if unintended, side effects of integration have been felt in almost every layer of the black community.

Id. (quoting Robert S. Browne, *A Case for Separation*, in SEPARATION OR INTEGRATION: WHICH WAY FOR AMERICA—A DIALOGUE 7, 7-15 (Robert S. Browne & Bayard Rustin eds., 1968)). Integrationists frequently extol the virtues of integration and present worst-case scenarios about black segregation. They offer no rebuttal, however, to references to integration's "injurious, if unintended, side effects" that disadvantage blacks. Spatial equality does recognize them. It does not, therefore, call for separation; it simply acknowledges the separate and unequal circumstances that already exist.

89. Blair C. Stone, Comment, *Community, Home, and the Residential Tenant*, 134 U. PA. L. REV. 627, 635 (1986).

blacks increasingly value black community attachment and affiliation at the expense of integration.⁹⁰ This is a controversial matter because opponents to fair housing often have cited voluntary segregation in denying the existence or extent of racial discrimination.⁹¹ The theory that "blacks prefer to live among their own kind" is advanced to delay or prevent efforts toward decreasing black residential segregation. In turn, this rationale can support a community's efforts to " 'maintain the ethnic purity of its neighborhood without racist guilt.' "⁹²

Nevertheless, I believe that a growing segment of the black middle class is voluntarily attaining housing in black areas. This may stem in part from the increase in black alienation from white society that has developed from the late 1960s and into the early 1980s among all segments of the black community. According to the National Research Council's survey, "[q]uestions concerning white intentions or basic trust in whites elicit some of the most alienated responses."⁹³ Also, for the black middle class, it has been possible to attain the benefits of socio-economic mobility without living in integrated neighborhoods.⁹⁴

Motivation aside, for the black middle class the existence of adequate housing alternatives to the most impoverished black areas has come about within the context of persistent racial segregation from whites and the reduced push to move to all-white or integrated areas. The push to move to these areas apparently was more valued when they represented the only viable options to deplorable living conditions.⁹⁵ Moreover, given the past history of white resistance to residential integration—including acts of intimidation, harassment, and violence—"voluntary" segregation may "simply reflect the judgment that entry into all-white communities is just not worth the risk or aggravation; and it is certainly no longer necessary to achieve a decent standard of living."⁹⁶

Those who emphasize integration either as a value per se or as a pragmatic means of access to improved lifestyles and life chances often discount the growing importance of black cultural and community affini-

90. Dent, *supra* note 42, at 20-22.

91. Joe T. Darden, *Choosing Neighbors and Neighborhoods: The Role of Race in Housing Preference*, in *DIVIDED NEIGHBORHOODS*, *supra* note 6, at 15, 15.

92. *Id.* at 37 (quoting Citizens Commission on Civil Rights).

93. A COMMON DESTINY, *supra* note 31, at 136.

94. ARNOLD R. HIRSCH, *MAKING THE SECOND GHETTO: RACE AND HOUSING IN CHICAGO, 1940-1960*, at 171-211 (1983); George C. Galster, *Black Suburbanization: Has it Changed the Relative Location of Races?*, 26 URB. AFF. Q. 621, 625-26 (1991); George C. Galster & Mark W. Keeney, *Race, Residence, Discrimination, and Economic Opportunity: Modeling the Nexus of Urban Racial Phenomena*, 24 URB. AFF. Q. 87, 107-09 (1988).

95. HIRSCH, *supra* note 94, at 1-39.

96. *Id.*

ties. Take, for example, the black community of Los Angeles' View Park: "To the outside observer, it may seem ironic that this group of professional blacks, who have successfully assimilated into mainstream white society, choose to live in this mostly black neighborhood—especially one that is situated a quick drive away from the gang-scarred neighborhoods east of Crenshaw."⁹⁷ Residents offer various explanations. According to a black airline pilot, the presence of black role models for his two pre-adolescent children outweighed negative factors associated with living in an urban area: "In this community, they can see black doctors, writers, lawyers, artists, craftsmen, law-enforcement officials. They're all within a hundred yards of where we live."⁹⁸

Many of the View Park residents reportedly experience relief upon returning home to a black environment after having endured the job stress of "competing on a white playing field all day."⁹⁹ Black parents, whose children attend predominantly white private schools, expressed a critical need to have their children come home to a black neighborhood where it is the norm to be black; otherwise the children could lose a social and cultural grounding that would militate against their growing up "lost, not knowing who they are."¹⁰⁰

In spite of the growing class schism among blacks, spatial equality's group-based remedial orientation presents the potential to build black community and cultural life in ways that integration simply cannot. The integration imperative is a skimming-off process that disperses from the community many of the very people who are needed as resources, often leaving behind in isolated circumstances those who are the most disabled and dislocated socially and economically. Spatial equality enables a re-linking of black interests across class lines.

