

A NORMS-BASED APPROACH TO SUSTAINING INTEGRATION

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Headlines about racial polarization and a country divided obscure an important present opportunity: racial integration initiated by local community choice. These local contexts have national significance in light of census data showing that American suburbs and exurbs are perfectly positioned to integrate and can do so through local choice irrespective of what occurs at the federal level.

However, integration is not preordained. Census data shows segregation decreasing within some large cities but increasing in metropolitan areas as a whole. When Blacks move to the suburbs, Whites flee to locations ever farther from the city's center. Suburbs and exurbs, not cities, are the new ground zero for integration efforts. The stakes are high: Ferguson, Missouri, home of the 2014 protests, is a suburb from which sixty-two percent of the White population fled between 1990 and 2010.

Using empirical fieldwork from a Chicago suburb that successfully integrated in the 1970's, this Article sheds light on how norms and other behavioral phenomena fuel the dynamics of integration. When a community deliberately chooses to integrate, it generates norms that foster and sustain integration. As a norm weaves itself into the fabric of the community, it becomes even more powerful than law. The norm helps ensure that individuals within the community make integration-affirming choices, even when those choices are costly. When the norm is visible to those outside the community, it attracts new members who value integration and are likely to support the

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policies that foster it. Once suburbs and exurbs opt for integration instead of White flight, norms and other mainstays of behavioral law and economics allow integration to perpetuate.

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I. INTRODUCTION

“Discrimination and segregation have long permeated much of American life; they now threaten the future of every American. This deepening racial division is not inevitable. The movement apart can be reversed. Choice is still possible.”

If law review articles had an interactive component, this one would start with a trivia question: In what year did

a presidential commission issue the above warning about segregation's dangers?

Sometime in the last few years would be a good guess considering that Blacks and Whites in the United States still mostly live apart, not together. It also remains true that “one’s neighborhood largely determines one’s achievements.”¹ Neighborhoods typically dictate the quality of schools, exposure to positive role models, crime and environmental hazards, and employment opportunities.² Today, different neighborhoods often still mean different life outcomes for Blacks and Whites. This is why housing discrimination continues to be a “badge and incident of slavery.”³

But while it would be reasonable to suppose that this is a recent government warning, the right answer is 1968. These are the words of the Kerner Commission, which President Johnson appointed to investigate the unrest and violence that broke out in poor Black urban neighborhoods during the 1960’s.⁴ Although the Commission’s warning about segregation is as salient now as it was in 1968,⁵ so is the Commission’s ultimate conclusion—choice is still possible.

¹ Abraham Bell & Gideon Parchomovsky, *The Integration Game*, 100 COLUM. L. REV. 1965, 1966 (2000).

² Works discussing the harms of segregation include DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE AMERICAN UNDERCLASS* (1993); GARY ORFIELD ET AL., *DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF BROWN V. BOARD OF EDUCATION* (1996); and RICHARD ROTHSTEIN, *THE COLOR OF LAW* (2017). On the environmental harms flowing from segregation, see Rachel D. Godsil, *Environmental Justice and the Integration Ideal*, 49 N.Y.L. SCH. L. REV. 1109 (2004).

³ *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 440–41 (1968) (discussing how the Thirteenth Amendment gives Congress authority to prohibit housing discrimination).

⁴ THE NAT’L ADVISORY COMM’N ON CIVIL DISORDERS, *REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 1* (1968).

⁵ This decade has seen significant unrest in cities across the country, including Milwaukee, Charlotte, Baltimore, and Ferguson. In each of these cities, violence broke out in connection with police shootings of Black men or Black men dying in police custody. See, e.g., Tonya Maxwell & Melanie Eversley, *N.C. Gov. Declares State of Emergency Following Violent Charlotte Protests*, USA TODAY (Sept. 21, 2016), <https://www.usatoday.com/story/news/nation/2016/09/21/charlotte-police-man-killed-officers-holding-gun-not-book/90774106/> [http://perma.cc/Z3TE-LMS8]; Archer Parquette, *Sherman Park Riot: One Year Later*, MILWAUKEE MAG. (Aug. 8, 2017), <https://www>

This Article is about the norms that emerge once a municipality chooses to integrate. Its message is a hopeful one: once a community chooses integration, the policies that help create integration become community norms. As norms weave themselves into the fabric of the community, they become a *tour de force* even more powerful than law. The norms function to help ensure that individuals within the community make integration-affirming choices, even when that choice comes at a cost. The norms also signal to the world at large that the community prioritizes integration, thereby attracting new members who similarly value integration and are likely to support the policies that sustain it. The norms, and the integration they foster, self-replicate. Integration—not segregation—is what perpetuates.

