

Introduction to the Issue



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The occasion of the 125th anniversary of *Plessy v. Ferguson* offers the opportunity for a general retrospective consideration of the legacies of state-sanctioned racial oppression as well as specific inquiries into plausible connections between the Supreme Court's approval of state-imposed racial segregation-hierarchy and ongoing racial disadvantages and inequities. This symposium examines novel interpretations and new insights about the legacy of "separate but equal." It provides specific explorations into connections between "separate but equal" during the first half of the twentieth century, observed racial disparities in the twenty-first century, and policy implications for the future. Recognizing that establishment of a causal link between a single Supreme Court decision and contemporary social and economic outcomes is fraught with limitations, the sym-

posium includes authors from multiple disciplines designed to shed new light on the racial inequalities that persist today.

As the title implies, the focus of the volume is on the legacy of *Plessy v. Ferguson* and not necessarily on the direct impacts of the causal effects of the Supreme Court decision.¹ The symposium is guided by the question of how it is that something that happened 125 years ago—and was presumably reversed more than fifty years ago—still has an enduring impact on racial disparities. The 125th anniversary of *Plessy v. Ferguson* in 2021 provides an appropriate forum to bring a magnifying glass to race and segregation in the United States—past and present—along with a robust conversation around citizenship, colorism, and civil rights.

Plessy is perhaps one of the most significant U.S. Supreme Court decisions affecting race re-

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1. *Plessy v. Ferguson*, 136 U.S. 537 (1896).

lations in America.² In its decision, the Court enshrined the doctrine of “separate but equal,” which arguably has left a lasting impact on race relations (Woodward 1974). The legacy of *Plessy* is anything but neat. “Separate but equal” public policies shaped the seating in movie theaters, the building of public swimming pools, the location of telephone booths, the placement of water fountains, the location and financing of housing, and the creation of racially segregated schooling, buses, hospitals, restaurants, and public parks. The decision permeated virtually all aspects of the social order in very complex and nuanced ways. The *Plessy* legacy, then, is messy and perhaps uneven across domains. Perhaps the neglect of the importance of *Plessy* in recent generations of social science scholarship stems from the apparent reversal of the tenets of the decision in *Brown v. Board of Education*.³ Yet in virtually every sphere of social and economic life in the twenty-first century, racial disparities persist despite the putative removal of the constitutionality of one of the primary mechanisms for maintaining racial inequality throughout the first half of the twentieth century—“separate but equal” policies. A central motivation for revisiting the legacy of *Plessy v. Ferguson* and the impacts of state-enforced racial segregation is to question how or whether something that happened 125 years ago might have left a lasting impression on social and economic outcomes facing racial and ethnic minority group members.

Legal scholars have pointed out that the decision itself has implications for more than just the issue of whether “separate but equal” is constitutional. Related issues that are part and parcel to the decision include definitions of whiteness and the relationship between white spaces and black bodies; the creation and sustaining of state-supported institutions; definitions of race and citizenship; and the role of the Court in creating, sustaining, or reversing social systems that reproduce racism, racial discrimination, and racial inequality.

Readers of this issue will be rewarded with a series of essays that illuminate a wide range

of aspects of the legacy of *Plessy v. Ferguson* into the twenty-first century. The phrase used in the majority opinion—“separate but equal”—is one of the most memorable phrases regarding racial issues in the nation’s history. “Separate but equal” enshrines a public policy that racial separation in public spaces was constitutionally permissible. Readers of this journal issue will discover or rediscover some of the lasting implications of *Plessy* on its 125th anniversary.

As coeditors, we face a formidable challenge. The volume was conceived prior to the killing of George Floyd in May 2020 and the ensuing nonviolent marches in hundreds of cities protesting systemic racism and police abuse. These national protests focused on racial disparities in educational attainment, employment, occupational achievement, wealth holdings, morbidity, and mortality as well as racial separation in residences. Elected officials, policymakers, and corporate executives may ask what should be done to address systemic racism. This volume does not attempt to provide a magic bullet for remedying the problem that ignited widespread outrage in hundreds of cities during the summer of 2020.

This introduction instead highlights how state-sanctioned racial separation—enshrined by the Supreme Court in *Plessy v. Ferguson*—became an enduring contributor to racial inequality in many of its manifestations in the twenty-first century. Although very little in the articles that follow details remedies to the legacy of racial separation in America, much can be said about the nature of systemic racism, a concept that has often eluded contemporary policymakers, corporate executives, and community leaders with little knowledge of the continuing impacts of “separate but equal.”

THE LEGACY

When considering the legacy of *Plessy v. Ferguson*, it is essential to situate the case within a broader historical context. The *Plessy* case occurred after the Civil War, which ended in 1865, and followed the Reconstruction period (1865–1877). During Reconstruction, the Thirteenth,

2. The 1857 *Dred Scott v. Sandford* (60 U.S. 393) ruling is also, arguably, just as significant as *Plessy*, as the case ruled the Constitution provided no rights to free or enslaved blacks.

3. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

Photograph 1. Nineteenth-Century Steam Engine

Source: Adam Burns, American-Rails.com.

Fourteenth, and Fifteenth Amendments were ratified, respectively, in 1865, 1868, and 1870. These amendments ended slavery and involuntary servitude other than lawful imprisonment, provided citizenship to all persons born or naturalized in the United States (including individuals formerly enslaved), and prohibited the denial of the right to vote based on race or previous condition of servitude.⁴ As Pulitzer-winning author Eric Foner (2019) discusses, this period ushered in a “second founding” of the U.S. Constitution by considering what rights come along with the abolishment of slavery. Will African Americans have the same rights as white Americans or are they going to be second-class citizens? The *Plessy* ruling was seminal in addressing these questions and, as such, reaffirming white supremacy.

