

## **The Color Of (American) Law**

**Ross** Welcome to Renegade Inc. What if the racism and inequality that America faces today are not accidental, but actually happened by design? Many people assume that the residential racial segregation in the US happened organically, but it simply didn't. What if there were unconstitutional plans to segregate black and white families by using planning laws and the housing market?

**Ross** Richard Rothstein, welcome to Renegade Inc.

**Richard Rothstein** Thank you very much.

**Ross** Your book, *The Color of Law: A Forgotten History of How Our Government Segregated America*. The really interesting word in that is the word 'forgotten'. Why do you use that word? And if it is forgotten, how was it airbrushed?

**Richard Rothstein** Well, it's forgotten because it was well known when these policies were being implemented. When the federal government was creating separate public housing projects, for example, for African-Americans and whites, frequently using those projects to segregate neighbourhoods that had previously not been segregated. Families who were directed to a project designated by their race certainly knew what was happening. It was no mystery. When the federal government imposed a policy on an explicitly racial basis to move the white working class population out of urban areas into single family homes and all white suburbs, frequently with deeds that had a provision that prohibited resale to African-Americans or rental to African-Americans, families that had FHA mortgages and living in developments that were financed by the Federal Housing Administration - the FHA - certainly knew that they were living in a segregated community. So there was no mystery in those days what was going on. Today, however, we've adopted the myth. We call it de facto segregation. We assume that the reason that this country is so segregated is because of individual choices and private bigotry. So the history has been forgotten. We've really whitewashed the history, to use a term, as a rationalisation not to confront the fact that the residential segregation of this country is a civil rights violation. It's unconstitutional. It was government created and requires a remedy.

**Ross** And when you say it was government created, is this a structural occurrence? Is it somebody sitting behind the scenes and saying, no, actually, we're going to do this, we're going to overlap these policies to ensure it delivers this economic and social result? And if so, who is the brainchild behind it all?

**Richard Rothstein** No, it was not a coordinated conspiracy, but it was a system of separate, racially explicit policies implemented by many government agencies at the federal state and local level that created the pattern of segregation that we have today. It wasn't the action, let me say, of rogue bureaucrats. It's not that they were people just individually taking initiatives. This was explicit racial policy. The Federal Housing Administration had a manual. It was called *The Underwriting Manual*. It was distributed to appraisers all over the country whose job it was to recommend proposals of developers for federal bank guarantees for creating subdivisions in the mid 20th century. The manual said explicitly that you could not

recommend for a federal bank guarantee a development that was going to be racially integrated. The manual went so far as to say, and I'm quoting, that you couldn't recommend for a federal bank guarantee a subdivision or project that was going to be all white if it was going to be located near where African-Americans were living. Because in the words of the manual, that would run the risk of infiltration by unharmonious racial groups. So this notion of de facto segregation is just utter nonsense. This was an explicit policy. No, other agencies of government had similar policies. I don't think there was anybody sitting behind a curtain coordinating them. They didn't have to. All government agencies at the time were implementing similar policies.

**Ross** When we then look across America today, we see police brutality. We see economic disadvantage. We see inequality that's off the charts. What you're pointing to is the root cause, which is many, many years of structured policy decisions which have delivered this. And today we are looking at the banquet of consequences.

**Richard Rothstein** Yes. Perhaps the biggest consequences, what we refer to as the wealth gap between African-Americans and whites. On average, African-Americans are lower income, on average. African-American families have 60 percent of the income on average of white families. But you'd expect if there was a 60 percent income ratio, there'd be a 60 percent wealth ratio as well. But in reality, African-American household wealth is only about five percent of white household wealth. And that enormous disparity between a 60 percent income ratio and the five percent wealth ratio is entirely attributable to unconstitutional federal housing policy. It was practised in the mid 20th century. When the federal government moved the white working class on a racially explicit basis out of urban areas into these single family homes in all white suburbs, those homes appreciated in value over the next couple of generations. They sold in the mid 20th century for about - in today's dollars - about one hundred thousand dollars, affordable to any working class family, black or white, who had a job in the post-war economy. Those homes now sell for 300, 400, 500 thousand dollars and maybe a million dollars in some places. The families who own those homes subsidised by the federal government on a racial basis, gained wealth from the appreciation and equity in the value of their homes. And they used that wealth to send their children to college. They used that wealth to perhaps take care of temporary emergencies like unemployment or medical emergencies. They used it to subsidise their own retirements and they used it to bequeath wealth to their children and grandchildren who then had down payments for their own homes. That is probably the single most important - although there are others - but the single most important factor that creates the racial inequality that we have today in this country, is a legacy of these unconstitutional policies that the federal government followed. And the reason I emphasise so often that these policies are unconstitutional is because they are civil rights violations. They require us to remedy them. We can't simply say let bygones be bygones. These were done in violation of the constitutional rights of African-Americans. And we have an obligation to redress it.

