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Can and Should the Federal Government Use Affirmative Action to Promote Residential Integration?

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Abstract

Racial segregation has been a persistent feature of the American social landscape and a longstanding contributor to racial inequality, particularly between Blacks and Whites. Affirmative action policies have been used to address the systemic discrimination and attendant socioeconomic consequences to which African Americans have been subjected. Yet affirmative action has not been widely used in all domains in which segregation and systemic discrimination occurred. Although such policies have been adopted in the domains of employment and postsecondary education, few federal affirmative action programs have been used in housing. This is surprising given high levels of segregation across the metropolitan United States, as well as the stated integrative objectives of the U.S. Congress when it passed the *Fair Housing Act of 1968*. To understand this puzzle, we use the Gautreaux Assisted Housing Program, a housing mobility effort of the Federal government and the Chicago Housing Authority that used explicit racial criteria, as a surrogate for affirmative action in housing more broadly. We conduct a comparative analysis of Gautreaux and affirmative action in college admissions using insights from applied political philosophy and sociology. By confronting Gautreaux with a more traditional affirmative action program, we are able to identify and compare the judicial, moral, and instrumental justifications for each, enabling us to draw conclusions about whether and how affirmative action can justifiably be used on a large scale to reduce neighborhood segregation, the possible forms it could take, and the difficulties it would face. We close with a discussion of the recent shift toward integration taken by the Department of Housing and Urban Development under the Obama administration, its relationship to affirmative action, and its implications for declines in residential segregation in the United States.

Keywords: Racial Residential Segregation, Affirmative Action, Gautreaux, Housing Mobility, Restorative Justice

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INTRODUCTION

The United States has a long history of racial segregation across its social institutions. Although racial separation has declined meaningfully in some areas, such as public accommodations, the workplace (Reskin and Cassirer, 1996), and postsecondary institutions (Farley 1984), only small declines have ever been realized within residential space (Farley and Frey, 1994; Logan et al., 2004; Logan and Stultz, 2011). That African American history in the United States reflects a history of systemic, and sometimes violent, segregation is no mere historical footnote, for there are contemporary social and economic consequences that flow from past and continued segregation.

If we compare the racial harms suffered by African Americans and the political solutions implemented to redress them since the 1960s, there seems to be a puzzling asymmetry: various pieces of federal legislation were passed to prohibit racial discrimination, and attempts were made to compensate for it through affirmative action programs, yet these programs were not widely implemented in all the fields where discrimination occurred. On the contrary, affirmative action efforts have focused mainly on employment and education, while there have been few such programs in housing despite the fact that many of the means by which residential segregation was achieved and maintained relied on state enforcement powers for their effectiveness (Hirsch 1983; Massey and Denton, 1993). The paltry use of affirmative action in housing is also rather surprising given the language of Title VIII of the *Civil Rights Act of 1968* (also known as the *Fair Housing Act of 1968* (FHA)). Section 3608(e)(5) of the *Act* states that the Department of Housing and Urban Development (HUD) is to "administer the programs and activities relating to housing and urban development in a manner *affirmatively to further* the policies of this subchapter," which, as defined in Section 3601, are "to provide within constitutional limitations for fair housing throughout the United States" (emphasis added). Although the FHA does not include explicit language about *integration*, legal scholars contend that its integration goals are rooted in the Thirteenth Amendment (1865), which abolished slavery and conferred on Congress the authority not only to decide what constituted "badges and incidents of slavery," (*Civil Rights Cases* 1883, p. 20) but to design legislation to address them (Roisman 2010; Tsesis 2007).[2]

The Supreme Court recognized segregation as a vestige of slavery when it wrote in 1968 that the Black Codes were "substitutes for the slave system, [just as] the exclusion of Negroes from white communities became a substitute for the Black Codes" (*Jones v. Mayer* 1968, p. 442; Roisman 2010, p. 72). Indeed, Congressional debate around the passage of the FHA engaged specific arguments about the necessity to decrease residential segregation, and the Supreme Court gave judicial recognition to Congress's interest in reducing this form of racial inequality when it held that Congress intended HUD to take affirmative steps to both ensure nondiscrimination in housing *and* promote residential integration (*Trafficante v. Metropolitan Life Insurance Company* 1972).[3]

To be sure, other scholars have inquired about the minimal use of affirmative action in housing. Christopher Bonastia (2006) describes Richard Nixon's presidency as a time when "federal civil rights policies in housing [diverged] from those in other areas, such as employment and education, where the United States adopted stronger (though by no means flawless) race-conscious policies" (p. 5).[4] To understand why, he juxtaposes the success of the Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance (OFCC), and the Office for Civil Rights (OCR) in pursing affirmative action shortly after the passage of the *Civil Rights Act of*

1964 with the ineffective efforts of HUD in the years immediately following passage of the FHA (Bonastia 2000, 2004, 2006). Bonastia's thesis is that the EEOC, OFCC, and OCR each had strong institutional homes that allowed them to develop and strengthen affirmative action policies in employment and education, while HUD had a weak institutional home plagued by divergent missions, mismanagement, and scandal, all of which undercut HUD's legitimacy and weakened its ability to pursue the more controversial policy of furthering residential integration versus simply ensuring nondiscrimination in the housing market.

In his analysis of this question, Charles Lamb points to Nixon's interpretation of the FHA as demanding only nondiscrimination in the housing market, not integration. Indeed, Nixon argued that "force[d] integration of the suburbs" would be "counter-productive and not in the interest of better race relations," a position that strengthened his popularity among suburban Whites (Lamb 2005, p. 9; Lamb and Twombly, 2001). Nixon, according to Lamb (2005), successfully implemented the "politics of suburban segregation" by shifting decision-making authority on housing policy from HUD and its Secretary to the West Wing, then ensured the longevity of his position on the FHA by appointing federal judges who shared his perspective.

Thus, we are not the first to consider the virtual lack of affirmative action policies in housing. We differ, however, from Lamb and Bonastia in the sites of our analysis. Whereas Bonastia and Lamb search for answers inside the "institutional homes" of the EEOC and HUD and in the political motivations and maneuvers of the Nixon Administration, respectively, our approach is to confront housing mobility programs with affirmative action policies. Additionally, while Lamb and Bonastia undertake historical analyses, we are forward-looking in an effort to understand the future prospects for the large-scale use of affirmative action in housing. That is, we do not assume that opportunities to implement affirmative action in housing are unique to the period immediately following passage of the *Fair Housing Act*. Rather, we allow for the possibility that HUD could pursue such policies today, despite recent restrictions on the voluntary use of race to achieve integration.[5]

To understand why affirmative action has yet to be applied to housing in large measure,[6] the possible forms it could take, and the difficulties it would face, we propose a comparison between affirmative action and a particular instrument of housing policy: housing mobility programs for minorities inspired by an original initiative called the Gautreaux Assisted Housing Program. That is, we confront Gautreaux, a housing mobility program with an explicit racial criteria, with the theoretical literature on affirmative action, particularly that in the fields of applied political philosophy and sociology.[7] We focus on two related questions: can the federal government use affirmative action tools in the field of housing, and should government implement such actions? To answer the former, we undertake an analysis of the judicial justifications for affirmative action and the Gautreaux Assisted Housing Program. To answer the latter, we undertake a comparison of the moral and instrumental justifications that support Gautreaux and affirmative action. We do not, however, focus extensively on the politics of effective implementation of these policies and programs. We believe that even in the presence of strong political opposition to their implementation, the arguments we interrogate have intrinsic interest, because there is currently no strong consensus about the active involvement of the federal government in reducing residential segregation in contrast to merely ensuring nondiscrimination in the housing market. Moreover, answers to these questions are directly useful to a government that desires to implement such programs: they comprise the arguments government would use to make the case for its policies. Answers to our questions are also directly useful in the concrete implementation of

such programs; they contribute to the way people perceive their legitimacy, as well as provide replies to moral objections voiced by local residents opposed to such programs. Finally, we are faithful to the idea that theoretical reflection on justice is useful in concrete politics, because most people have a sense of justice and care about the justice of political decisions.