In 1892, Homer A. Plessy was arrested for refusing to leave a whites-only railway car in Louisiana. An octoroon, or someone with a racial heritage of seven-eighths white and one-eighth black, Plessy was considered black and was re-

quired to sit in a “colored” railway car under Louisiana law (Luxenberg 2019) (see photograph 1).⁵ He, his allies, and his lawyers argued that his rights had been denied under the Thirteenth and Fourteenth Amendments. Judge John H. Ferguson sided with the State of Louisiana and found the Separate Car Act of 1890 constitutional. The case was appealed and made its way to the United States Supreme Court.

On May 18, 1896, the Supreme Court issued its landmark decision in the case, ruling that Louisiana had the authority to exercise its “police powers” to pass and enforce a separate car act. The decision stated that each state could define race and its mechanism of segregation individually. Thus, it was not a matter for the federal government to determine. This ruling would later become a landmark decision routinely cited by the Supreme Court and established the constitutionality of “separate but equal” laws created by many states. The decision also recognized and justified the power of individual states to enforce their state segrega-

4. The Fourteenth Amendment was heavily influenced by understandings of race at the time. As it went through Congress, it was amended to make sure that citizenship and voting rights were not extended to Native Americans who were not taxed even if they were born in the United States.

5. *Octoroon* is a term used in the mid- to late nineteenth century that has negative connotations today.

Photograph 2. Pinckney Benton Stewart Pinchback



Source: Library of Congress, Prints and Photographs Division, LC-DIG-cwpbh-03857.

Caption: P.B.S. Pinchback, first black governor of Louisiana and leader of Creole plaintiffs in *Plessy v. Ferguson*. Pinchback was a quadroon (three-quarters white), son of a mulatto mother and a white father. This picture is often erroneously used to depict Homer Plessy. Historians disagree about the authenticity of other alleged photographs of Homer Plessy.

tion laws. As a result, the decision has had implications for such issues as the definition of blackness, the acknowledgment of gradients of whiteness, the significance of citizenship, and the interpretation of the state’s regulatory role in the separation of races in public space.

Plessy’s legal team’s goal for the case was to end segregation for multiracial people with predominantly white heritage (see photograph 2). The legal team advocated that Plessy’s proximity to whiteness allowed him more privileges than those granted to him at the time.⁶ Some

scholars propose that had had the team succeeded in their case, the United States would have more resembled Latin American countries or apartheid South Africa, where a class of mixed-raced people is separated from those considered black.

The most potent and long-lasting impact of *Plessy v. Ferguson* is the creation of blackness as an identity that is defined by the state, absent of enslavement (see Gaynor, Kang, and Williams 2021, this issue; Davis 2021, this issue). The U.S. government has always had a vested interest in defining race in relation to citizenship and rights. When the Constitution was written, it explicitly defined those who were eligible to be citizens, along with the parameters for who was to be counted a person in the decennial census, noting different groups and their rights of citizenship: Native Americans who paid taxes, Native Americans who did not pay taxes, free persons, indentured servants, and enslaved peoples. Free persons were to be counted as a whole person and slaves as three-fifths of a person; at the time, the majority of blacks in the United States were enslaved.

Plessy, like many Louisiana Creoles, was an octoroon and had a family legacy of being free.⁷ Freed blacks had more rights than enslaved blacks and, in some communities, more citizenship privileges. After slavery was abolished, all blacks were given equal rights with the ratification of the Thirteenth and Fourteenth Amendments—although segregation was emerging as a practice, as John Powell points out (2021, this issue). Ideologies of blackness were in flux, due to the changing status of blacks as a whole. The *Plessy v. Ferguson* decision was used to justify segregation, antiblack ideologies, and the creation of white identity. Once it was used to create the parameters of whiteness and blackness, it was used to regulate black bodies in white spaces, through state-enforced segregation.

What *Plessy* represents is much more than a decision. It refortified the idea of white supremacy, after the Thirteenth and Fourteenth

6. The train was an accessible and well-used service at the end of the nineteenth century. Railroads physically linked the country and served as the avenue for expansion, progress, and the everchanging race relations.

7. Plessy’s lawyer Albion Tourgee and Plessy’s legal team wrote in their brief that Plessy’s racial heritage was an octoroon, yet Steven Luxenberg, in his book *Separate*, offers research that Plessy was 1/4 black.

Photograph 3. Ruby Bridges on School Steps with Federal Marshals, November 14, 1960



Source: U.S. Department of Justice.

Caption: Ruby Bridges being escorted by federal marshals to the all-white William Frantz Elementary School in Louisiana on November 14, 1960.

Amendments, at a time when whites believed white supremacy was being challenged. After *Plessy*, white supremacy was institutionalized and crystallized across the country, but especially in the South. The highest law of the land codified legal, structural racism in American institutions. In essence, public policy inequities based on race were mainstreamed. Although the specific complaint that produced the decision involved seating on a train, the Supreme Court's decision went far beyond racial segregation in transportation.

Not only did the decision have direct implications for education, housing, public health, employment, and many forms of public access, but it also had little-known profound impacts. Emblematic of this, in the 1940s, President Truman pushed for universal health care, which included his support for desegregated hospitals. The South, fearing a challenge to segrega-

tion, would not support it. Another sixty years would pass before even a semblance of universal health care was legislated. Thus *Plessy* was a watershed moment in how Americans lived and saw themselves. Its impact permeated definitions of identity, family, marriage, and community.⁸ Ultimately, the decision was so broad that it was not just about segregation on trains, but instead an ideological representation of the United States as a nation. *Plessy* has implications for such issues as skin color and colorism as a marker for race and racial hierarchy. It can be seen as a turning point in the changing social construction of race in America. It occurred at a time when the U.S. Census had extended its list of "races" to include mulattos, quadroons, and octoroons. *Plessy* has implications for notions of citizenship, whiteness, and deviations from the binary of black versus white.