**Ross** Speaking of civil rights, America produced an economist called Henry George. He wrote a book called Progress and Poverty. It inspired many, many people from Churchill through Tolstoy, Bertrand Russell, Hayek, Bernard Shaw, people from many, many, different economic schools of thought. But they could unify on one issue, which is the land issue and land being the mother of all monopolies, I think, as Churchill put it. He also inspired, Mr. George, a man called Martin Luther King. So when we start to talk about civil rights and

unearned increment, unearned wealth through accumulation of wealth through land divided into two ethnic groups, we really come to the nub of it, don't we? Is Henry George as relevant today as he always was? And can he be used for the redistribution of this kind of economic disparity?

**Richard Rothstein** Well, he was a man of his time. He's certainly relevant. But I think you just summarised the relevance of it. The enormous wealth gap that we have is largely attributable to the fact that whites were assigned residences in communities that appreciated in value. And African-Americans were denied those opportunities. But it's a bit more complex than that. African-Americans also own homes in many places, but their neighbourhoods haven't appreciated in value to the same extent that white neighbourhoods have. So homeownership itself, landownership itself, is not necessarily the key to wealth in this country. It depends largely on the racial inheritance we have from our failure to deal with the legacies of slavery. It's a combination of these housing policies, as well as income policies that I described before. I said that the African-American incomes are 60 percent of white incomes on average. There's a whole story behind that too. Federal policy in the New Deal during the Depression in the Roosevelt administration, excluded African-Americans not only from equal housing opportunities, but from equal employment opportunities. And the legacy of that continues as well. So it's not only wealth, but wealth is a good part of it.

**Ross** Building communities, building solid communities ultimately increase the

**Ross** Just tell us what the societal fallout is when you segregate in this way. And I hope that isn't a trite question.

**Richard Rothstein** No, it's not a trite question at all. It's a very important question, and it's one that very few Americans understand. The segregation that we have imposed on this country - and by 'we' I mean our government - is responsible for much of the social inequality that we know in this country today. In one area, in education, for example, we have an enormous achievement gap between black and white children. African-American children achieve in school at lower levels than white children on average. That's almost entirely because we have concentrated lower income children, the most disadvantaged children in this country, in single neighbourhoods where they have less access to healthy food, less access to healthy air, are all things that contribute to low achievement. For example, I remember I wrote a column once about the fact that African-American children in urban areas have asthma at four times the rate of middle class children because they live in more polluted neighbourhoods. There are more diesel trucks driving through their neighbourhoods. They have more deteriorated buildings. And if a child has asthma, that child is more likely to be up at night wheezing and coming to school drowsy the next day. And if you have two groups of children who are identical in every respect, except one has a higher rate of asthma, that group's going to have lower average achievement. And so you start adding up all the consequences of segregated neighbourhoods - asthma, lead poisoning, which is much more predominant in black neighbourhoods than white ones, mass incarceration and police abuse that we've spent so much time paying attention to, which could not exist to the extent it does if we weren't concentrating the most disadvantaged young men in single neighbourhoods where they have no access to good jobs or transportation to those jobs or schools with high achievement. So the achievement gap is one consequence of this segregation. Health disparities between African-Americans and whites. African-Americans in this country have

shorter life expectancies, greater rates of cardiovascular disease than whites on average, in large part because African-Americans live again in more polluted neighbourhoods. So less access to healthy food, medical care. That, and as I say, mass incarceration and police abuse. I think that the segregation that we've created also predicts to a large extent the very, very, dangerous and frightening political polarisation that we have in this country today. It largely tracks racial lines. It's not entirely racial. But how can we ever expect in this country to develop the common national identity that's necessary to preserve this democracy if so many African-Americans and whites live so far from each other, that they have no ability to empathise with each other, no ability to understand each other's life experiences? So the consequence of the segregation that we've created, in addition to the wealth and the income gaps themselves, are enormous.