Before we undertake the tasks described, however, we provide a brief description of the Gautreaux housing mobility program and what we mean by affirmative action. As a result of a series of court decisions that began in 1969 in which HUD and the Chicago Housing Authority (CHA) were found to have funded and operated a racially discriminatory public housing system, a housing mobility program was implemented to compensate African American public housing residents for the harms they had suffered by being restricted to ghetto areas of Chicago. The program relocated African American public housing residents to more affluent and diverse neighborhoods in the city of Chicago or to middle-class White neighborhoods in the suburbs through multiple kinds of housing assistance, including vouchers from the newly created national Section 8 program.

Commonly understood, race-based affirmative action may mean two things: positive steps taken to increase the representation of minorities where they are underrepresented in areas of employment, education, or business, but without preferential ethnic or racial selection (e.g., strict assurance of the neutrality of hiring processes, increased outreach to potential minority applicants) or positive steps with the same aim but that take race and ethnicity explicitly into account in "allocating opportunities" (Harper and Reskin, 2005, p. 358). In neither case are the expected beneficiaries limited to victims of discrimination; rather, they include all qualified members of targeted race and ethnic groups that were subject to systemic discrimination. The second form of affirmative action described above (sometimes called "hard" or "radical" affirmative action) consists of giving a special positive value to the fact that a qualified applicant is a member of a minority group; that is, to give an advantage in the selection process to qualified minority applicants as such. Although the use of racial preferences is but one of many approaches to affirmative action, it is the form that generates the most controversy, and is the subject of most of the theoretical literature about affirmative action.[8] It is the form of affirmative action that is of interest here.

With that said, let us specify what we have in mind for the domain of housing. By "affirmative action in housing," we mean the large-scale and sustained involvement of the federal government (working with local and state governments) in the private (as well as publicly-subsidized) housing market, with an explicit and focused intent to reduce racial residential segregation through the use of race-based instruments. We do not presume to offer a unique definition of affirmative action in housing. Rather, our intention is to help elevate, in the minds of researchers and policymakers, the government's responsibility for reducing housing segregation not only in government programs administered by HUD but in the private market, given the government's historical contributions to segregation in that sphere.

We now encounter a problem that could seem to make a comparison between Gautreaux and affirmative action meaningless: the difference between the kinds of goods and advantages that are at stake. Indeed, housing is not the same kind of good as employment or admission to a university; their differences have implications for the proper way to allocate these resources and the criteria used to evaluate the allocation processes. One of the main debates about affirmative action is the conflict between a racial criterion of selection on the one hand, and the competence and desert criteria on the other. To hire someone in a firm or admit a student to a

university consists of attributing a certain function to a position in which a person must exercise precise activities. In order to exercise those activities correctly, some skills and competencies are necessary; hence, a possible moral problem arises if the selection process takes into account not only the degree to which applicants possess the relevant competencies, but some entirely heterogeneous traits. However, there can be no such conflict in the case of housing, because the concepts of competence and merit are irrelevant here given that living in a home requires neither precise skills nor competencies. In other words, the primary requirement for residing in a home is the ability to pay rent or mortgage. This is distinct from requirements for employment or admission to a university where one's ability to pay is irrelevant (in the case of the former) and important but insufficient (in the case of the latter).

However, it remains possible to identify in the case of the Gautreaux Program (and other housing mobility programs) a similar conflict between the use of a racial preference and the normal criteria of selection, which lies in the advantages offered to participants in the program: they were given access to both the advantages of the Section 8 housing program (including a fair rent and financial assistance to pay it) and the advantages of moving to a more affluent neighborhood. Outside the Gautreaux Program, both advantages are normally attributed without a racial criterion but with reference to nonracial traits of the applicants. For example, the Section 8 program is open to families that meet some eligibility criteria that justify assistance to them (such as an income ceiling). As for access to a good neighborhood, one can think of it as a relatively rare and valuable good that can be obtained if a family manages to achieve sufficient income in order to present guarantees to a landlord for rent or to a bank for a mortgage. In this way, a family has to "deserve" or "earn" access to the advantages of a good neighborhood. But these advantages were achieved in the Gautreaux Program through preferential treatment of Black families in the Gautreaux class—a certain proportion of CHA's Section 8 vouchers were reserved for these families, which gave them strong advantages in accessing a good neighborhood. So there is in the Gautreaux Program, as in affirmative action programs, a possible conflict between normal criteria of selection and the use of racial preferences for selection; a conflict that could be questioned by members of other racial groups eager to receive the same advantages.

Below, we undertake the first component of our analysis—a comparison of the available justifications for the Gautreaux housing mobility program and affirmative action. We then conduct the second component of our analysis by comparing the content and implementation of these programs. We close with a discussion of the prospects for affirmative action in housing.

COMPARISON OF JUSTIFICATIONS FOR THE GAUTREAUX ASSISTED HOUSING PROGRAM AND TRADITIONAL AFFIRMATIVE ACTION PROGRAMS

Judicial Justifications

Gautreaux

As previously noted, the Gautreaux Assisted Housing Program is the result of various court decisions that found the policies and practices of the Chicago Housing Authority and HUD in violation of federal statutes and the constitutional rights of African American public housing residents. The facts for which CHA was judged were their site-selection practices and tenant-assignment policies that dated back to 1950. In

particular, attorneys for public housing plaintiffs (Dorothy Gautreaux and similarly situated Black residents) documented the intent of CHA officials to confine Black families eligible for public housing to racially homogeneous (Black) ghettos in Chicago by (1) building public housing projects nearly exclusively in such areas and (2) limiting the number of Black families that could reside in the few projects that existed in White neighborhoods.

As was established by Alexander Polikoff (2006) and other pro bono attorneys for the plaintiffs, thirty-one of the thirty-two projects built between 1950 and 1965 were located in neighborhoods with populations more than 85% Black. What is more, the reasons for choosing these locations appear to be not merely the availability and cost of land, but mainly a commitment to segregation. In finding that CHA had operated a racially discriminatory public housing system, a federal judge concluded that "No criterion, other than race, can plausibly explain the veto of over $99\frac{1}{2}$% of the housing units [proposed to be] located on the White sites which were initially selected on the basis of CHA's expert judgment and at the same time the rejection of only 10% or so of the [proposed] units on the Negro sites" (*Gautreaux v. Chicago Housing Authority* 1969, p. 912).

The liability of CHA also stems from its cooperation with Chicago's city council, whose members refused to build public housing in White neighborhoods they represented (Polikoff 2006). Additionally, CHA agents separated Black and White applicants, placed quotas on the number of Black families allowed to reside in "white family housing projects," and encouraged Black families to express preferences for projects in Black areas by promising them higher chances of selection. Thus, CHA was found to have violated the Equal Protection Clause (Section I) of the Fourteenth Amendment (1868) to the United States Constitution.[9]

Still, the Gautreaux program does not come solely from the case against CHA (*Gautreaux v. Chicago Housing Authority* 1969), but also from the companion case against HUD (*Gautreaux v. Romney* 1971). In this case, HUD was found to have violated the Due Process Clause of the Fifth Amendment (1791) and Section 601 of the *Civil Rights Act of 1964* (42 U.S.C. §2000d) due to the financial support it provided CHA with full knowledge of its discriminatory practices.[10] That ruling prompted a new judicial process to identify an appropriate and effective remedy. The Gautreaux housing mobility program is one component of the remedy proposed by plaintiffs' attorneys. It would use HUD's Section 8 program to relocate African American families from public housing to less racially concentrated neighborhoods within the city of Chicago and to middle class White suburbs. This remedy was rejected by the district court because it would involve suburbs that were innocent of racial discrimination. However, the U.S. Court of Appeals reversed that decision declaring "it is necessary and equitable that any remedial plan to be effective must be on a suburban or metropolitan area basis" (*Gautreaux v. Chicago Housing Authority* 1974, p. 936). In 1976, the Supreme Court affirmed the use of a metropolitan plan in *Hills v. Gautreaux* because a metropolitan approach was typically used by HUD in its intervention in urban housing markets, and because the Section 8 program did not require any agreement or obligations on the part of the suburban municipalities (Polikoff 2006).