8. Whether President Eisenhower would or would not use federal power to enforce the school integration rulings of federal courts in southern cities in the 1950s was an issue.

The Empirical Evidence

The Supreme Court ruling in *Plessy* solidified racial separation in public and private life. The codification included segregation in schools, public swimming pools, private social clubs, the workplace, occupations, churches and places of worship, and virtually every sphere of social and economic life (see photograph 3).

The social science literature documenting the extent and patterns of segregation in American life is voluminous (Farley and Frey 1994; Frey and Myers 2001, 2005; Iceland, Sharp, and Timberlake 2013). Richard Rothstein, in his award-winning book *The Color of Law* (2017), helpfully distinguishes between private acts of racial animus related to segregation (de facto segregation) and public acts deriving from explicit government policies at the local, state, and federal levels (de jure segregation) designed to ensure the separation of African Americans from whites. The literature points to segregation in public transportation (Seymore 2005), in residential neighborhoods (Rothstein 2017; Logan and Parman 2017), in the labor market and the workplace (Hutchison 2011), in higher education (Kauper 1954), in elementary and secondary public schools (Reardon and Yun 2002; Johnson 2011; Pinder and Hanson 2010; Liu 2006), and in public accommodations, movie theaters, hotels, restaurants, meeting places, and even swimming pools (Henry 1998). A substantial social science literature also links racial residential segregation to outcomes such as employment, wages, access to credit, insurance, business capital, and crime (Myers and Phillips 1979; Kain 1968; Harrison 1974).

Establishing any causal relationship between this state-enforced segregation and specific outcomes experienced by African Americans as a group is difficult. Even the measurement and nature of the patterns of segregation are heatedly contested in the literature. An

illustration involves the relationship between residential segregation and income inequality. Two widely used measures of segregation are the index of dissimilarity and the index of isolation. The index of dissimilarity measures how similar the distribution of minority residents among geographical units is to the distribution of nonminority residents among those same units, whereas the index of isolation measures the exposure of minority residents to other individuals outside of their group or the racial composition of the census tract for the average minority resident (Logan and Parman 2017; Massey and Denton 1988; Andrews et al. 2017; Adams 2006).

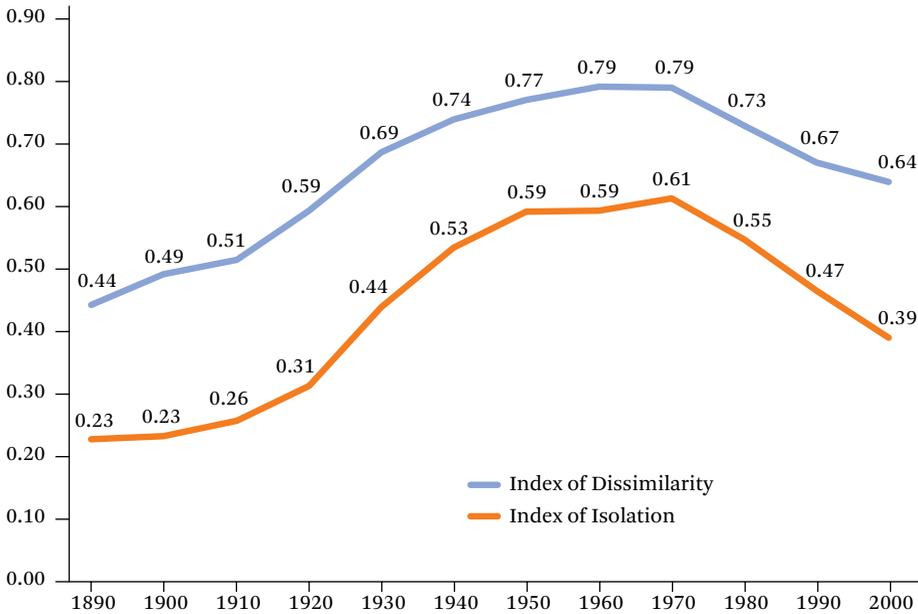
Figure 1 reports two published measures of residential segregation from 1890 to 2000—an index of dissimilarity and an index of isolation. Both can be criticized for their failure to account for the greater ethnic and racial diversity in neighborhoods in urban areas where often the numbers of different nationalities, ethnicities, and social and economic backgrounds are large (Iceland, Sharp, and Timberlake 2013). The conventional measures of segregation capture an older and perhaps outdated black-white conceptualization of what it means to be segregated.⁹

Figure 1 provides compelling evidence concerning the rise and fall of residential segregation since the late nineteenth century. The figure shows increasing racial segregation in the United States from 1890 to 1960 and then sharp declines after the 1970s. The dissimilarity measure in 2000 was 0.64; in 1920 it was 0.59. The inclusion measure in 2000 was 0.39; in 1920 it was 0.31.¹⁰ Both measures show increases in segregation from 1890 to 1920. The conclusion from this visualization of the broad trends in segregation, then, is that America was more segregated in 2000 than it was when *Plessy* was decided in the 1890s.¹¹ Others have computed measures of segregation using large metropol-

9. Two studies estimate the indices for each metropolitan statistical area (Cutler, Glaeser, and Vigdor 1999; Glaeser and Vigdor 2001). To derive the overall rate for the United States, the authors aggregated each index into the overall level. They used a simple average and the weighted average by the black population. Figure 1 reports the indices that evaluated the average index value weighted by the black population.

10. The method of weighing may contribute to this difference in calculation between the two periods.

11. Excellent articles update measures of dissimilarity and inclusion indices to more recent years. The measures are not always directly comparable to the Glaeser and Vigdor calculations because of differences in coverage.