Behavioral law and economics, relying heavily on the work of social scientists, has demonstrated how social norms and mental shortcuts profoundly affect how people think about and interact with the law. Much of the work in the field is aimed at describing how a particular norm-based theory, mental shortcut, or bias accounts for a multitude of behaviors. Heuristics and herd mentality, external and internal norm-based sanctions, lack of knowledge about the law, feedback loops, and signaling are all mainstays of the field.⁶ This Article takes the opposite tack and demonstrates how a multitude of behavioral phenomena can come together to make the individuals within a community exhibit the same integration-affirming behavior. It does so by exploring how, in the Village

milwaukeeimag.com/sherman-park-riot-one-year-later/ [http://perma.cc/S9XE-88T6]; Christina Tkacik, *Remembering the Baltimore Riots After Freddie Gray's Death, 3 Years Later*, THE BALT. SUN (Apr. 27, 2018), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ciriots-three-years-later-20180426-story.html> [http://perma.cc/KY82-YQBQ]; Larry Buchanan et al., *What Happened in Ferguson?*, N.Y. TIMES (Aug. 10, 2015), <https://www.nytimes.com/interactive/2014/08/13/us/ferguson-missouri-town-under-siege-after-police-shooting.html> [http://perma.cc/L2ME-WL75].

⁶ See, e.g., ERIC A. POSNER, *LAW AND SOCIAL NORMS* 26 (2000) (setting forth a norms-as-signals theory); RICHARD H. THALER & CASS SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (2008) (describing how to exploit human biases to create a “choice architecture” that nudges people towards good choices); see also Daniel M. Kahan, *Gentle Nudges vs. Hard Shoves: Solving the Sticky Norms Problem*, 67 U. CHI. L. REV. 607 (2000) (setting forth a prescription for how to avoid reinforcing norms that the law is intended to change).

of Oak Park, Illinois, a norm about the non-use of residential for sale signs has eclipsed a First Amendment right.⁷

Oak Park is a municipality currently unlike most others—it is racially integrated. As Black people moved west from Chicago’s inner city in the 1970’s, the Village decided that it could prevent White flight by deliberately fostering integration. The Village successfully sought to have Blacks and Whites live together on the same blocks instead of in segregated clusters within the municipality. Today, integration is the Village’s most defining characteristic and a cultural value that binds it together.

Oak Park’s integration resulted from a deliberate and multifaceted strategy. One component was a ban on residential for sale signs. Like other municipalities around the country that passed similar ordinances, Oak Park sought to disarm unscrupulous realtors who used a proliferation of for sale signs to signal to Whites that it was in their financial best interest to flee as Black families moved into a neighborhood. Then, in 1977, a unanimous Supreme Court in *Linmark Associates v. Township of Willingboro* held that for sale sign bans unconstitutionally interfered with the flow of legitimate and truthful commercial information.⁸

Around the country, homeowners and realtors returned to using signs as a quick and easy means of indicating that a property was on the market. But in the years since *Linmark*, most homeowners in the Village of Oak Park have not exercised their constitutional right to use for sale signs. When the occasional for sale sign does go up, it quickly comes down. In Oak Park, it is almost as though *Linmark* never happened. Instead, the Village sticks with the integration-affirming sign ban that the community adopted back in 1972.

Unlike in the 1970’s, however, the sight of for sale signs would not spur Whites to move out of Oak Park today. But the sign ban still functions as a symbol of integration, so that newcomers who value diversity replace like-minded residents who move out of the Village. The absence of for sale signs makes the Village visibly different from surrounding communities. Any inquiry about the lack of signs is likely to prompt a response that mentions the Village’s commitment

⁷ This Article uses “Oak Park” and “the Village” interchangeably.

⁸ *Linmark Assocs. v. Township of Willingboro*, 431 U.S. 85 (1977).

to integration. This response will resonate with prospective residents who value diversity. Once they move to the Village, these newcomers are likely to make choices that help perpetuate integration. The norm that restrains the use of for sale signs helps the Village avoid a classic tragedy of the commons in which people acting according to their self-interest destroy a shared resource. Similar to environmental resources such as air and water, integration and other cultural resources are readily degraded unless individuals exercise restraint.

This Article draws from empirical fieldwork to explain why the Village's residential sign ban has endured. This rich and nuanced story demonstrates how a lack of knowledge about the law, powerful norm-based incentives, a heavy municipal hand, and other factors can converge to make the law—here, the constitutional right to commercial speech—largely beside the point.

The Oak Park example is important because the United States is in the midst of an opportunity to integrate. Census data shows that neighborhoods within cities are becoming less segregated, but suburbs and communities on the metropolitan fringe are becoming even more segregated. As segregation declines within large cities, the United States can make real inroads with integration if suburbs and exurbs deliberately choose to integrate instead of simply succumbing to segregation. Once communities make this deliberate choice, norms and other behavioral phenomena will help integration endure.

This Article begins by discussing current segregation patterns and using the contemporary example of Ferguson, Missouri, to emphasize integration's urgency. Part II returns to the 1970's and discusses the Village of Oak Park's multifaceted effort to prevent White flight and to ensure that Black people both had the opportunity and would choose to live in every part of the Village. Part III turns to Oak Park's passage of its sign ban and the *Linmark* decision that the Supreme Court handed down five years later. Part IV employs empirical research to understand why homeowners and realtors in the Village restrain their use of signs post-*Linmark*. Part V draws on cultural property scholarship and explains how a norm about the non-use of for sale signs helps preserve integration and avoid a tragedy of the commons. Part VI argues that unraveling segregation is a surmountable task.