Affirmative Action

What, then, are the main justifications for affirmative action programs, and to what extent are they similar to the judicial justification for the Gautreaux program? At first glance, the difference between affirmative action programs and the Gautreaux pro-

gram may seem fundamental: affirmative action involves racial preferences (at least the "hard" form that is of interest here), while Gautreaux does not, as it is a remedy for past discrimination acknowledged by courts. Affirmative action gives an advantage on the mere basis of race among qualified alternates, whereas Gautreaux gives compensation to those who have been wronged.

In the most influential case concerning affirmative action, *Regents of the University of California v. Bakke* (1978), the Supreme Court spoke directly (though implicitly) to whether the compensation argument used to justify Gautreaux also justifies affirmative action programs. In this case, the University of California at Davis utilized a two-track system of admissions to its medical school with the objective of increasing the number of Black doctors in the country. This admissions process was challenged by Allan Bakke, a White applicant who was twice denied admission though his test scores and grades were better than many of the qualified minority applicants who were admitted under Davis's special admissions program, which reserved sixteen of one hundred places for minorities. Among the four reasons offered by the university for its special program was the compensation argument: to counter "the effects of societal discrimination" against African Americans, which had disadvantaged them such that it was impossible to admit a meaningful number of Black candidates without using affirmative action (*Bakke* 1978, p. 307). This argument was rejected by the Supreme Court. In an opinion written by Justice Powell, the Court made clear that though ameliorating the effects of past discrimination is a legitimate governmental interest, such an objective does not justify an admissions system that uses racial quotas or targets, nor does it justify any other affirmative action program. Indeed, Powell noted that the Court "has never approved a classification that aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals *in the absence of judicial, legislative, or administrative findings of constitutional or statutory violations*" (*Bakke* 1978, p. 307, emphasis added). Based on *Bakke*, then, it is clear that affirmative action does not have the same justification as the Gautreaux program. Compensation for past racial discrimination provides judicial justification for Gautreaux, but not for affirmative action.

Here the difference between the Gautreaux program and affirmative action is irreducible: the specificity of Gautreaux (compared to that of the UC-Davis program) means that it does not seek to compensate for the residential segregation of African Americans in general, but simply for the discriminatory practices committed by HUD and the CHA in Chicago between 1950 and 1965. Although plaintiffs' attorneys were fully aware of entrenched segregation in Chicago that resulted from the actions of specific entities (e.g., Whites hostile to Blacks as neighbors, White elected officials complicit in such discrimination), they did not claim compensation for this entire context, but simply for the specific contribution of CHA and HUD during a specific period of time. Attorneys targeted particular institutions (not the interaction of myriad actors), identified precise discriminatory practices (not habits or dispositions), and avoided claims for further reparation once those particular acts had been remedied. Thus, compensation for past discrimination must be specific, local, and precisely limited if it is to be legally permissible. Gautreaux exemplifies such compensation while affirmative action does not.

Moral Justifications

Nevertheless, the case for affirmative action is a moral, not just a legal, one. Examining the differences between Gautreaux and affirmative action on a moral basis reveals two important similarities: (1) racial preferences are treated in affirmative

action programs as a kind of reparation for past wrongs, so affirmative action would appear in fact closer to Gautreaux than the judicial justifications imply; and (2) the relationship between the Gautreaux program and the original harms for which it compensates is more complex than in a basic judicial compensation and, thus, Gautreaux appears similar to the principles in affirmative action. Let us examine these two points.

Affirmative Action as Moral Parallel to Gautreaux

Insofar as the use of racial preferences in affirmative action programs can be justified as a kind of reparation for past wrongs suffered by racial minorities—a kind of "restorative justice"—it displays an important similarity to the Gautreaux program. Therefore, it is important to discuss the reasons for which affirmative action can be construed as a moral compensation apart from any judicial endorsement of it. The restorative justice argument for affirmative action contends that advantaging minorities is a matter of social justice; it corrects the disadvantages they have suffered as a group and as individuals by giving them some advantage in the selection of applicants for a job or to a college program. It is a way to restore justice, measured at a global level. More specifically, affirmative action improves the overall fairness of the selection process because in a context of entrenched racial prejudice and discrimination, each minority applicant is likely to have been disadvantaged in his own life.[11]

Such a rationale is often strongly criticized. It is especially argued that preferential hiring construed as compensation is perverse, because it tends to benefit individuals least likely harmed by past wrongs (e.g., Blacks possessing good educational credentials), while it disadvantages individuals least responsible for those wrongs (e.g., young White applicants). According to this critique, the only fair criteria for selection are relevant competencies and skills in order to respect the right of every applicant to equal consideration and the right of the maximally competent person to an open position (Thompson 1973). Moreover, it is argued that the use of racial preferences to promote racial equality is contradictory and self-defeating: "To count by race, to use the means of numerical equality to achieve the end of moral equality, is counterproductive, for to count by race is to deny the end by virtue of the means" (Eastland and Bennett, 1979, p. 149).

Still, this idea of a contradiction between the end and the means in affirmative action can itself be challenged through the same means-end reasoning: the rule for hiring the most competent applicant has its origin and justification in the broader principle of justice, namely a principle of equality of opportunity. Therefore, the creation of more equal opportunities takes precedence when in conflict with the narrower competence criterion, and there is such a conflict as soon as opportunities are unequal elsewhere in the system. Though formal structures of racial domination have been dismantled, the "forms and mechanisms of that domination" continue today as "loosely coupled, complex," and informal apparatuses that provide (often hidden) advantages to Whites over racial minorities (Bobo et al., 1997, p. 17). Under these conditions, termed "laissez-faire racism" by Bobo and colleagues (Bobo et al., 1997; Bobo and Smith, 1998) and "color-blind racism" by Bonilla-Silva (2006), the application of the competence rule may simply compound injustices. So the right to equal opportunity, as a more fundamental principle of justice, may justify short-run violations of the (secondary) rule of competence in order to expiate the general inequality of opportunity affecting African Americans; that is to say: may justify measured and targeted racial preferences. So there is a case for the *moral* justification of some preferential treatment of minorities as a form of restorative justice for racial

discrimination; in this respect affirmative action has the same kind of philosophical inspiration as the Gautreaux program.

Gautreaux as Compensatory Equivalent to Affirmative Action

Conversely, the compensation provided through the Gautreaux program appears to be closer to the kind of compensation that could flow from affirmative action programs than to judicially ordered reparations intended to compensate plaintiffs for damages. The problem of affirmative action as compensation, it is said, is that the compensation is not and cannot be precisely tailored to the wrong it is supposed to remedy. In particular, there is no necessary identity between (1) those responsible for past wrongs and persons currently disadvantaged by racial preferences, and (2) the victims of past wrongs and beneficiaries of current racial advantages, because of the possible historical gap between the period of discrimination and the moment of remedy. But, in fact, such a strict double principle of identity is not fully present in the Gautreaux program as a remedy, either.