Figure 1. Weighted Segregation Measures, 1890–2000

Source: Produced by the authors based on original data from Glaeser and Vigdor 2001.

itan areas for periods after the 1970s and well into the twenty-first century. We do not replicate those estimates in figure 1 because of non-trivial differences in coverage, producing even higher levels of segregation in recent years. The trends, nonetheless, are essentially the same as shown in figure 1: declines in segregation after the 1970s.

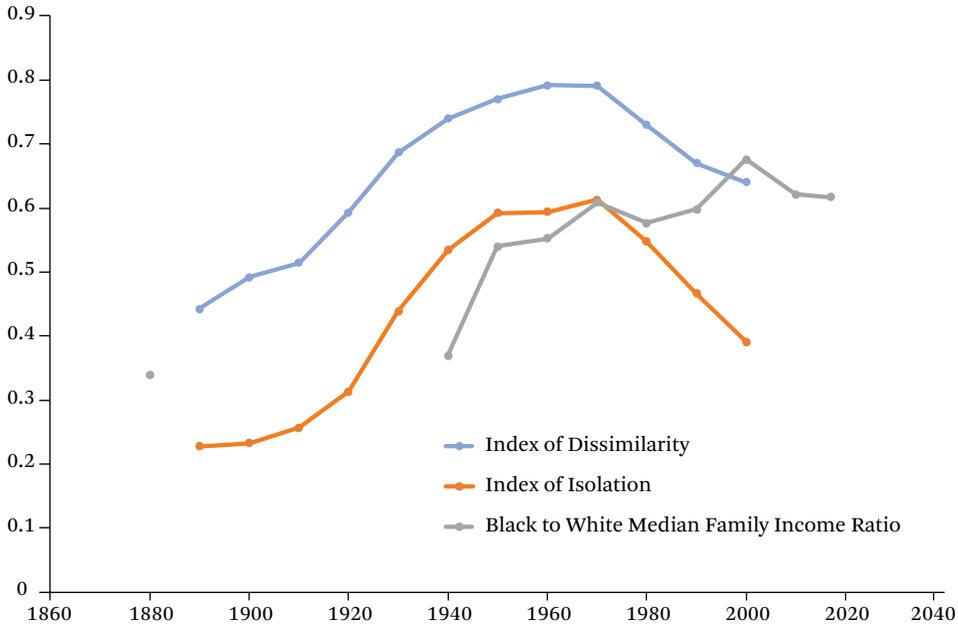
What then can we say about the association between racial income inequality and racial segregation? Figure 2 reveals that racial residential segregation trends and trends in the ratio of black family income to white family income do not always move in the same direction. From 1940 to 1970, racial residential segregation increased but the ratio of black to white income also increased. From 1970 to 2000, black-white residential segregation declined but the black-white ratio of family income continued to rise.

In short, the descriptive evidence about the linkage between racial segregation and black-white income is inconclusive. Figure 2 juxtaposes the data on residential segregation with

measures of black-white income ratios by year. Comparing income across census years is notoriously difficult. In some of the years, income measures are for households; in other years, they are for families (which can be subunits within a household), but the broad trends evidenced in the figure are consistent with widely acknowledged patterns in the literature. Before *Plessy*, black households (families) earned 34 cents for every dollar that white households (families) earned. By 1940, they received 36 cents. The black-white income ratio peaked in 2000 and has been on the decline since then.

Figure 2 shows two patterns of association between the measures of segregation and the measures of income inequality. From 1940 to 1970, when black-white income ratios were rising, both measures of residential segregation were also increasing. The positive association between black-white income ratios and segregation belies the contention that segregation causes inequality. Looking at the patterns and

Some of the measures cover metropolitan areas of a half million or more and others cover areas of one million or more. But in all of these calculations is a downward trend in the series after 1970, and that downward trend continues until the twenty-first century.

Figure 2. Segregation Indices Versus Income Ratios, 1880–2019

Sources: Authors' calculations based on Glaeser and Vigdor 2001; Ng and Virts 1989; U.S. Census Bureau 1975.

Notes: Weighted value of segregation indices (Glaeser and Vigdor 2001); income ratios for 1880 (Ng and Virts 1989); income ratios for 1940 (U.S. Census Bureau 1975, Series G 353-371, Median Money Wage or Salary Income of Primary Families and Unrelated Individuals with Wage or Salary Income, by Selected Characteristics: 1939 to 1970); income ratios for 1950 and 1960 (U.S. Census Bureau 1975, Series G 189-204, Median Money Income of Families and Unrelated Individuals in Current and Constant (1967) Dollars, by Race of Head, 1947 to 1970). Income ratios for all other years, from U.S. Census Bureau Current Population Survey, 1968 to 2019 Annual Social and Economic Supplements.

trends after 1970 reveals a different association between segregation and inequality. The dissimilarity index and the isolation index were both declining, whereas the ratio of black to white incomes declined, flattened, rose, and then fell again from 1970 to 2017. Some authors claim that the post-1970s era ushered in a period of the elimination of the black ghetto, but the reduced segregation did not always guarantee reductions in racial economic inequality.¹²

The point that this empirical exploration is designed to illustrate is that the legacy of *Plessy*

via state-enforced segregation is far from obvious. Even more difficult to fathom is how or whether the remnants of racial segregation documented during the 1890s to the 1950s can affect current social and economic outcomes—the purpose and theme of this issue (Harris 1983).