V. THE HISTORICAL LINKAGE BETWEEN FEDERAL POLICY AND SPATIAL INEQUALITY

The Kerner Commission awakened America to its national racism. As we examine the matters it addressed, we must recognize that racism changes through time as it takes on new forms and reflects various antagonisms in different contexts.¹⁰¹ One view of contemporary racism is

97. Karen Grigsby Bates, *View Park: A Case Study in Racial Ironies*, L.A. TIMES, Sept. 18, 1989, at 1.

98. *Id.*

99. *Id.*

100. *Id.*; see also DARLENE POWELL HOPSON & DEREK S. HOPSON, DIFFERENT AND WONDERFUL: RAISING BLACK CHILDREN IN A RACE-CONSCIOUS SOCIETY 55 (1990) (discussing modeling for black children in nonblack environments).

101. OMI & WINANT, *supra* note 13, at 89-109.

that blacks collectively personify a problem, or more precisely, a series of problems. Similarly, blacks are also characterized as perennial victims. Together, these perceptions remove from black life its historical dimension. Thus, Paul Gilroy states that "[t]he oscillation between black as problem and black as victim has become, today, the principal mechanism through which 'race' is pushed outside of history and into the realm of natural, inevitable events."¹⁰² In other words, "[r]acism rests on the ability to contain blacks in the present, to repress and to deny the past."¹⁰³ Opposition to racism must counter this by reclaiming and revealing to others the historical dimensions of black life.

A decade ago, Eric Schnapper wrote that the central discrimination issue of the 1980s would be to end the perpetuation of past discrimination.¹⁰⁴ In considering the remedy for black America's housing predicament, it is important to move beyond individual acts of racial discrimination and address the government rules, policies, and practices "that perennially reenforce the subordinate status of any group."¹⁰⁵ The urban oppression now experienced by so many blacks is neither natural nor inevitable. In assessing responsibility, little is gained by searching out individual perpetrators. A regime sustains subordination through generating "devices, institutions, and circumstances that impose burdens or constraints on the target group without resort to repeated or individualized discriminatory actions."¹⁰⁶ Through contextualizing the historical development of federal housing policies, we can look back to the future and see the nation's continuing responsibility for furthering the racist adventure that now plagues so many blacks in urban settings.¹⁰⁷ This history saddens me. My ancestors, without the benefits of citizenship—without its privileges and immunities—maintained much of the

102. PAUL GILROY, *THERE AIN'T NO BLACK IN THE UNION JACK* 11 (1991).

103. *Id.*

104. Eric Schnapper, *Perpetuation of Past Discrimination*, 96 HARV. L. REV. 828, 828 (1983); see Jeremy Waldron, *Superseding Historic Injustice*, 103 ETHICS 4, 7-20 (1992).

105. LAURENCE TRIBE, *AMERICAN CONSTITUTIONAL LAW* 1516 (2d ed. 1988).

106. Schnapper, *supra* note 104, at 834.

107. The first scholarly work to recognize this was CHARLES ABRAMS, *FORBIDDEN NEIGHBORS* 1-9 (1955); see also MARK I. GELFAND, *A NATION OF CITIES: THE FEDERAL GOVERNMENT AND URBAN AMERICA, 1933-1965*, at 380-89 (1975) (discussing the development of federal policies to improve the urban environment). The significance of federal involvement in creating the circumstances of spatial inequality, however, has been discounted by an emphasis on market factors in housing discrimination or by a belief that the private nature of housing prevents the government from redressing matters. Martha Mahoney, Note, *Law and Racial Geography: Public Housing and the Economy in New Orleans*, 42 STAN. L. REV. 1251, 1255-56 (1990). Mahoney presents a causation analysis combining federal policy with private practices to assess questions of cause and effect. *Id.* at 1255-60.

South's economy and style of life as slaves. Later they fought in the nation's wars. They paid their taxes, but were betrayed.