First, the two defendants in the *Gautreaux* cases are artificial persons—organizations subject to evolution whose responsible parties change over time. The timetable of the Gautreaux case is particularly long, given that wrongdoing began in the 1950s and the remedial order remained in application until 1998. Thus, the organization that had to pay for the Gautreaux program in the 1980s and 1990s was a HUD different from the HUD that backed the discriminatory practices of the CHA thirty years earlier, and probably without any remaining individuals directly responsible for those past wrongs. Nevertheless, as is well-established law, the continuity of the institution warrants its judicial sentencing, even though there is a shift in the organization's leadership over time. In this way, the legally sanctioned Gautreaux program shares with affirmative action both a temporal gap between offense and remedy and a corresponding gap between individuals who engaged in discriminatory behavior and those charged with providing compensation. Therefore, judicial (and moral) obligations to rectify and compensate for harms inflicted become *institutional* burdens that must be carried, even when doing so privileges one group over another.

Second and more strikingly, there are also in Gautreaux important gaps between past victims and current beneficiaries. These gaps, too, are due to the lengthy period between constitutional violations and remedy, but also because *Gautreaux* was filed as a class action suit on behalf of 30,000 Black families who were tenants or qualified applicants of the CHA when the case began. Many of the actual victims of the CHA were no longer alive or tenants of the CHA when their rights to compensation were effectuated in the late 1970s. Indeed, many of the beneficiaries of the Gautreaux program had not themselves been wronged by the CHA before 1966 when the case was brought. Consider, for example, families that had a true preference for housing in Black neighborhoods were still eligible for the Gautreaux program, even though the site selection policies of the CHA and its intent to discriminate had not directly wronged them. Altogether, the distance between past victims and actual beneficiaries of the Gautreaux program is not so different from the distance between the victims of past racial discrimination that justifies a preferential treatment in college admissions and the applicants who effectively take advantage of them. In these two aspects, the kind of reparation provided through the Gautreaux program is more collective and broadly designed than a standard model of personal judicial compensation. Consequently, the historical gap found in affirmative action is not so specific to it.

Underlining this double similarity regarding the compensation rationales of affirmative action and Gautreaux is insufficient to complete our analysis. Affirmative

action is not only morally justifiable in terms of restorative justice, but is justifiable through the argument of anticipated good social effects; that is, for its instrumental value. Although this argument has only limited application to the Gautreaux program, it may be the strongest argument for affirmative action.

Instrumental Justifications

Conceptually, the instrumental justification for affirmative action is very different from arguments about its ability to mitigate past injustices, as it is a forward-looking justification, not a backward-looking one. Its instrumental value is in its ability to produce better social situations; indeed, to abate the future effects of prior discrimination. This instrumental justification does not require the identification of precise wrongs and culprits, which allows it to be accepted by courts.

Indeed, an instrumental justification for the preferential treatment of minorities led the Supreme Court in *Bakke* (1978) to uphold a form of affirmative action in college admissions. In the majority opinion, Justice Powell accepted the university's argument regarding the value of ethnic diversity among students in a medical program as a way to achieve a better educational environment. Even though Justice Powell dismissed the university's method of achieving diversity, he recognized the value of the diversity argument as a legal justification for affirmative action: a university's interest in a diverse student body is legitimated by the principle of protection of academic freedom, guaranteed by the First Amendment to the Constitution. In a more recent case, Justice O'Connor, writing for the majority in *Grutter v. Bollinger* (2003), agreed with Justice Powell's conclusion that "student body diversity is a compelling state interest that can justify the use of race in university admissions" (p. 325). O'Connor, like Powell almost a quarter century earlier, but with substantially more support from her brethren and sistren,[12] affirmed the value of a diverse educational environment to enrich the education of every student and, in particular, to prepare them for their future roles in America's pluralistic society.[13]

In spite of this renewed consecration of diversity as a legal basis for affirmative action in college admissions, diversity is not the only good instrumental argument for it. One can assess the value of affirmative action relative to its larger societal consequences. The fundamental premise of this argument is that the composition of a nation's leadership should not be too different from the ethnic and racial composition of its population, and it should be obvious that such leadership is effectively open to competent members of every race and ethnic group. This requirement is based on the necessity that leaders and public institutions have legitimacy among the citizens of all ethnic and racial groups.[14] As universities are crucial places where the selection and training of future leaders takes place, they should manage this function in accordance with the goal of sufficient representation of all ethnic and racial groups. If there are strong inequalities between minorities and members of the majority, especially ones rooted in historical and contemporary oppression and discrimination, then universities are entitled (even socially obligated) to favor the admission of underrepresented groups through affirmative action means.

The Supreme Court affirmed this instrumental argument, too, when Justice O'Connor wrote of the benefits of diversity that reach *beyond* college campuses: "High-ranking retired officers and civilian military leaders assert that a highly qualified, racially diverse officer corps is essential to national security. Moreover, because universities, and in particular, law schools, represent the training ground for a large number of the Nation's leaders, the path to leadership must be visibly open to talented and qualified individuals of every race and ethnicity" (*Grutter v. Bollinger*

2003, p. 321). In this *integration* argument, the benefits of affirmative action are still instrumental, but the valuable consequences are not to be found on university campuses themselves but in the relationship between the nation and its leaders. Here, as with the diversity argument but contrary to the compensation argument, affirmative action is valuable for its collective advantages for society at large, not merely for its direct beneficiaries.

Unlike affirmative action, the diversity and integration arguments have little applicability to the Gautreaux housing mobility program. The advantages of moving to more affluent and diverse neighborhoods made possible via Gautreaux and documented by social scientists (Rosenbaum 1995; Rubinowitz and Rosenbaum, 2002) are essentially advantages for the families who participated in it. The program was not intended to yield benefits to the neighborhoods where participant families settled in the way diversity is expected to benefit college environments. On the contrary, program administrators avoided relocating families to only a few neighborhoods to avoid actual or perceived negative changes in the neighborhoods where families relocated.

Similarly, the integration argument could have had no more than secondary consideration in the Gautreaux program. Certainly, the concentration of Black public-housing residents in only a few Black neighborhoods helped to concentrate their poverty along with the social problems associated with economic disadvantage. Relocating Black families out of such neighborhoods and into more economically advantaged ones should have reduced poverty concentration and its sequelae in city neighborhoods, thus providing a larger social benefit to the city in the form of reduced social problems. But again, this line of argument remains secondary to the Gautreaux program. Neither the desire to reduce poverty concentration in Chicago, nor the effects of living in poverty-concentrated neighborhoods on one's chances of becoming part of the political, economic, and military leadership of the country constituted an acceptable legal argument for providing residential mobility assistance to Black public-housing residents. Only violations of their constitutional rights did.

However, the inapplicability of the diversity and integration arguments to Gautreaux does not preclude their relevance to other housing mobility programs. Much social science research documents the close association between racial residential segregation and social problems. For example, segregation is implicated in poverty concentration (Massey and Eggers, 1990), crime (Shihadeh and Flynn, 1996), victimization (Petersen and Krivo, 1999), unemployment and joblessness (Mouw 2000), disease (Acevedo-Garcia 2001; Massey 2004), mortality (Collins and Williams, 1999), and race gaps in cognitive skills (Bennett 2011). Segregation contributes to poorer educational outcomes of Blacks relative to Whites, in part due to the poorer quality schools that serve minority versus predominantly White neighborhoods (Ainsworth 2002; Ascher and Branch-Smith, 2005; Bennett 2011; Massey et al., 1987). The negative consequences of segregation even invade the presumably protective spaces of elite colleges; segregation and its attendant social problems (e.g., increased family stress) are associated with lower grade-point averages among Black and Latino students compared to those of Whites, even when they enjoy the same socioeconomic family background (Charles et al., 2004). Because the effects of living in a racially concentrated, poor neighborhood are deep and varied, segregation artificially arrests the social mobility of enumerable African Americans, thus making it difficult for their members to reach top positions in government, the military, and the professions. It is here that the integration argument can be validly used. Just as preferential treatment for minorities in college admissions is justified because of the

need for a higher proportion of minorities among leaders, so too are housing mobility programs that use a racial selection criterion justified to the extent that they help pave the road to college entry, increase the socioeconomic status of minorities and, thus, elevate their chances of becoming part of the elite.