**Video clip (Kevin Graham)** The lending and banking institutions, when they drew up contracts with interest rates, with flexible interest rates, I think they knew in the beginning that these problems were going to come back later on where folks weren't going to be able to afford the mortgages as the interest rates increased. It put a lot of people in situations where they were taking food out of refrigerators and taking kids out of higher education. They're not able to afford college anymore. And it is making a really, really, bad situation worse.

**Video clip (George Nilson)** These are loans which were made by one of the major lenders in the city and in this country, Wells Fargo, in which Wells Fargo targeted minority communities in the city, put borrowers into loans that they could not afford, put borrowers into loans that were of the subprime variety, therefore more expensive and less advantageous to the borrowers. Many of the communities in which African-Americans live in the city were establishing momentum. There was development activity that was occurring. We were seeing signs of vitality in many of these communities. And the results of the Wells Fargo foreclosures and the subprime lending practises of that lender and others, has significantly impaired that progress and brought it to a halt.

**Video clip (Nicketa Johnson)** They aren't coming into the heart of it. Like you're in the heart of it so you see. They don't really see the trouble if they don't come into the heart of it. They're staying at the outside of it. That's like looking at the cover of a book and seeing the outside of a book. But if you don't go inside the book, you'll never know what the book is about. So they're not worrying about anybody but themselves. And I think that's wrong because if they came into the heart of it and they see they would be willing to help.

**Ross** Richard, we mentioned in the first half the very obvious consequences now that Americans are harvesting after such a pernicious, unequal policy. When you look at places like Baltimore, areas where black families were offered ninja loans, where they didn't have a job, didn't have the wages to pay for it, you can't really blame people. If you get offered a huge amount of credit and you are in poverty and your life chances are low, you're going to take that anyway, aren't you? You're gonna take that. You're going to take those mortgage offers and try and make something of the situation that you're in.

**Richard Rothstein** Well, partly. But this wasn't just an offer of a lot of credit. This was deceptive marketing of exploitative loans whose terms were hidden. They frequently had exploding interest rates for the families that took out these loans. These were typically free refinancing loans, not initial mortgage loans. This was refinancing homes at very low interest

rates that would then explode a couple of years later into very high rates without the later explosion being advertised when the loans were initially being marketed. They had very, very, high prepayment penalties so that if a family wanted to prepay their loan before the interest rates exploded, they couldn't do it. So this wasn't simply a question of offering people something that was attractive. They were deceptive practises. Mortgage brokers were given bonuses for selling loans of this kind even if families were fully qualified for the traditional loans that were being offered in white neighbourhoods. So this was a violation of the Fair Housing Act, which prohibited ongoing discrimination in the sale and rental of housing, as you know, from the Baltimore suits of some of the banks. And it wasn't just Wells Fargo, but there was others as well who sent mortgage salespeople to black churches on Sundays, not to white churches. They preyed on African-Americans, in particular, in order to market these loans. So this was a blatant violation of the Fair Housing Act. It compounded the already existing segregation of these neighbourhoods. It didn't create it, but it compounded it.

**Ross** You've done amazing work to chart this forgotten history. Those people trying to airbrush it, you're a real pain to them, and brilliantly so. When we come to solutions, how do we begin to think about how to unify neighbourhoods, how you can come to a different social contract, a different social deal, which truly does make America a unified United States?

**Richard Rothstein** Well, you know, the solutions to this are well-known. There's nothing mysterious about the solutions. Policy experts know them. Housing experts know them. Think tanks generate papers explaining them. What's missing is not solutions, ideas. What's missing is a new civil rights movement like we had in the 20th century that's going to, in the words of our late civil rights leader and Congressman John Lewis, make good trouble to make it untenable to maintain these segregated patterns. Right now, for example, we should have constitutionally required an affirmative action programme in housing. The federal government should be subsidising the purchase of housing by middle class, working class, African-American families in suburbs that are now unaffordable to them, but would have been affordable to them when they were created. That's a narrowly targeted remedy for a very specific constitutional violation. There's nothing mysterious about it. There's no political support for it. So the problem is not coming up with the programme. The problem is developing that political support. And that's true no matter which party is in power. A curious thing about the politics of this country is that the Democratic Party, which is more liberal on racial issues, is a combination of low income minority voters and suburban voters in exclusive white communities who are socially liberal, economically moderate to conservative, and who are all in favour of racial progress so long as - and the term we use here is, 'not my backyard'. So you have to overcome that political resistance. We need a new civil rights movement much like we had in the 20th century, it's going to change the way in which we think about these problems in order to implement the very obvious solutions that are sitting there waiting to be implemented.