In *Milliken v. Bradley*, the 1974 Detroit school desegregation case, Justice Potter Stewart concluded that the segregative disadvantages associated with spatial inequality had been caused "by unknown and perhaps unknowable factors."¹⁰⁸ This view badly misreads the historical role of the federal government since the 1930s. It is now clear that the dual housing market that undergirds racial demography and residential segregation has been preserved and expanded by the federal government's express endorsement of racism.¹⁰⁹

As summarized by the Citizen's Commission on Civil Rights:

[D]uring the period when FHA mortgage assistance and other programs were operating full throttle, first to save the housing industry and then to finance suburban expansion, a "whites only" label was firmly affixed to these programs. Federal policymakers cooperated with state and local governments, real estate brokers, developers and financial institutions to assure that minorities were excluded from assistance designed to benefit the middle class and that low-income housing was provided only on a segregated basis. The federal government placed its imprimatur on the exclusionary and segregative practices of others and helped shape the current racial demography of the nation's cities. For [blacks], the government's housing policies meant that they were confined to ghettos, lacking choice and access to the jobs and services that would have afforded them the opportunity to become part of the mainstream.¹¹⁰

It is virtually impossible to overstate the significance of this involvement in creating, sponsoring, and perpetuating the racially segregated dual housing markets that divide America. The federal government should acknowledge its role and move to right these tragic wrongs.

The legacy of the government's racist past is broad and far-reaching. Consider the gap in black-white homeowner rates. In 1985, while sixty-eight percent of all white households owned their homes, only forty-four percent of all black households did.¹¹¹ Moreover, even the proportion of

108. *Milliken v. Bradley*, 418 U.S. 717, 756 n.2 (1974) (Stewart, J., concurring).

109. James A. Kushner, *Apartheid in America: An Historical and Legal Analysis of Contemporary Racial Residential Segregation in the United States*, 22 How. L.J. 547, 551 (1979).

110. CITIZENS' COMM'N ON CIVIL RIGHTS, A DECENT HOME: A REPORT ON THE CONTINUING FAILURE OF THE FEDERAL GOVERNMENT TO PROVIDE EQUAL HOUSING OPPORTUNITY 81-82 (1983) [hereinafter A DECENT HOME]; see Dennis R. Judd, *Segregation Forever*, THE NATION, Dec. 9, 1991, at 740, 742.

111. EDWARD B. LAZERE & PAUL A. LEONARD, THE CRISIS IN HOUSING FOR THE POOR: A SPECIAL REPORT ON HISPANICS AND BLACKS ix (1989).

poor white households who owned their homes was forty-six percent, thus exceeding all black homeowners.¹¹² Because home ownership represents the primary source of wealth in our society, these disparities explain in significant part the fact that in 1984 the median wealth of all white households was eleven times greater than that of all black households.¹¹³

The racially discriminatory policies of the FHA and VA that significantly transformed the nation's patterns of homeownership facilitated this huge discrepancy. Prior to World War II, banks and other lending institutions as a rule demanded a down payment of fifty percent and required repayment of the mortgage within ten years.¹¹⁴ In contrast, the FHA offered insured mortgages over thirty years, with only five to ten percent downpayments.¹¹⁵ Aided by VA insured mortgages, 3.75 million GIs were able to buy homes after the war, often with no more than a token one dollar down payment.¹¹⁶ The FHA and the VA were insuring thirty-six percent of all new nonfarm mortgages by 1950, and forty-one percent by 1955.¹¹⁷ As was said about FHA policy, however, it was essentially "separate for whites and nothing for blacks":¹¹⁸ Between 1934 and 1959, only two percent of the FHA units were made available to the nation's minorities who comprised approximately fifteen percent of the overall population.¹¹⁹

The new mortgage policies had their greatest effect in the suburbs, which could accommodate the new construction of single-family detached houses.¹²⁰ The FHA rated residential areas in terms of risks that

112. *Id.*

113. Lynne Duke, *Black Economic Disparity Deepened During 1980s*, WASH. POST, Aug. 9, 1991, at A12. In 1987 the median value of homes owned by blacks was \$48,000 compared to \$69,300 for whites. *Id.*

114. RICHARD POLENBERG, *ONE NATION DIVIDABLE: CLASS, RACE, AND ETHNICITY IN THE UNITED STATES SINCE 1938*, at 131 (1980).

115. *Id.*

116. *Id.*

117. *Id.*

118. ABRAMS, *supra* note 107, at 237 (comparing FHA policy to the "separate but equal" doctrine, and arguing that FHA policy went further).