Conceiving of housing mobility programs as a tool of education policy is not to deny that they are an indirect tool. Certainly, funds used to finance such programs could be given directly to schools in minority neighborhoods to improve their quality. However, the allocation of school resources is performed at the state and local levels, whereas our concern is with the actions the federal government may take. Moreover, work by David Rusk (2003) and others remind us that "housing policy *is* school policy," due to the rather intricate connection between home values and school quality (McKoy and Vincent, 2008).

Yet there are other desired social consequences from reducing residential segregation that pertain to a more general "social effects" argument. The social problems generated or worsened by segregation are not experienced solely by the individual minority persons who are segregated from Whites; they are also experienced by anyone who inhabits a segregated city or suburb, as there are social and economic costs associated with living in places beleaguered by crime and unemployment, for example. So while reducing segregation is expected to have a positive impact on the lives of individual racial minorities (as does greater opportunity to obtain postsecondary education), the larger effect is to ameliorate myriad social problems, thus contributing to a collective, global good.

COMPARISON OF THE CONTENT AND IMPLEMENTATION OF HOUSING MOBILITY AND AFFIRMATIVE ACTION PROGRAMS

Perceptions of Legitimacy

We have shown similarities and differences between justifications for affirmative action and the Gautreaux Assisted Housing Program. Their differences imply correlative differences in content and implementation and, thus, in the legitimacy each is perceived to have by the public. Still, a comparison at this second level is useful, because in both cases it is difficult to separate justifications from the implementation of programs. That is, the ways programs are justified determine largely their content and implementation, and finally the ways programs are realized are important to appreciating their value.

The allocation processes in both affirmative action and housing mobility programs are perceived as illegitimate. Recall that the Gautreaux program used the national Section 8 program and, as such, provided a double help to former plaintiffs who became program participants. Private landlords who participated in the program were required to accept a "fair market rent" set by HUD that may have been below market rent (Rubinowitz and Rosenbaum, 2002), and tenants were required to pay no more than 25% of their income toward rent (Polikoff 2006).[15] This financial assistance allows the beneficiaries to meet the higher costs of living in relatively affluent suburbs.

Additionally, the Gautreaux program provided relocation assistance to families in order to meet the complex and global character of such an integration process. Relative to the integration of a new employee into a corporation or student into a university, successful entry into a new and dramatically different neighborhood is complex, as it involves virtually all the aspects of daily life. The Gautreaux program was also sensitive to the residential contexts in which they placed participant families.

It relied on neighborhoods that were neither predominantly Black (to allow for real change in residential environments), entirely White (to avoid racially "opening up" neighborhoods), nor ones with a history of hostility towards Blacks (Polikoff 2006). In addition to these precautions, families were dispersed across many neighborhoods.

Opposition by local residents to the settlement of poor Black families could have posed a significant challenge to the Gautreaux program. Such contestations have their origin in a long history of hostility to racial residential integration. However, in this case they could have also been related to the preferential treatment given to beneficiaries of the program. In other words, White opposition to Gautreaux, had it materialized at high levels, might have been an expression of feelings of injustice, pointing to the supposed unfairness of advantaging African American families. Here the parallel to objections to affirmative action programs is clear. One of the main arguments against the principle of preferential treatment for minorities is that it harms some White applicants who may display more merit than selected minority applicants.

However, the situation is somewhat different in a housing mobility program like Gautreaux, because the contestation does not come from White applicants rejected from the program based on their racial status, but instead from suburban residents who claim to have been able to settle there "on their own." Although intense opposition did not emerge relative to the Gautreaux program (Rubinowitz and Rosenbaum, 2002), it was vigorously expressed in one of the cities in which Moving to Opportunity (MTO), a federal housing mobility program, operated despite the fact that selection into MTO was based on a social criterion—poverty status—not a racial one. That is, MTO helped poor families in public housing relocate to low-poverty neighborhoods. However, because of the concentration of poverty in cities versus suburbs, Blacks were disproportionately represented among MTO participants who sought to move to low-poverty, predominantly White suburban neighborhoods. Thus, in Baltimore, there were in 1994 intense protests by White residents against the planned moves of public housing residents to their neighborhoods (Polikoff 2006).

Such protests presuppose a certain conception of a legitimate move to the suburbs—it should result from personal socioeconomic improvements and, thus, should be merited by a family. This reasoning is flawed, however, especially because the supposedly spontaneous wave of White migration from cities to suburbs was made possible by myriad forms of governmental intervention that overwhelmingly benefitted Whites. From the Federal Housing Authority and Veteran Administration's disproportionate financial backing of mortgages for homes in the suburbs versus cities to government-funded expansion of highways and utilities to suburban communities, the growth and prosperity of the suburbs was heavily subsidized by the government, as was the supposed personal achievement of suburban residence (Jackson 1985; Massey and Denton, 1993).

Nevertheless, housing mobility programs are particularly vulnerable to perceptions of illegitimacy. (MTO in Baltimore, for example, was seriously weakened by protests.) In this regard, the judicial origin of the Gautreaux program may be an advantage over affirmative action programs because the compensation it provides was explicitly justified by courts as the limited and appropriate remedy for violations of the law. Consequently, it may have more perceived legitimacy than an administrative plan that could be modified by another administrative decision. We note, though, that even the legitimacy of housing mobility programs that arise out of remedial orders is not unlimited. Indeed, the limits to Gautreaux's perceived legitimacy are revealed by the constant care of the administrative judge to avoid backlash from suburban Whites. Housing mobility and traditional affirmative action programs are,

therefore, subject to the same claims of illegitimacy. But this similarity also means that if we reject such claims with respect to affirmative action in college admissions, we can reject them with respect to affirmative action in housing.

Claims of illegitimacy are not the only motive of opposition against housing mobility programs, and perhaps not even their main one: partly racist fears about having poor Black neighbors, or distaste for them, are often central. Nevertheless, insisting on the justice of such programs may help to reduce opposition. First, there is little reason to think that White residents are completely insensitive to moral arguments: part of their complaint that MTO is unfair was probably sincere; to that extent, elaborating on the justification for housing mobility programs can help to convince their opponents. On the other hand, even where claims of unfairness are completely hypocritical, discussing the fairness of these programs remains important, because egoist arguments are much more difficult to express publicly than arguments about justice. That is, racist opponents to housing mobility programs would have less influence if it were made obvious that such programs are not unfair. Discoursing about the justice of these programs would not *convince* these particular opponents, but it would partly *silence* them.

Evaluation of Consequences

In addition to arguments that challenge the legitimacy of affirmative action and housing mobility programs are arguments that question their implementation and consequences. It is suggested that such programs harm the very persons they are intended to help. For example, critics charge that Black students admitted under preferential admissions are, on average, less competent than other students because they were preferred for nonacademic reasons. The privileging of race over academic credentials, critics argue, creates a mismatch between minority students' qualifications on the one hand and the qualifications of White students and the demands of elite universities on the other (Sander 2004; Thernstrom and Thernstrom, 1999). Debates about the consequences of this mismatch focus on three main points: (1) a supposedly higher attrition rate for beneficiaries; (2) their supposed demoralization; and (3) negative effects on their professional careers, particularly through feelings of inferiority (Bowen and Bok, 1998).