WHY RACIAL SEGREGATION PERSISTS: COMPETING EXPLANATIONS

Taking on its face the documentation in figure 1 that shows a rise and then a fall in residential

12. Note that other estimates of segregation (see, for example, Frey 2015a, 2015b, 2016, 2020) show continued declines in the dissimilarity index for periods up to 2017, in an era when black-white income ratios were not always rising. For the short period between 1970 and 2000 an inverse relationship is discernible between segregation and racial income inequality. Thereafter, when alternate measure of segregation showed declines, income inequality widened.

racial segregation, we can explore the various explanations for these trends and patterns. The most widely cited reason for the persistence of racial segregation is the institutionalization of housing segregation through federal housing policies. These policies included the Home Owners' Loan Corporation Act, the GI Bill, and urban renewal plans that federalized a national segregation policy. For example, the New Deal housing programs implemented lending criteria that made it extremely difficult for would-be black homeowners to benefit, especially in integrated neighborhoods. The result was that segregation, which had primarily been state, regional, and local before 1930, was now pushed through federal policy and remains even today.

Federal housing policies played a significant role in exacerbating and extending racial residential segregation nationally (Wagmiller, Gage-Bouchard, and Karraker 2017), but cannot be considered a core cause of national levels of segregation. As critics point out, "federal intervention in local housing policy was nonexistent before the 1930s, [and] black segregation was firmly established throughout urban America." Although true, this critique ignores the fact that national levels of black-white segregation peaked sometime between 1950 and 1970, depending on the measure of segregation used (Farley and Frey 1994).

Another frequently cited source of housing segregation is white prejudice and discrimination in housing markets. Data on the frequency of discrimination were not systematically collected or generally available until the 1970s (Frey 2015b). However, the General Social Survey (GSS), which tracks white attitudes on race, finds that the proportion of whites who support residential segregation has fallen significantly since the early 1970s (Myers and Ha 2018). Specifically, the share of whites who would vote to prohibit racial discrimination by homeowners rose from 30 to 40 percent in the 1970s to 60 to 70 percent in 1996, when the GSS removed the question. Moreover, the share of whites who say that they strongly disagree with the statement "whites have a right to segregated neighborhoods" rose similarly during the same period, from a minority to a substantial majority supporting the position.

That discrimination in the housing market

exists is without question. A recent study by *Newsday* found systematic discrimination, for example, on Long Island (McDermott and Herbert 2019). The social science literature, however, is not uniform about the degree to which discrimination shapes segregation. For instance, in the late 1990s, economists found that outright discrimination declined substantially from the 1970s to the 1990s, but that whites preferred to live in racially homogenous neighborhoods.

Even if the number of housing discrimination incidents per year totals one million, and that estimate may be conservative, scholars have reasons to doubt the degree to which those instances could maintain or perpetuate segregation, especially given that many of those instances may be relatively minor differences in treatment, rather than outright denials. More generally, despite ample evidence of discrimination in housing markets, levels of segregation cannot be explained by discrimination alone (Myers and Lee 2018). National fair housing audits typically find evidence of discrimination, but the types and frequency have declined over time. The economist Stephen Ross, who helped develop many discrimination studies, concluded in 2008 that the discrimination paradigm could no longer explain persistently high levels of segregation. In a review of national audit studies financed by the Department of Housing and Urban Development, Sun Jung Oh and John Yinger (2015) found that measures of discrimination in housing rentals and sales related to whether the advertised unit was available declined from 1977 to 2015 but other measures of discrimination, such as whether the applicant inspected more units or was offered financing, did not decline as much. This suggests the evidence from audit studies points to a more complex rendering of the trends in housing market discrimination over the decades since the 1970s.

Adding another nuance to the "white prejudice" explanation for housing segregation is what Maria Krysan and Kyle Crowder (2017) refer to as the cycle of segregation. In this twist on the discrimination view, the housing market search process relies on preferences for neighborhoods that are known to friends, family, and relatives as "good places to live." The lack of

racial diversity in social networks tends to perpetuate racial residential segregation. In this version of the white prejudice argument, the culprit is not overt discrimination against blacks but instead within-group preferences.¹³

Another competing explanation relates to labor markets and residences. Under this explanation, blacks moved to cities to find employment, and the employment centers for factory work and related jobs that often were the source of unionization and strikes were almost exclusively in the urban core. Blacks were often brought in as strikebreakers and housed in tenement housing close to their jobs. The rise in housing segregation in this model is associated with the increase in black migration to urban jobs located near the centers of trade. These residential areas had seen successive movements of immigrants and were not exclusively black when blacks moved in. However, as jobs moved to suburban areas, white flight led to the blackening of these residential areas. In many instances, the movement of blacks depended on the willingness of whites to rent or sell to blacks.

Opposition to race-conscious remedies to problems of racial inequality and segregation are strongly related to white perceptions about the causes of black-white disparities. Samuel Myers and Inhyuck Ha (2018), using data from the General Social Survey, estimated a model of the determinants of white opposition to policies designed to reduce racial segregation and discrimination. They controlled for age, gender, education, time, location, and beliefs about the causes of racial inequality. Possible responses to the GSS question of why blacks have lower incomes, more inadequate education, worse jobs, and more inadequate housing included discrimination, less innate ability to learn, lack of opportunity for the education it takes to rise out of poverty, or lack of motivation or willpower to escape poverty. The vast majority of whites, regardless of age, education, gender, or location, believed that the problem of racial inequalities was not due to racial discrimination. A significant minority thought it

due to either lack of motivation or an inborn inability to learn. Moreover, white opposition to programs designed to remedy inequality was primarily related to their beliefs that the cause of the inequality was not discrimination.

