
Volume 126 | Issue 1

Fall 2021

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Recommended Citation

Megan Riesmeyer, *A Framework for Creative Problem- Solving: The Color of Law: A Forgotten History of How Our Government Segregated America*, 126 DICK. L. REV. 245 (2021).

Available at: <https://ideas.dickinsonlaw.psu.edu/dlr/vol126/iss1/9>

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A Framework for Creative Problem-Solving: The Color of Law: A Forgotten History of How Our Government Segregated America

Megan Riesmeyer*

Richard Rothstein's *The Color of Law: A Forgotten History of How Our Government Segregated America*¹ was published in 2017. So why do a book review in 2021, four years after its release? Because recent events have led to a national recognition of race and racism that has not been seen in this country for nearly 50 years. Law schools, as part of higher educational institutions around the country, are recognizing not only their potential contribution to the racist society in which we live, but, importantly, the role they can play in addressing and overcoming such racism and its effects.

The Color of Law brings to light the history of how our federal and state governments have created the racist systems in the United States. Rothstein expertly weaves together the policies and practices codified in our national, state, and local laws that are the root cause of the situation we find ourselves in today. He discusses, for example, many of the programs created under The New Deal, such as the Public Works Administration, created in 1933, and the Federal Housing Administration, created the following year. Each of these programs, while created with the laudable goals of pulling Americans out of poverty and providing homes to live in, also had built-in policies that kept Black and White Americans forcibly sep-

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1. RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017).

arated, and, importantly, that kept Black Americans in worse physical and financial situations than their White neighbors. Rothstein demonstrates that these policies were, in fact, intended to segregate perceived races, to create and sustain worse conditions for Black people in this country. That intended result has not only occurred but has built upon itself in exponential ways.

Through careful historical analysis, from the founding of the United States through present day, Rothstein identifies how these broad federal, state, and local policies are found in communities across the country; from San Francisco on the West Coast to Detroit and Chicago in the Midwest to the Levittowns of New York and Pennsylvania on the East Coast. He specifically identifies how housing policies, like that of the Home Owners Loan Corporation, which directed neighborhoods to be color coded by race, or the multitude of suburban post-war housing developments with specific language prohibiting African Americans from purchasing homes, have harmed communities in more ways than just housing, namely education, manufacturing, and business development.

One of the main revelations of the book is that the entire country, not just the stereotypically race segregated southern states, worked to cause harm to Black Americans. Rothstein starts in San Francisco and moves through the country to show how city after city destroyed opportunities to make, or keep, all communities prosperous and diverse. Rothstein reveals how cities implemented policies not only to separate White and Black citizens, but to intentionally place the residents of Black communities in the sub-par conditions, and impossible financial situations, in which most are still trapped today.

Importantly though, Rothstein does not use the narrative to simply uncover and remind readers of the harms committed against Black Americans; he concludes the book with a chapter titled, "Considering Fixes" in which he discusses ideas and action items that readers can undertake to reverse and repair some of these harms. Of course, these are not easy fixes, but as Rothstein reminds his reader throughout the book, the segregation and racism in this country today was implemented through *de jure*, not *de facto*, policies and actions as so many have tried to assert or would like to believe. Governments and individuals purposefully and deliberately created division where little previously existed and in doing so, they created the unjust society we have today. Therefore, it is only through purposeful and deliberate action by government and individuals working to reverse the harm that we can correct it.

This is where institutions of higher education, and specifically law schools, need to take note of Rothstein's work. Understanding the historical background, seeing the effects and consequences play out, and witnessing the damage caused by racist policies and practices should serve as a framework for law schools to teach students how, and why, a social justice focus in lawyering can have great impact. As the director of a law school clinic serving clients living at or near poverty, my role is to not only supervise students in the legal work they conduct on behalf of our clients but also to teach about and raise awareness of the conditions in which our clients live. Within the Clinic, students learn the skills of effective lawyering. Those skills necessarily include legal writing, case law and statutory interpretation and application, and oral advocacy. However, we also teach that an attorney must possess the ability to see the broader picture to properly advocate for a client. To best serve Clinic clients, students must understand poverty and how it affects and contributes to the legal issues our clients face. They must understand the root causes of poverty, what policies exist to create or maintain poverty, and what actions might be taken to alleviate poverty. By using *The Color of Law* as a framework for analyzing the conditions of a population of underserved people who are profoundly harmed by the conditions in which they live, I have been able to develop a structure to help students 1) identify the need for investigation into the development of these conditions, 2) specially show how these conditions negatively affect the population we serve, 3) observe the national parallel of conditions—not just local causes and effects, but similarities throughout the country, 4) examine how these conditions negatively affect society as a whole, and 5) explore ways in which these factors can be addressed and potentially alleviated.

Students in the Clinic read the last chapter of Rothstein's book, where he identifies the potential fixes to the racist policies that have caused segregated communities. Using that chapter as a guide, I ask students to identify broad categories of social justice from which our clients are deprived. Students must then identify the barriers in place that create or make worse the situation and then brainstorm potential solutions, or "fixes," to overcoming those barriers. The final project is to work together as a class to choose just one of those "fixes" and develop a policy that will address the barrier. Students must prepare written and oral advocacy to get their policy adopted. Just as Rothstein identifies the constituents needed to make change a reality, students must identify the constituents they'll need to partner with and bring on board to forward

their policy. They must ascertain the possible negative impacts and/or negative reactions from the community and be able to find a way to address those issues. Finally, using their new-found understanding of the ripple effects of policy and regulation implementation, they must identify how far-reaching the impact of their policy would be.

Using Rothstein's book in this way allows students to move beyond the traditional lawyer role of individual-client advocacy and think creatively about the causes of problems faced by many of our clients. They must identify the root of those problems, the possible actors, and the sometimes long-standing policies that created these problems. Finally, they must work to design solutions. These are skills that lawyers are asked to utilize every day, whether for individual clients, organizations, or large-scale governmental entities. Lawyers must think creatively and endeavor to identify the true causes of the harm felt by clients, and then work towards solutions that will address them.

The Color of Law gives a blueprint for this type of understanding and work. Rothstein sets the stage for identifying and creating solutions by reminding, and often revealing to the reader the history and cause of how we got here, the actions individuals and governments took to create the harm, and the steps we can take to correct them. Although a large segment of the book is dedicated to revealing and reminding the reader about the systemic racism created by housing segregation, it is ultimately a book of hope suggesting how we can fix our man-made ills and work to correct the damage done. This is why, in 2021, a review of a book published in 2017 is so important. It provides a framework for understanding and action to become problem-solvers and teach problem-solving.