But any discussion of these consequences faces a twofold methodological difficulty. To measure the effects of preferential admissions practices, one has to identify their beneficiaries—those who would not have been admitted otherwise. The difficulty is that, except within systems of racial quotas, such people are unknown. Second, one has to find a way to compare the observed situation of the policy's beneficiaries with the unobserved situation that would have materialized without the existence of racial preferences. Bowen and Bok (1998) insist on this difficulty and provide a way to solve it. They underline the limitations of an approach based on average characteristics (especially SAT scores) of Black and White students to determine the "degree of advantage" awarded to Blacks in universities that practice affirmative action. That Blacks are underrepresented among those who score at high levels on the SAT means that their average score is necessarily lower than that of White students, even if admissions were strictly race-neutral. So the evaluation of affirmative action practices must be measured "at the margin," and target the very students who would not have been admitted without affirmative action (Bowen and Bok, 1998, pp. 16–17).

Bowen and Bok (1998) adopt such an approach by using simulation techniques to compare the outcomes of three cohorts of students in twenty-eight selective

colleges to outcomes that would have occurred had respondents attended less selective universities where beneficiaries of affirmative action would likely have studied otherwise (pp. 31–44). They find no evidence that affirmative action harms its beneficiaries. First, higher attrition rates for Black students at selective colleges cannot be explained by their preferential admission, as their dropout rates are much lower in selective than nonselective colleges. For a given SAT score, Black students have higher graduation rates in the most selective universities in which they study. Besides, a more general analysis on an "other things being equal" basis confirms that being admitted to a very selective university has a positive effect on the likelihood of graduation, even for students with modest SAT scores. Alon and Tienda (2005) obtain similar results with different data, and show that the positive relationship between college selectivity and graduation is strongest among Black and Latino students.

Second, arguments about the demoralizing effects of affirmative action on grades are challenged by the higher levels of satisfaction expressed by Black students in the most selective universities compared to those at nonselective colleges, even among students with lower test scores. Third, these same conclusions hold for professional outcomes. Although there is an average difference in earnings between Black and White men with the same academic and socioeconomic characteristics, race-sensitive admissions reduce this troubling gap, because attending the most selective schools has a significant and positive effect on earnings, even for Black students with lower SAT scores (Bowen and Bok, 1998). Taken together, there is much evidence against the mismatch hypothesis, especially given that the studies described above include Black and Latino students without respect to whether or not any individual member benefitted from affirmative action.

There are parallels to these challenges in the Gautreaux program, which have been documented through the study of its long-term effects by Rosenbaum and colleagues (Rosenbaum 1995; Rubinowitz and Rosenbaum, 2002). The supposed mismatch between the academic qualifications of affirmative action beneficiaries and regularly-admitted college students finds a counterpart in the academic preparation of the Gautreaux children compared to students in their new suburban schools. Children in the Gautreaux program were often in the bottom ranks of their classes, and initially experienced many difficulties because of academic weaknesses, many rooted in their prior preparation in Chicago city schools. There were also questions about whether adults in the program could take advantage of job opportunities in their new environments given weaknesses in their skills, training, and work experience.

The Rosenbaum studies (Rosenbaum 1995; Rubinowitz and Rosenbaum, 2002) show that suburban Gautreaux participants experienced difficulties and, sometimes, a worsening of certain conditions in the first years (e.g., children's grades due to the greater demands of suburban schools). On average, however, suburban program participants gained considerable advantage in terms of adult employment and children's academic performance compared to Gautreaux families who settled in new neighborhoods in Chicago. Rosenbaum et al. (2005) even identified a mechanism through which sources of the initial difficulties became means by which subsequent progress was made. The academic press of suburban schools, for example, helped to elevate students' academic performance as they adapted to the greater demands placed on them. Adults, meanwhile, overcame their initial difficulties, in part, by benefiting from and contributing to social capital in their neighborhoods. Granted, the adaptation processes in the field of housing are specific to it (i.e., residential change is an exceptionally global and complex shift in the life conditions of a person), but in both

housing and education, the difficulties prove to be limited and temporary in comparison to the benefits of race-sensitive programs.

There is another criticism of housing mobility programs generally that, while not often levied against Gautreaux and having no direct parallel to affirmative action, is worth considering because it raises questions about the value of such programs, particularly if they are scaled to the national level. Critics charge that housing mobility programs, like other efforts to combat concentrated poverty, involve the dispersal of African Americans from city neighborhoods to the suburbs. The concern is that such programs can bring about negative consequences for Black communities much like those associated with gentrification: displacement of Black residents, disruption of the social and support networks that residents rely upon, and weakening of the political power and cultural strength of the Black community (Goertz 2003; Lees et al., 2008; powell and Spencer, 2003; Steinberg 2010). There is debate, however, regarding whether and to what extent such negative consequences are associated with housing mobility programs or even neighborhood renovation programs like HOPE VI and gentrification that involve large numbers of neighborhood residents (Byrne 2003a, 2003b; Freeman 2006; Vigdor 2002). Polikoff (2006, p. 370) succinctly expresses the view of housing mobility advocates when he notes that the institutions and culture of ethnic groups (like Italians and Jews) survived a much larger dispersal than a mobility program for Blacks would produce, and that Black culture, too, is strong enough to survive it. One thing is certain, however, housing mobility programs do little (by design) to improve the neighborhoods from which program participants come (Goertz 2003). Thus, housing mobility programs must be only one of many approaches taken to increase residential integration.

CONCLUSION: FROM GAUTREAUX TO AFFIRMATIVE ACTION IN HOUSING

Racial residential segregation is the most enduring form of discrimination against African Americans. Paradoxically, while affirmative action programs have been utilized to stymie the effects of discrimination in employment and education, we have witnessed no large-scale systemic federal effort to implement affirmative action programs in housing, even though Black families have been segregated by both individual and governmental action. Although our comparative analysis of the Gautreaux Assisted Housing Program and affirmative action in postsecondary education identified important differences between them, we also established significant similarities. We are now left to ask what those divergences and parallels mean for the prospects of creating a federal affirmative action program in the domain of housing.

We have shown that Gautreaux and affirmative action have different judicial justifications, but share moral and, to a limited degree, instrumental justifications (Table 1). Judicial limitations on affirmative action programs, however, do not close the door to the use of affirmative action in housing, because the Supreme Court has recognized Congress's ability to act to end what it deems are "vestiges of slavery," along with Congress's directive to HUD to take affirmative steps to achieve integration. Thus, like Gautreaux, affirmative action in housing is judicially justified, albeit for different reasons.

Moreover, thinking of affirmative action as a form of restorative justice makes clear that the preferential treatment of minorities via affirmative action programs is rooted in the same moral justification as Gautreaux, in that both programs provide reparations. Finally, the positive social effects that are expected to arise from and

Table 1. Summary of Comparison of the Justifications for the Gautreaux Assisted Housing Program, Traditional Affirmative Action Programs, and Prospective Affirmative Action Programs in the Domain of Housing

Justification	Gautreaux	Affirmative Action	Affirmative Action in Housing
Judicial (i.e., Remedy/Compensation for Past Wrongs)	Y (*Gautreaux*)	N (*Bakke*)	Y (*Trafficante*)
Moral (i.e., Restorative Justice)	Y	Y	Y
Instrumental (i.e., Positive Social Effects)			
Diversity (in the Local Context)	N	Y (*Bakke; Grutter; Gratz*)	N
Integration (in the Global Context)	Limited/Unintended	Y (*Grutter; Gratz*)	Y

Note: "*Gautreaux*" refers collectively to *Gautreaux v. Chicago Housing Authority*, *Gautreaux v. Romney*, and *Hills v. Gautreaux;* "*Bakke*" refers to *Regents of the University of California v. Allan H. Bakke;* "*Trafficante*" refers to *Trafficante v. Metropolitan Life Insurance Co.*; "*Grutter*" refers to *Grutter v. Bollinger*; and "*Gratz*" refers to *Gratz v. Bollinger.*

have been used, in part, to justify affirmative action in postsecondary education may have only limited applicability to Gautreaux, but are fundamental to affirmative action in housing. The instrumental value derived from affirmative action in college admissions—improvement of the local college environment through increased diversity—did not justify Gautreaux. That is, improvement of White suburban neighborhoods was never an objective of the program. Nor, we argue, would this "local diversity" benefit likely justify affirmative action in housing. However, the "global integration" benefit of affirmative action recognized in *Grutter v. Bollinger* (2003)—the integration of the country's political, economic, and military leadership—likewise justifies affirmative action in housing. In sum, that affirmative action in housing is judicially justified and shares moral and instrumental justifications with existing affirmative action programs in college admissions begs the question of whether there can be a race-based housing mobility program or other race-based affirmative action program in housing initiated not by law suits such as *Gautreaux*, but by the will of political actors to take meaningful steps towards reducing residential segregation in the United States.