One enduring explanation for the rise of the ghetto in northern and midwestern cities is that black migrants from the South moved into established black neighborhoods, where churches, barbershops, beauty parlors, and local schools would support their families and household. An example is the Rondo neighborhood in St. Paul, Minnesota, which had one of the highest black homeownership rates in the country in the 1920s and the 1930s. This economically diverse neighborhood included manual laborers, domestic servants, small shop owners, Pullman porters, dentists, pharmacists, doctors, lawyers, schoolteachers, social workers, and ministers. Many of the professionals had their degrees from the University of Minnesota, and some were architects and chemists with degrees from Howard University who found employment at firms such as General Mills, Pillsbury, Honeywell, and other national corporations that did not practice the forms of employment prevalent in many southern states. Others came to Minnesota via the Northern Pacific Railroad and other major railroad companies as Pullman porters, established roots in the Rondo neighborhood, and formed social clubs such as the Sterling Club—one of the oldest African American men's social clubs in the nation. Rondo is where the Prince Hall Mason Lodge and Odd-Fellows Lodge were located, as was St. Peter Claver Church, the only black Catholic Church in the upper Midwest (whose black pastor was also Archbishop John Ireland's canon lawyer). This is where representatives from Minnesota to the Niagara movement lived and where black newspapers flourished. It was the Harlem of Minnesota. Following this explanation, the move to black enclaves was predicated on preferences by blacks to live with other blacks.

These explanations are neither exhaustive

13. White preferences not to rent or sell to blacks can coexist with black preferences to live in residences that are not all-white. The growing black middle class of civil servants in many large metropolitan areas is often accompanied by the growth in predominantly black suburban residences, such as those in Prince George's County, Maryland.

nor necessarily mutually exclusive. The central task of answering the question of how the legacy of *Plessy v. Ferguson* could have an enduring impact on contemporary inequalities is to establish what precisely did or did not happen as the result of this Supreme Court decision. Although many observers claim that *Plessy* produced the rising and persistent racial segregation observed in the first half of the twentieth century, the following section argues that perhaps observers have overstated the role of the Court's decision in causing the isolation and racial separation that is the topic of this issue.

OVERVIEW OF THE ISSUE

This issue of *RSF: The Russell Sage Foundation Journal of the Social Sciences* serves as a platform for a more comprehensive discussion among scholars, policymakers, and community leaders to explore the intersection of race, color, whiteness, and citizenship, along with the historical impacts of state-enforced segregation. From separate railroad cars to state-sanctioned spatial separation in education, housing, policing, and voting, this issue focuses on these components of public space, schooling, housing, policing, and voting in relation to the legacy of *Plessy*. It brings together the best scholarly research on the long-term and perhaps uneven impacts of *Plessy*, relying on interdisciplinary scholarship, a variety of research and methodological approaches, as well as the historical-legal analysis and sociology of identity, racism, and colorism.

The issue is divided into three sections. The first, "Historical and Legal Context of Racial Exclusion," is devoted to how *Plessy* affected understandings of frequently unexplored areas of race and exclusion. Four articles explore the legal and historical foundations of *Plessy* and the unique legacies of the ruling. The essay by John Powell, "The Law and Significance of *Plessy*," shows that *Plessy* was the culmination rather than the foundation of retrenchment during Reconstruction. Powell writes that racial residential segregation is and remains the foundation of structural racism today, by separating people from life-enhancing resources, just as the Court in *Brown* recognized more than sixty years ago. Finally, Powell shows that Justice Harlan's impressive and largely overlooked ju-

risprudence (despite his well-known dissent in *Plessy*) is a roadmap for constitutional remediation. Next, Thomas Davis provides a different perspective on the legal history covering the same evidence, contending in "Who Gets to Say Who's Who? *Plessy's* Insidious Legacy" that a central lasting feature of *Plessy* was the construction of racial identity in America. Tia Sherée Gaynor, Seong Kang, and Brian Williams explore the relationship between state-sanctioned violence and place in "The Legacy of *Plessy v. Ferguson*: The Relationship Between State-Sanctioned Violence, Race, and Place." In "Separate, Therefore Equal': American Spatial Segregation from Jim Crow to Kiryas Joel," Shai Stern provides a unique application of socio-legal analysis to four phases of spatial segregation in America.

The second section of the issue, "Housing and Spatial Segregation," continues to analyze racial exclusion and segregation. Leland Ware offers a historical analysis of *Plessy's* legacy on housing segregation; Jason Reece revisits the impacts of exclusionary real estate practices on contemporary housing policies; and Paru Shah and Robert Smith point to the implications of housing segregation on voter disenfranchisement.

A third section, "Educational Segregation," focuses on one of the forms of segregation putatively abolished by the 1954 *Brown v. Board of Education* decision. The impetus for asking "how can racial segregation persist long after it has been banned?" is illustrated prominently in the analysis of persistent disparities in classrooms and educational outcomes in America more than a century and a quarter after the institutionalization of the "separate but equal" doctrine and a half-century after its formal reversal. The separate articles by political scientist Douglas Reed and stratification economists Timothy Diette, Darrick Hamilton, Arthur Goldsmith, and William Darity, as well as the article by Dania Francis and William Darity, all explore different facets of the enduring legacies of racial segregation in schools.

Summaries of Papers

In part I, "Historical and Legal Context of Racial Exclusion," John Powell (2021) writes in his essay, "The Law and Significance of *Plessy*," that

though a defining feature of *Plessy v. Ferguson* was the demarcation of whiteness and the codification of the "separate but equal" doctrine, "for all its symbolic importance, the *Plessy* decision does not implicate the type or form of segregation we live with today, nor is it even directly connected to it." He notes that "contrary to the significance accorded to the *Plessy* court for sanctioning racial segregation in public facilities, residential segregation was not primarily an outgrowth of Jim Crow." Powell concludes that most of the segregation observed after *Plessy* occurred in northern metropolitan areas and that patterns of Jim Crow segregation in the South differed from those in the north. Powell challenges the reader to consider whether any meaningful relationship is to be found between residential segregation today and the Supreme Court decision in *Plessy v. Ferguson* 125 years ago.