119. James P. Chandler, *Fair Housing Laws: A Critique*, 24 HASTINGS L.J. 159, 161 n.19 (1972-73).

120. Barry Checkoway, *Large Builders, Federal Housing Programs, and Postwar Suburbanization*, in CRITICAL PERSPECTIVES, *supra* note 11, at 119, 123 ("Between 1950 and 1955 the total metropolitan population increased by 11.6 million people, 9.2 million of whom were suburban."). Checkoway demonstrates how the federal government supported large builders, such as Levitt and Sons, as the federal government's suburban development stemmed directly from its effort to stimulate production in the housing sector and the national economy. *Id.* at 124-27. Large builders accounted for only 5% of housing production in 1938, but 64% in 1959. *Id.* at 122.

might be associated with lending in a given area. Invariably, suburban areas received high ratings, while urban areas were redlined as undesirable. According to historian Richard Polenberg, "[i]t became virtually impossible to obtain a federally insured mortgage to buy an older home in the city. The deck was stacked in favor of those who wanted to buy a new home in the suburbs."¹²¹ If blacks sought to buy in the suburbs there was yet another deck stacked against them. Racially prejudiced local customs and exclusionary practices in the suburbs were federally endorsed by the FHA manuals that guided the agency underwriters issuing federal insurance. The manuals provided a blueprint to prevent blacks from entering neighborhoods where their mere presence would bring down property values.¹²² One year after federal law established the federal mortgage insurance program, a 1935 manual stated that acceptable ratings would turn on neighborhoods that protected against "the occurrence or development of unfavorable influences" such as the "[i]nfiltration of inharmonious racial or nationality groups."¹²³

In 1936, an agency underwriters' manual spelled out techniques for preventing this infiltration, recommending deed restrictions as preferable to zoning measures: "Where the same deed restrictions apply over a broad area and where these restrictions relate to types of structures, use to which improvements may be put, and *racial occupancy*, a favorable condition is apt to exist."¹²⁴ Finally, the manual explained that neighborhood stability was an important rating factor, and this too was coded in terms of race. Neighborhood stability requires properties to continue to be occupied by racially and socially homogeneous classes: "*A change in social or racial occupancy generally contributes to instability and a decline in values.*"¹²⁵

These racist theories combined with other policies to establish rigid black-white segregation in public housing, to exclude blacks from white neighborhoods that received federal funds, and to decline mortgage assistance in black neighborhoods. These early policies continued after the war, and with the boom in suburbanization of the 1950s the federal government not only planted the seeds for today's persistent residential segregation, but it joined hands with local government, realtors, and developers to nurture and extend lily white suburban enclaves.¹²⁶ The ur-

121. POLENBERG, *supra* note 114, at 132.

122. Mahoney, *supra* note 107, at 1259 (discussing "racialized appraisal policies based on their invention and institutionalization by the federal government").

123. A DECENT HOME, *supra* note 110, at 7.

124. *Id.*

125. *Id.* at 9.

126. During the 1970s, blacks moved in large numbers to the suburbs. Although blacks

ban civil disorders that prompted the *Kerner Commission Report* were just an unintended part of the harvest.

VI. RECOMMENDATIONS

A. *Litigation*

The position articulated by National Housing Law Project attorney Florence Roisman presents the best balanced approach to assure affordable housing in communities of color as well as to provide integrated housing opportunities beyond those communities.¹²⁷ She argues that the conflict that I have raised between these two goals is a function of scarce housing supply, which she deems to be "an artificial constraint that is itself not acceptable."¹²⁸ Her central claim, with which I agree, is that integration must be achieved without disadvantaging people of color in the process.¹²⁹ She therefore advocates that constitutional and Title VIII legal principles and remedies be marshalled to produce increased housing and improved neighborhoods for people of color while also achieving integration.¹³⁰