Although inspired by Gautreaux, the Moving to Opportunity (MTO) program created under the George H. W. Bush Administration and administered by HUD under the Clinton Administration (Polikoff 2006) failed from its conception to live up to its potential or the success of Gautreaux. Recall that like Gautreaux, MTO is a housing mobility program, but one that contained no racial criteria for either participation or neighborhood location. Rather than moving Black families from segregated to integrated or predominantly White neighborhoods, the objective of MTO was to move poor families of any race from poor to low-poverty neighborhoods. Although HUD, during the interim between the *Gautreaux* cases (*Gautreaux v. Chicago Housing Authority* 1969; *Gautreaux v. Romney* 1971) and MTO had again been found liable for segregating Black families, notably in *Walker v. HUD* (1989, 1996), HUD did not utilize the legal and moral justifications provided by that case to create a large-scale, multicity housing mobility program whose *raison d'être* was to integrate Black families it had helped to segregate.

Yet there appear to be few legal obstacles to the creation of a modified MTO program, one in which class does not serve as political cover for race. The U.S. Congress long ago spoke via the *Fair Housing Act* to the need for serious federal efforts at reducing segregation. The Supreme Court endorsed such a view in *Trafficante v. Metropolitan Life Insurance Company* (1972), while it and federal courts helped to illuminate one means by which it could be achieved (i.e., metropolitan-wide housing mobility programs). Applying these decisions in 2005, a U.S. District Court in Maryland held HUD liable for its failure to "live up to its statutory mandate to consider the effect of its policies on the racial and socioeconomic composition of the surrounding area" (*Thompson v. HUD* 2005, p. 13) in contrast to its practice of "rearranging Baltimore's public housing residents within the Baltimore City limits" (*Thompson v. HUD* 2005, p. 13).

Recently, the Obama Administration has signaled a change in HUD's relationship to the FHA. It appears that HUD will no longer focus mainly on that portion of its mandate to ensure nondiscrimination in housing, but will also embrace the Act's directive to "affirmatively further" reductions in residential segregation (U.S. Department of Housing and Urban Development 2009a). The recent agreement with Westchester County, NY exemplifies HUD's new commitment to promoting integration. The agreement requires Westchester to obtain or build more than 600 affordable homes or apartments in communities where Blacks and Latinos are substantially underrepresented. Unlike *Gautreaux* and MTO, this settlement appears

targeted to working- and middle-class families rather than the poor (*Anti-Discrimination Center of Metro New York, Inc. v. Westchester County*, New York Stipulation and Order of Settlement and Dismissal 2009; Roberts 2009; U.S. Department of Housing and Urban Development 2009b). According to HUD Deputy Secretary Ron Sims, the settlement and HUD's new orientation are motivated by the knowledge that "we can predict life outcomes by zip codes" (Goldstein 2009) and President Obama's "desire to see a fully integrated society" (Roberts 2009).

Interestingly, the Westchester settlement sits between Gautreaux and MTO in terms of its use of racial and social criteria. Due to HUD's discrimination against Black public-housing residents, the Gautreaux housing mobility program uses a racial criterion for selection of participants as well as a racial criteria for placement. That is, Gautreaux placed Black families in neighborhoods of low Black concentration. In contrast, MTO relied strictly on social criteria for both participant selection and placement—MTO sought to place poor families in nonpoor neighborhoods. Like MTO, the Westchester settlement uses a social criterion for its selection of participants, but like Gautreaux uses a racial criterion for their placement. The homes obtained or built for the settlement must be located in areas of low Black and Latino presence, but families of any racial background may rent or purchase them. Thus, the extent to which the settlement increases racial integration in Westchester County depends on the extent to which African Americans and Latinos rent and/or purchase those homes relative to the level of participation by Whites.

We can also imagine a contemporary program that, like Gautreaux and in contrast to MTO, uses racial criteria for both participant selection and placement.[16] Just as tax laws have been used to encourage various kinds of socially desirable behavior (e.g., home ownership, saving for retirement), it could be used to encourage decisions that contribute to reductions in residential segregation. In highly segregated cities and suburbs, tax incentives could be provided to home buyers who make integrative residential moves. Such a program would utilize race in participant selection and placement in its evaluation of whether a move is integrative or not. That is, by moving to a particular neighborhood, does the mover by virtue of his/her racial background move the neighborhood towards greater integration or segregation given the neighborhood's existing racial composition? At the same time that the program utilizes race to evaluate the impact of a move, it is race-neutral with respect to who can benefit from it. Rewards flow to participants not based on their racial identity (as with affirmative action programs in education and employment), but for their contributions to reductions in segregation. Members of all racial groups can be beneficiaries so long as they participate in literally moving America towards a more integrated nation. Kushner described a similar plan back in 1980, but we have yet to see it implemented.

The Fund for the Future of Shaker Heights is another financial incentive program that exemplifies the approach described above (Ellen 2000, pp. 168–169). It provides low-interest loans to home buyers who make integrative moves (Keating 1988; Shaker Heights 1986). Although evidence suggests that the Fund has been effective, it, like similar ones in Philadelphia, Detroit, and Chicago, operates on a local level (Cromwell 1990).

What is needed, we think, is federal backing and national expansion of prointegrative programs in order to fund the future of America. We agree with Boger (1996) who argues that the reason "[n]o federal housing statute has ever met with systemwide success in combating residential segregation [is] because none . . . was ever designed to demand systemwide results" (p. 396). To move us toward such solutions, he proposes a "National Fair Share Act," which would incentivize integration while

de-incentivizing segregation. The Act would require the creation of goals for racially and economically integrated housing in communities that currently do not have their "fair share." It would also provide federal funds to localities that "shoulder their fair share housing obligations" (Boger 1996, p. 389) and deny, over time, federal tax deductions for mortgage interest and property taxes to homeowners in places that refuse to meet their responsibilities for integrated housing. Finally, Boger's (1996) Act would give municipalities some choice in whether to prioritize income or racial integration. Kushner (1980) laid out a similar fair share plan that he described as a "housing and land use rights act" (pp. 125–129).

Lowen (2005) proposes a Resident's Rights Act, which (if adopted nationally) would permit investigations of towns by federal housing examiners if African Americans are underrepresented relative to the metropolitan area, and there existed "at least two valid complaints from families who were rebuffed when trying to buy or rent a home in the community and a careful showing that it was a sundown town," (i.e., towns that are all White due to the intentional exclusion of African Americans) (p. 442). Further, the Act would prevent a town from spending money on discretionary programs until it "clean[ed] up its segregation" (Lowen 2005, p. 443). Finally, like Boger, Lowen (2005) supports the denial of federal tax deductions for mortgage interest to residents in sundown towns, reasoning that "America has no interest in encouraging homeownership in sundown towns" (p. 444).

Fiss (2003) envisions another system-wide prointegrative solution, which would dismantle the urban ghetto altogether by giving every person who lives therein the economic and social resources to move to more advantaged places if they wish. His plan is inspired by the Gautreaux program in that it calls for the use of housing vouchers (with requirements that property owners accept them) to subsidize the rent of former residents of ghettos, as well as a publicly-funded agency that assists with residential moves. This is a proposal that, in broad strokes, Polikoff (2006) endorses.