In "Who Gets to Say Who's Who? *Plessy's* Insidious Legacy," Thomas Davis (2021) examines in greater detail the historical backdrop of the "equal but separate" doctrine, as well as arguments and the majority opinion of *Plessy v. Ferguson*. His article argues that the core of *Plessy's* argument was personal agency over self-identity. By overruling such an agency, the Supreme Court granted the state the power to define one's racial identity and assign social and economic benefits based on such identity. Davis points out that landmark legislation after *Plessy v. Ferguson*, such as the 1964 Civil Rights Act, has similarly failed to reach fundamental issues of state power and personal agency over identity. The Court's rationale in *Plessy v. Ferguson* reached far beyond a black-and-white racial dichotomy to a full range of identity-based social relations along the lines of race, gender, religion, and so forth. The real legacy of *Plessy*, in Davis's view, lies in the arguments made for U.S. law to recognize and accept human diversity and in the process to abolish state authority to assign and sustain personal identity arbitrarily.

In "The Legacy of *Plessy v. Ferguson*: The Relationship Between State-Sanctioned Violence, Race, and Place," Tia Sherèe Gaynor, Seong Kang, and Brian Williams (2021) discuss the long-term effects of segregation by examining the intersection of state-sanctioned violence,

policing, race, and place. Specifically, they address two questions: how the legacy of *Plessy v. Ferguson* has helped maintain state-sanctioned racially based violence, and what the relationship is between space and the rate of deaths of black people caused by the police. Drawing data from Mapping Police Violence from 2013 to 2017, the authors use ordinary least squares regressions to determine what factors predict the percentage of black people killed by police, especially the roles of space and place. Results show that the percentage of the black population, the percentage of black officers, and the black-white dissimilarity index all are significant predictors. The authors conclude by calling for local law enforcement agencies and individual officers to recognize, acknowledge, and understand how the historical legacy and practice of the police profession still affect the perception and participation of black communities.

In "Separate, Therefore Equal: American Spatial Segregation from Jim Crow to Kiryas Joel," Shai Stern (2021) identifies three generations of spatial segregation in the United States through the lens of socio-legal analysis. The law, according to Stern, played different roles in these generations with different characteristics. Stern argues that a fourth generation featuring the "separate, therefore equal" doctrine has come. In the new generation, minority communities require voluntary self-segregation to achieve equality. Stern provides analysis and justifications of and objections to such a new generation of exceptional separation and concludes the article with proposed roles of law in this generation. The law should embrace a protective role by which it will defend the ability of minority communities to segregate spatially, the autonomy of individual community members, and the welfare of the society at large.

In part II, "Housing and Spatial Segregation," Leland Ware (2021) argues in his article "*Plessy's* Legacy: The Government's Role in the Development and Perpetuation of Segregated Neighborhoods," that *Plessy v. Ferguson* provided the foundation for a discriminatory structure that continues to burden the lived experiences of African Americans. Ware revisits federal policies in the twentieth century to demonstrate how government policies have

created residential segregation, which in turn has a long-lasting negative impact on the well-being of various aspects of African Americans. Ware concludes that the real legacy of *Plessy* is that “The architecture of America’s built environment reflects decades of government-sponsored segregation. High levels of residential separation persist, causing public schools in urban communities to remain segregated. African Americans and Latino/as possess less wealth than whites, fewer opportunities for upward mobility, lower income levels, and fewer chances to build wealth.”

In “Confronting the Legacy of ‘Separate but Equal’: Can the History of Race, Real Estate, and Discrimination Engage and Inform Contemporary Policy?” Jason Reece (2021) conducts a case study of two Ohio community-based initiatives, one in Cleveland and one in Columbus. These initiatives used historical analysis of racial discrimination in development practices as the focus of a community engagement process. Drawing from critical race theory and theories of structural racism, Reece argues that in-depth historical analysis is needed to contextualize and understand the history of discrimination. Structural analysis is required to generate solutions and policymaker consensus to address the contemporary patterns of segregation and opportunity isolation in the twenty-first century metropolis. In-depth historical analysis of surveys, participant observations, and interviews collected from these two initiatives and GIS analysis using historical redlining maps support his argument. Reese concludes that “historical analysis of Cleveland and Columbus clearly document the cumulative discriminatory structures that shared each city, thus modeling today’s geography of opportunity and segregation. The longevity of these discriminatory structures and their reinforcing characteristics created apartheid-like conditions . . . [and] a legacy of discrimination that our various civil rights acts and inclusionary housing tools have yet to fully overcome.”

In “Legacies of Segregation and Disenfranchisement: The Road from *Plessy* to *Frank* and Voter ID Laws in the United States,” Paru Shah and Robert Smith (2021) explore how remnants of *Plessy* remain alive in current efforts to disenfranchise black and Latino voters through

devices such as voter ID laws. Regarding *Frank v. Walker* and Wisconsin Act 23, Shah and Smith conclude that the measure is a naked attempt to disenfranchise voters in a city that is now home to a black population of more than 40 percent and a Latino population nearing 20 percent. This case study also revealed how longstanding patterns and practices with residential segregation allow for political manipulation and voter dilution through legislative mechanisms in the form of race-neutral policy.

In part III, “Educational Segregation,” Douglas Reed (2021) revisits in his article “Harlan’s Dissent: Citizenship, Education, and the Color-Conscious Constitution” the discussion of colorism and racial identity introduced in the first section of this issue. He links the Harlan dissent to issues of citizenship and colorism and their implications for education and examines the origins and consequences of the ascendance of colorblind logic in educational law. The ability to acknowledge, use, or even develop racial perception and racialized knowing, he argues, is essential to eradicating the educational harms of *Plessy*. Reed highlights the progression of the colorblind logic in the Supreme Court school desegregation case law from 1954 to 2007, discerning theories that undermine racial formalism and endorse racial awareness and racial consciousness in pedagogy. Reed admonishes the reader that “a cruel irony that Harlan’s courageous dissent in *Plessy v. Ferguson* has since the 1970s been deployed to thwart the implementation of policies that might undo some of the long-lasting effects of the majority opinion in *Plessy v. Ferguson*.”