The fair housing bar is very small, however, and advocacy cannot adopt a "let's do it all" approach. Rather, it must set priorities in light of client need assessment and input, remedial feasibility, and the value orientations that advance fair housing and human development for the community of people who are represented as well as absentees from the litigation who would be affected. Until there is a universal entitlement to housing for poor people, the political reality, heavily reliant on privatization, simply does not hold out much promise for overcoming the scarcity

represented only 6% of the suburban population, one out of five blacks resided in suburban areas in 1980. Generally, however, the move to the suburbs reveals a racialized demography, as blacks moved to spillover suburbs, close to the central city, or to black enclaves in otherwise white suburbs. Integration as a result of black suburbanization has been minimal. The benefits of suburban life have been much less substantial to blacks than to most whites. Blacks have gained less financially, as very few have been able to buy homes in the suburbs when the investments were the least and the gains the greatest. John O. Calmore, *To Make Wrong Right: The Necessary and Proper Aspirations of Fair Housing*, in *THE STATE OF BLACK AMERICA* 1989, at 77, 92-93 (Janet Dewart ed., 1989). With a majority of whites now living in the suburbs, racialized politics have negative consequences for the cities, see Demetrios Caraley, *Washington Abandons the Cities*, 107 *POL. SCI. Q.* 1 (1992), and for the poor, Helene Slessarev, *Racial Tensions and Institutional Support: Social Programs during a Period of Retrenchment*, in *THE POLITICS OF SOCIAL POLICY*, *supra* note 58, at 357.

127. Florence Wagman Roisman & Philip Tegeler, *Improving and Expanding Housing Opportunities for Poor People of Color: Recent Developments in Federal and State Courts*, 24 *CLEARINGHOUSE REV.* 312 (1990).

128. *Id.* at 314, 325.

129. *Id.* at 314, 337-38.

130. *Id.* at 314.

issue that Roisman deems to be artificial.¹³¹ I remain unconvinced that the push for integration—at least at this time—can move beyond the gradualism, tokenism, and cultural chauvinism that are the common expressions of white dominance.

While Roisman provides to the fair housing advocate an excellent *litigation* approach, the problems are primarily *political*. Any fair housing lawyer, however, should rely upon her constitutional and statutory arguments to establish liability and to provide remedy. Fair housing's antidiscrimination mandate requires an increase in the supply of housing so that whites and people of color can be treated equally. While I would press for *targeted* housing production, rehabilitation, and preservation in communities of color, Roisman would seek to enlarge the housing stock there and in proximate predominantly white developments so that both colored and white applicants would receive equal treatment "with respect to securing access to the enlarged stock."¹³² Roisman presents an ambitious advocacy program that contemplates literally hundreds of systemic litigation cases.¹³³ These suits would require very complex, creative, and flexible remedy formulation whereby resources for housing would be expanded and redirected from white higher-income communities to support equalization.¹³⁴ *Here is where I would stop.* Roisman would go beyond this point and also seek remedies to require "previously closed communities to open up to poor people of color."¹³⁵

Because of the Fair Housing Act's bias toward an integration imperative, and because fair housing advocacy generally has been directed by that bias, I fear that Roisman's two-pronged approach of mobility remedies and in-place remedies will not be adopted, but, rather, the access

131. See Chester Hartman, *Housing Policies Under the Reagan Administration*, in CRITICAL PERSPECTIVES, *supra* note 11, at 362 (discussing the federal government's reversal of its having provided housing for 50 years to those for whom the private market has failed to provide housing); Lawrence B. Simons, *Toward a New National Housing Policy*, 6 YALE L. & POL'Y REV. 259, 260 (1988) (noting that during the 1980s, federal appropriations were cut almost 80%, more than any other item on the national budget).

132. Roisman & Tegeler, *supra* note 127, at 325.

133. *Id.*

134. *Id.* at 328.

135. *Id.* For an overview of the problems tied to this goal, see John M. Payne, *Title VIII and Mount Laurel: Is Affordable Housing Fair Housing?*, 6 YALE L. & POL'Y REV. 361, 366-74 (1988). There are demonstrations that mobility remedies may place poor people of color in positions to obtain better jobs. James E. Rosenbaum & Susan J. Popkin, *Employment and Earnings of Low-Income Blacks Who Move to Middle Class Suburbs*, in THE URBAN UNDERCLASS, *supra* note 67, at 342, 346-55. But that access can be blocked by discrimination. See Joleen Kirschenmann & Kathryn M. Neckerman, "We'd Love to Hire Them, But . . .": *The Meaning of Race for Employers*, in THE URBAN UNDERCLASS, *supra* note 67, at 203, 207-31 (discussing the effect of factors such as race, ethnicity, and class on employers' hiring attitudes).

prong will be pressed at the expense of the equalization prong. Her strategy is really a luxury that contemplates both increased appropriations of federal financial resources for housing as well as increased lawyering capacity to litigate these cases. Her excellent discussion of case models presents an opportunity to direct effective advocacy efforts *if* opportunities are carefully selected, and lawyering resources are not spread too thinly.