Clearly, there are a variety of approaches to reducing residential segregation, including others not mentioned here or, perhaps, waiting to be conceived. We do not intend to advocate any particular program or set of programs. Rather, our objective has been to help reorient our perception and discussion of the federal government's responsibility vis-à-vis residential segregation from the often-discussed enforcement of nondiscrimination laws to its second obligation to affirmatively further the integrative goals of the *Fair Housing Act*. The proposals described above embody our vision of affirmative action in housing in that they are national race-conscious policies and programs that would involve the federal government in the private housing market on a sustained basis with the explicit objective of reducing segregation.

Although there are few judicial obstacles to affirmative action in housing, we recognize continued opposition to it among some Whites. Housing desegregation efforts have long met with social, political, and sometimes, violent resistance (Hirsch 1983) fueled by stereotypes (Krysan et al., 2008), fears of financial loss due to declining home values (Orser 1994), and a distaste for or animus toward African Americans; Boyle (2004) presents a particularly vivid and instructive example. Even more challenging is the possibility that racial isolation increases the role that racial prejudice plays in the political positions of Whites (Kinder and Mendelberg, 1995), which would make it that much more difficult to secure the support of suburban Whites for federal efforts at integration.

However, there are reasons to be hopeful. Violence as a tool for maintaining segregation has been rendered unacceptable. Expressed support for residential integration has increased over time, while the gap between Whites' support for the principals of equality and support for polices that embody those principles is smaller

regarding residential integration than for most other racial issues (Schuman et al., 1985). Nevertheless, some Whites reject residential integration in fact and principle. Even among those who support it in the abstract, there remains resistance to government efforts to achieve it. Thus, a difficult but important question exists—how to implement affirmative action in housing in the face of White resistance to government efforts to achieve residential integration?

First, Orfield's (1997) work on city-suburban coalitions offers one strategy. Unlike outer suburbs with high tax bases, inner-ring suburbs experience some of the same social and economic problems as central cities. Part of Orfield's strategy for system-wide solutions is clear, data-driven communication of the ways the destinies of inner-ring suburbs are linked to those of central cities. Making clear their linked problems reshapes the conversation from solutions intended to benefit cities to solutions for city and inner-ring suburban residents, the latter of which, according to Orfield, were critical to the elections of numerous Democratic and Republican Presidents. Orfield's work suggests that Whites who reside in inner-ring suburbs can come to view nation-wide efforts at residential integration as beneficial to them, given the myriad social and economic problems generated by segregation.

Second, we note continuing discussions of proposals for addressing racial inequality on a national level. Unlike policy recommendations that follow most analyses of racial inequality, these discussions depart from advocating specific programs and envision, instead, large-scale changes in the way the United States operates in order to affect radical and systemic social change. Such proposals are offered as part of a larger vision of a Third Reconstruction (Foner 1993) that would operate on a national level and comprise, in the words of Bobo and Smith (1998), "another wave of relatively coordinated political reform involving the judicial, legislative, and executive branches of government [to] open the way to profound changes in the status of African Americans" (p. 214). Strategies for reducing residential segregation need to be part of any effort to bring about fundamental changes in the status and conditions of Blacks in the post–Civil Rights Era. As for how to achieve such ambitious goals, we draw further inspiration from Bobo and Smith (1998) who argue for, among other things, marshaling the persuasive forces of the nation's elites by providing to them "a convincing analysis of both the social barriers Black communities face and appropriate responses to them that a wide spectrum of social and political elites [can] take seriously" (p. 214). Public conversations with and among elites are expected to shape the frame through which social problems—their origins and solutions—are viewed by the general public, creating a mechanism with which to increase social and political support for reform. We seek to contribute to this effort by providing a convincing analysis of the judicial, moral, and instrumental justifications for affirmative action in housing so that the large-scale and systemic involvement of the federal government in the housing market in order to achieve greater racial residential integration can find a place on the national agenda.

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NOTES

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2. See also footnote 41 of *Regents of the University of California v. Bakke* (1978).

3. See Roisman (2007) for extensive treatment of the congressional debate surrounding the *Fair Housing Act of 1968*.
4. During Nixon's time in office, the Supreme Court handed down a ruling that, while not *preventing* neighborhood integration, made it more difficult to achieve. In *Milliken v. Bradley* (1974), the Court, using what Gary Orfield (1995) calls a "theory of suburban innocence" (p. 1398), ruled that suburban school districts that had not practiced school segregation or contributed to segregation in other districts could not be compelled to participate in interdistrict desegregation plans. The effect of that decision was to make White flight from Detroit (where the case originated) to surrounding suburbs a way for Whites to avoid integrated schools. Thus, the decision in *Milliken* provided Whites with a strong motivation to maintain residential segregation.
5. See *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) and Tegeler's (2009) analysis of the implications of this decision for race-conscious policies in housing.
6. We recognize that since the end of the Nixon Administration, HUD has undertaken steps in an effort to reduce residential segregation, such as defunding municipalities that engage in segregative practices and funding fair housing organizations across the country though its Fair Housing Initiatives Program. However, most of their efforts strike us as preventing or ameliorating racial discrimination in the housing market. Other efforts are directed at providing affordable housing opportunities, which may have the indirect effect of increasing residential integration. For example, Congress defined the purpose of the Housing and Community Development Act of 1974 (out of which comes the Community Development Block Grant program (CDBG)) as "the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, *principally for persons of low and moderate income*" (emphasis added). The CDBG program does not ignore race altogether; federal regulations require that grantees "engage in fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of identified impediments, and maintaining records to document the actions taken" (Patenaude and Kendrick, 2007, p. 2). Affirmative marketing and the strategic placement of sites outside areas of racial and ethnic concentration are examples of actions grantees can take to remove impediments to fair housing choice. Although such requirements and actions can potentially increase residential integration, they do so only to the extent that the low- and moderate-income families reached by the program are African American (or other racial minority) and are facilitated in moving to predominately White communities. We argue in this paper for policies and programs that place racial integration at the center, rather than the margins, of their objectives. Examples of such policies and programs are discussed at the end of the paper.
7. Because the Gautreaux Assisted Housing Program is named after the legal case from which it emerged, we distinguish our reference to each via the use of italics following the standard formatting used for legal cases. That is, we italicize the name when referring to the legal case (e.g., *Gautreaux*) and leave the term unitalicized when referring to the housing mobility program (e.g., Gautreaux).
8. See Harper and Reskin (2005) for a review of other approaches to affirmative action.
9. The holding of the district court was later affirmed by the U.S. Court of Appeals (436 F.2d 306 (1970)).
10. Section 601 of the *Civil Rights Act of 1964* states that "no person in the United States shall be excluded from participation in or otherwise discriminated against on the ground of race, color, or national origin under any program or activity receiving Federal financial assistance."
11. For a version of this argument applied to gender discrimination, see Warren (1977).
12. In *Regents of the University of California v. Bakke* (1978) only Justice Powell asserted that diversity was a compelling state interest, whereas the majority of justices did so in *Grutter v. Bollinger* (2003).
13. This hypothesis is empirically measured and confirmed in Chapter 8 of Bowen and Bok (1998).
14. Justice O'Connor alluded briefly to this argument in *Grutter v. Bollinger* (539 U. S. 306, at 336).
15. At the time of this writing, families who use Section 8 vouchers pay thirty percent of their monthly adjusted income towards rent (U.S. Department of Housing and Urban Development, 2011)

16. The *Thompson v. HUD* (2005) decision resulted in the Baltimore Mobility Housing Program, a metropolitan-wide program that relocates Black families to neighborhoods that meet the same racial criteria used in the Gautreaux program (no more than 30% Black), but also imposes limits on neighborhood poverty (no more than 10%) and limits on the presence of subsidized housing (no more than 5%) (Engdahl 2009).

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