In “Does the Negro Need Separate Schools? A Retrospective Analysis of the Racial Composition of Schools and Black Adult Academic and Economic Success,” Timothy Diette, Darrick Hamilton, Arthur Goldsmith, and William Darity (2021) test three hypotheses of the linkage between the racial composition of high schools and educational attainment. The conventional hypothesis states that a higher share of white peers is associated with higher levels of educational attainment of black students. The Du Bois hypothesis states that white peers harm the educational attainment of black students, who will be better served by attending predom-

inantly black high schools as long as society engages in racial discrimination. Both hypotheses assume a monotonic relationship between the racial composition of high school and the educational attainment of black students. The functionality of discrimination theory, however, predicts a nonmonotonic relationship between these two variables because of the functionality of discrimination given different levels of competition and threats posed to the whites. Specifically, black students attending mixed-race high schools achieve less education than those attending predominantly black schools. However, black students attending predominantly white schools complete more education. Using data of the National Survey of Black Americans, Diette and colleagues find evidence to support a nonmonotonic relationship between the racial composition of high schools and educational achievements of black students. Robustness checks using different measures confirm the findings. Diette and colleagues also test the long-term impacts of the racial composition of high schools on employment and homeownership of black students. Results also show a nonmonotonic relationship. These findings have important implications, specifically that the current efforts to shift black students from predominantly black high schools to mixed-race high schools may actually be harmful.

In "Separate and Unequal Under One Roof: How the Legacy of Racialized Tracking Perpetuates Within-School Segregation," Dania Francis and William Darity (2021) use North Carolina public high school administrative data to examine the effects of within-school segregation on the propensity of academically eligible black high school students to take advanced math courses. Using a novel identification strategy that takes account of the timing of the shares of black students enrolled in eleventh and twelfth grade advanced math courses when a given student enters high school in the ninth grade, the authors establish a causal relationship between tracking and within-school segregation. They argue persuasively that persistent, present-day, within-school segregation at the high school level is linked to the legacy of racialized tracking born from the resistance to the desegregation of schools by race.

POLICY IMPLICATIONS FOR THE TWENTY-FIRST CENTURY

Lawrence Bobo has written extensively on how racially segregated communities affect political attitudes, political power, crime and justice, and overall economic opportunities. Racial segregation is a key driver of the black-white divide in America. He writes, "Processes of racial residential segregation are a key factor in contemporary racial inequality. Despite important declines in overall rates of segregation over the past three decades and blacks' increasing suburbanization, blacks remain highly segregated from whites" (Bobo 2011, 22).

Often policy interventions have impacts that persist long after the interventions have been reversed. Arguably, many of those impacts have been negative, but positive impacts are possible as well. *Plessy v. Ferguson* legitimized state-sanctioned racial segregation and separation. The range of laws and conventions is surprisingly enormous, and some may have persisted unwittingly into the twenty-first century. Well-known and well-documented examples include early twentieth-century racial covenants and twenty-first-century patterns of racial segregation. It is plausible that "separate but equal" legislation, rulings, conventions, practices, or institutional structures have current policy implications, but as John Powell argues in his article (2021, this issue), it may not have been *Plessy* that solidified the form and content of racial separation we observe today. Perhaps it was the social mores and the institutionalization of racial exclusion in public and private life that explains the twenty-first-century form of racial separation.

Racial inequities in the United States are saturated. This means the pattern of racial distribution is mutually compounding and permeates multiple aspects of public policies that significantly affect life choices. For example, environmental inequities affect health inequities, which affect educational inequities and so forth. These inequities compound in predictable patterns and are maintained from generation to generation. For example, although Jim Crow laws have ended, they have been replaced by covert statutes and practices that maintain racial disparities. Although pockets of a racial group, such as the very wealthy, may be only

minimally affected by these inequities, the general pattern holds for the racial group at large.

These persistent patterns of racial inequality that seem to reproduce themselves across generations are easily defined using a term understood by many African Americans across all parts of the distribution of education, income, wealth, and proximity to political power—*structural racism*. An intractable, structurally embedded process, its roots run much deeper than merely the Supreme Court decision in *Plessy v. Ferguson*. The official stamp of approval of state-sanctioned and enforced racial separation, though, is as clear a manifestation of structural racism as one can find. The reason that racial disparities in virtually every aspect of life in America did not suddenly disappear after *Plessy* was implicitly overturned in *Brown v. Board of Education* is that, unlike conventional policy interventions that can reverse undesirable behaviors, structural racism—deeply embedded in institutions—can reproduce racial disparities even when laws prohibiting overt racial discrimination are on the books.

Many public policy interventions since the 1960s have been ostensibly designed to slow down or potentially reverse the legacy of the “separate but equal” doctrine, but these policies are also designed and implemented in an underlying context of nervousness in government. Public agencies that deliver public policies have a historical and contemporary record of how equitably their services have been provided across racial groups.

The award-winning journalist Steve Luxenberg writes in his best-selling book *Separate: The Story of Plessy v. Ferguson and America’s Journey from Slavery to Segregation* (2019) that *Plessy* was the most important Supreme Court decision of the nineteenth century. Could such an important decision have remnants scattered into the twenty-first century?

The articles here elevate crucial public policy considerations as we progress through the twenty-first century. What is the role of the state in addressing racial exclusion and segregation of place and space? How can public policy reverse the harmful effects of residential and educational segregation—both of which have real implications for one’s life chances—

including economic self-sufficiency and well-being, earnings, and the accumulation of assets and wealth? And perhaps most important, how can public policy aggressively fulfill the enduring American ideal of equality for all?

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