We must keep in mind that much litigation cost, time, and energy necessarily will be spent bringing defensive suits such as those that attempt to preserve public housing from demolition, prevent urban revitalization from causing racially impacted involuntary displacement, eliminate the effects of environmental racism, and prevent so-called benign quotas from limiting colored access to housing. To militate against resource diffusion, advocates should contemplate opportunities that would leverage quite heavily their efforts. One such move would be to search for cases that accommodate *national* class action law suits. For example, it is well-documented that HUD-assisted, public, and subsidized housing programs reflect separate and unequal accommodations for blacks and whites.¹³⁶ A national class action against HUD could be filed to force HUD to equalize these housing accommodations across America. In this regard, for example, I believe there is tremendous untapped potential to further the goal of spatial equality through reliance on Title VIII's provision making it illegal "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin."¹³⁷ The provision protects not only the person seeking to secure housing on a non-discriminatory basis, but also, and more importantly for this analysis, the right to equal services and facilities once the person actually has secured the housing.¹³⁸ For example, the HUD fair housing regulations illustrate a violation of 42 U.S.C.A. § 3604(b) where a housing provider fails or delays proper maintenance or repairs of a dwelling because of the resident's race (or other protected status).¹³⁹ On this basis, HUD should

136. See *Separate and Unequal: Subsidized Housing in America*, DALLAS MORNING NEWS, Feb. 10-17, 1985, reprinted in HOUSE COMM. ON BANKING FIN. & URBAN AFFAIRS, DISCRIMINATION IN FEDERALLY ASSISTED HOUSING PROGRAMS: HEARINGS BEFORE THE SUBCOMM. ON HOUS. & COMMUNITY DEV., 99th Cong., 1st and 2d Sess., Pt. 1, at 22-60 (Comm. Print 1985-86).

137. 42 U.S.C. § 3604(b) (1988).

138. 24 C.F.R. § 100.65(b)(2) (1992).

139. *Id.*; see ROBERT G. SCHWENIM, HOUSING DISCRIMINATION LAW AND LITIGATION § 14.3, at 14-6 to 14-10 (1990) (discussing discriminatory services and facilities for residents within the meaning of § 3604(b)).

be obligated to equalize the conditions of its HUD inventory so that there is parity between white and black residents. This is spatial equality.

B. National Urban Policy

Urban policy under the new Administration realistically will not be able to build on the last twelve years of federal governance. Instead, it must reorient and reestablish before it can advance a significantly new agenda. It must do no less than relegitimate federal intervention in local matters of housing and urban development. As Peter Berger and Thomas Lukmann state, "[l]egitimation produces new meanings . . . already attached to disparate institutional processes."¹⁴⁰ The process of legitimation both explains and justifies society's institutional order and arrangements. As a result, legitimation provides "a normative dignity" to the institutional order's "practical imperatives."¹⁴¹ "Legitimation not only tells the individual why he *should* perform one action and not another; it also tells him why things *are* what they are."¹⁴² In legitimation, then, knowledge precedes value and therefore the nation must acquire a different knowledge about, and sense of responsibility for, urban-racial oppression in order to achieve a proper value reorientation to address it.

To advance this effort the new Administration must adopt and convey what Michael Lerner has characterized as a "politics of meaning."¹⁴³ This politics of meaning must be established on a shared purpose and moral vision. This meaning, rather than policy details, will be crucial in generating support. Lerner argues that

liberal struggles for economic entitlements and political rights, while deserving our support, must be reframed within a larger context that recognizes an equally central set of psychological, ethical, and spiritual needs—most important, the need to be part of a larger community of meaning and purpose that lets us transcend the self-interested materialism of the competitive marketplace and situate ourselves in an ethically and spiritually grounded vision of who we are and who we seek to become.¹⁴⁴

The national community—who we are and who we seek to become—must incorporate inner-city communities of color.

In 1969, Daniel Moynihan proposed ten fundamental points of ur-

140. PETER L. BERGER & THOMAS LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY* 85 (1966).

141. *Id.* at 86.

142. *Id.* at 87.