**Ross** When Martin Luther King, influenced by Henry George, wrote *Chaos or Community*. Do you think it's the case that when he turned his attention to the economy that is when people decided, actually, this guy is way too dangerous and we can't put up with this anymore?

**Richard Rothstein** Well, I don't think really that's what happened. I think that the point at which he lost universal supports was when he came out against the Vietnam War and people

began to think of him no longer as a pure civil rights leader, but as somebody who... as I say against the Vietnam War as well. The Vietnam War terribly divided this country in the 1960s. He took a long time to come out against it, to align himself with anti-war activists as the anti-war movement proceeded. And I think that's what undermined the universal support for him, at least in theory, if not in practise. He barely had begun his programme to desegregate neighbourhoods when he was assassinated. He had moved to Chicago. He was planning open housing marches which were not very moderate, very moderate. They were not aimed at trying to implement the kind of programme I was talking about of subsidising African-Americans to move to communities for which they'd been excluded. His sole purpose was what we called at the time, open housing, which was to prohibit discrimination on a racial basis against homebuyers or renters who couldn't... were prohibited from buying or renting homes, even if they had the money to do so without federal subsidy. So it was a very moderate programme that he was proposing to to implement. He planned marches through white neighbourhoods in the western suburbs of Chicago. He met with violence when he did that and we never made much progress after that.

**Ross** The NIMBY, as we call it, the not in my backyard lot, they really are a massive barrier to progress, aren't they? What would be a way to go and get the sort of oxygen needed around this issue so people can begin to a) understand it and b) put an economic solution to it? And I'll just say this, because as soon as you begin to explain this type of issue - and again, it comes back to progress on the one hand and poverty on the other - at a dinner table in the UK here or in the US, people find it almost impossible to accept that dichotomy.

**Richard Rothstein** Well, you know, I'm old enough to remember the 1960s when the desegregation of restaurants and buses, swimming pools and water fountains, was considered unacceptable, didn't have majority support. And a civil rights movement called attention to it, caused trouble, forced the government to be constantly dealing with disruptions around enforced segregation. And eventually, I wouldn't say a majority of the country, but a sufficiently effective plurality of the country came around to understand that racial segregation was wrong, immoral, harmful actually, to both blacks and to whites, incompatible with our self conception as a constitutional democracy. And we began to implement changes. I don't know what the tactics of a new civil rights movement will be. You know, these kids these days, they use these phones with their thumbs. I don't know how to do that. That's not the way we did it in the 1960s. But they'll come up with ways. We are now having in this country, as you may know, a more accurate and passionate discussion about the legacies of slavery and Jim Crow than we ever have had before in American history. We have white, elected Southern politicians running around the south, removing statues to commemorate the defenders of slavery. That was unheard of just five, ten years ago. We had 25 million people in this country participating in Black Lives Matter demonstrations in the last few months - most of whom were white participating in these demonstrations, also inconceivable just a few years ago. Now, that movement, that Black Lives Matter movement, was focused almost entirely on police abuse. It hasn't moved beyond that into organising local civil rights groups that will take action on issues of residential segregation. But it can. It certainly provides the basis for it. And although I'm not confident that we'll have that kind of movement that will achieve desegregation, I'm hopeful that it may. One of the things in my book, *The Color of Law*, that I do is I describe how all the textbooks used in history classes in high schools all over the country, lie about this history. And one of the things that local civil rights groups can begin to do, and are beginning to do in

some places, is challenging their local school districts about the misleading education they're giving children, about the history of racial segregation and how it happened in this country. If the next generation doesn't learn this history any better than present generations have, they're going to be in this poor of a position to remedy it as we've been. But I think there's an opportunity to move forward in that regard. So I think that there are many, many, opportunities for direct action in local communities to begin the conversation beyond police abuse, which is an important thing to focus on to move beyond that, to the underlying segregation which creates the environment in which that kind of police abuse nurtures itself.

**Ross** Richard Rothstein, thank you very much for your time.

**Richard Rothstein** Thank you.

**Ross** That's it from Renegade Inc. this week. We'd love to hear from you - [studio@renegadeinc.com](mailto:studio@renegadeinc.com). Join us next week for more insight from those people who are thinking differently. But until then, stay curious.