143. Michael Lerner, *Memo to Clinton: Our First Hundred Days*, *TIKKUN*, Jan.-Feb. 1993, at 8, 8.

144. *Id.*

ban policy.¹⁴⁵ I would endorse the following five:

The poverty and social isolation of minority groups in central cities is the single most serious problem of the American city today. It must be attacked with urgency, with a greater commitment of resources than has heretofore been the case, and with programs designed especially for this purpose.

* * *

A primary object of federal urban policy must be to restore the fiscal vitality of urban government, with the particular object of ensuring that local governments normally have enough resources on hand or available to make local initiative in public affairs a reality.

* * *

Federal urban policy should seek to equalize the provision of public services as among different jurisdictions in metropolitan areas.

* * *

The federal government must develop and put into practice far more effective incentive systems than now exist whereby state and local governments, and private interest too, can be led to achieve the goals of federal programs.

* * *

The federal government must provide more and better information concerning urban affairs, and should sponsor extensive and sustained research into urban problems.¹⁴⁶

While Senator Moynihan's policy recommendations are now twenty-four years ignored, they are not really dated. Instead, at least as a point to begin conversation, they are more urgent today than then.

VII. CONCLUSION

In the year the *Kerner Commission Report* was published, Martin Luther King, Jr. was assassinated in Memphis. Shortly thereafter, Congress passed the Fair Housing Act. When Dr. King died, it was said that the Dreamer could be slain, but not the Dream. I wish that were so, but I fear that it is not. Today, out of necessity black people are, as Patricia Williams might say, "regrouping in singular times."¹⁴⁷ Not only does spatial equality call for a compensatory policy that responds directly to a

145. Daniel P. Moynihan, *Toward a National Urban Policy*, 17 PUB. INT. 3, 8-20 (1969).

146. *Id.* at 8-18.

147. Patricia J. Williams, *Metro Broadcasting, Inc. v. FCC: Regrouping in Singular Times*, 104 HARV. L. REV. 525, 528-33 (1990).

group history of racial subordination, but it also rebuts the contention that group-based social justice claims lack theoretical and moral foundation, that group affiliation is a mere "proxy" for individual claims not to be discriminated against.¹⁴⁸ We all have learned that for the most disadvantaged of our race, remedial strategies predicated on the enhancement of individual opportunities offer little real help or hope when they fail to improve group conditions.¹⁴⁹

Gary Peller wrote that "[i]ntegrationists filter discussion of the wide disparities between African-American and white communities through the nonracial language of poverty and class, and avoid altogether any considerations of the racial implications of the institutional practices of 'integrated' arenas of social life."¹⁵⁰ The construction of race reform in integrationist terms has cost a great deal in social resources and personal energy, resources and energy spent on integrating schools, neighborhoods, workplaces, government, and society. I cannot deny that the lives of many blacks, including my own, have been improved through integrationist efforts. Nor can I deny that the social climate of overt racist domination that America reflected forty years ago has been transformed. As Peller contends, however, the integrationist program, such as it is, "has been pursued to the exclusion of a commitment to the vitality of the black community as a whole and to the economic and cultural health of black neighborhoods, schools, economic enterprises, and individuals."¹⁵¹ It is this neglected commitment that drives my call for spatial equality.

In 1979, I was a Legal Services attorney, attending a meeting of low-income housing advocates and clients in Washington, D.C. Some of the black clients questioned us as to why we were all so intent on trying to move them out of their communities instead of working to improve those communities. It was in response to representing their interests that I began to rethink integration. Since that time I have urged spatial equality as a moderating force to the pursuit of integration at all costs.

I experience no special joy in presenting integration as an object of critique, but integration comes with a lot of freight for those such as the clients I have mentioned. We must awaken to its practical dysfunctions and conceptual shortcomings. When integration works, fine. When it

148. Paul Brest, *The Supreme Court, 1975 Term—Foreword: In Defense of the Antidiscrimination Principle*, 90 HARV. L. REV. 1, 48-52 (1976).

149. See Kimberle Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1342 (1988) (presenting the "restrictive vision" of antidiscrimination law that views wrongdoing as isolated incidents against individuals which is critiqued throughout the article).

150. Peller, *supra* note 2, at 845.

151. *Id.*

does not work, we should not pretend that it will with just a little more time and understanding. Instead, we should move to something else: "*God gave Noah the rainbow sign, No more water, the fire next time!*"¹⁵²

152. James Baldwin, *Down at the Cross: Letter From a Region in My Mind*, in JAMES BALDWIN, *THE FIRE NEXT TIME* 141 (1985).