II. DELIBERATE INTEGRATION AMID SEEMINGLY INTRACTABLE SEGREGATION

William Faulkner famously wrote, “The past is never dead. It’s not even the past.”⁹ And so it has transpired with residential segregation in the United States. Segregation between Blacks and Whites is particularly entrenched, with Blacks remaining highly segregated from Whites.¹⁰

A. Living Apart

Richard Rothstein has painstakingly documented the dizzying array of governmental actions that created Black-White residential segregation. Black-White segregation was baked into New Deal public housing, with the federal government constructing racially separate housing in cities where segregation had not yet taken root instead of scattering integrated developments throughout the community.¹¹ The Federal Housing Authority (FHA), created in 1934 to make homeownership attainable for working- and middle-class Americans, refused to insure loans in racially-mixed neighborhoods or in White neighborhoods that might soon integrate. In community after community, the FHA refused to guarantee loans for Blacks or for Whites who might lease to Blacks.¹² Federal and state highway authorities placed urban interstates in locations that required the leveling of Black communities, thereby displacing Black residents and forcing them to move into urban ghettos.¹³ Municipalities adopted exclusionary zoning laws, creating racially exclusive suburbs to which Whites could flee.¹⁴ State courts enforced restrictive covenants that forbade home sales to Blacks, preventing Black

⁹ WILLIAM FAULKNER, *REQUIEM FOR A NUN* 92 (1951).

¹⁰ Daniel T. Lichter et al., *Toward a New Macro-Segregation? Decomposing Segregation Within and Between Metropolitan Cities and Suburbs*, *AM. SOC. REV.* 843, 868 (2015).

¹¹ Rothstein, *supra* note 2, at 17–37 (discussing history of public housing in the United States).

¹² *Id.* at 59–75 (documenting how the Federal Housing Authority discriminated against Black people).

¹³ *Id.* at 126–31 (detailing the placement of interstates and the resulting destruction of Black communities).

¹⁴ *Id.* at 39–57 (explaining racial zoning).

people from integrating into communities they could afford.¹⁵ State real estate boards licensed professional realtors who steered Blacks away from places where Whites lived.¹⁶ In these and other ways, federal and state governments wove Black-White residential segregation into American society.

This government-created segregation has persisted over time. Researchers have traditionally pointed to three reasons why Black-White segregation endures: economics, discrimination, and preferences. On average, Whites have more income and wealth than Blacks, which enables Whites to buy homes in neighborhoods that Blacks cannot afford.¹⁷ Some landlords, homeowners, and real estate agents have continued to discriminate against Blacks, and thus Black people who can afford the same housing as Whites are denied access to it.¹⁸ Personal preference also contributes to segregation, with some Whites preferring to live with other Whites and some Blacks preferring to live with other Blacks.¹⁹ Recent research also suggests that people rely heavily on their social

¹⁵ *Id.* at 77–91 (discussing history of court-enforced restrictive covenants).

¹⁶ *Id.* at 95–96 (detailing real estate practices that fueled White flight).

¹⁷ For an in-depth analysis of how economic factors contribute to segregation, see, e.g., Richard D. Alba & John R. Logan, *Minority Proximity to Whites in Suburbs: An Individual-Level Analysis of Segregation*, 98 AM. J. SOC. 1338 (1993); John R. Logan et al., *Making a Place in the Metropolis: Locational Attainment in Cities and Suburbs*, 33 DEMOGRAPHY 443 (1996); and Camille Zubrinsky Charles, *The Dynamics of Racial Residential Segregation*, 29 ANN. REV. SOC. 167 (2003).

¹⁸ See, e.g., MARGERY AUSTIN TURNER ET AL., HOUSING DISCRIMINATION AGAINST RACIAL AND ETHNIC MINORITIES 2012 (2013) (summarizing United States Department of Housing and Urban Development testing from 1977 to 2010); Michael Ewens et al., *Statistical Discrimination or Prejudice? A Large Sample Field Experiment*, 96 REV. ECON. & STAT. 119 (2014) (reporting that landlords who listed apartments on Craigslist were less likely to respond to e-mails from senders with African American-sounding names); Douglas S. Massey & Garvey Lundy, *Use of Black English and Racial Discrimination in Urban Housing Markets*, 36 URB. AFF. REV. 452 (2001) (reporting discrimination against Blacks in Philadelphia who were responding to newspaper ads about rental units).

¹⁹ MARIA KRYSAN & KYLE CROWDER, CYCLE OF SEGREGATION: SOCIAL PROCESSES AND RESIDENTIAL STRATIFICATION 151 (2017) (summarizing the traditional view that segregation is driven by peoples' desire to live near members of their own ethnic group).

networks when deciding where to live.²⁰ A person's opinion about various housing options is shaped by where the person works, lives, worships, and so forth. Because of preexisting segregation, Blacks and Whites tend to do these activities in different areas. Most people are likely to search for housing in places they, their families, or their friends already know. If a White person's social network is primarily comprised of other White people, most of the information she learns from her network will be about White communities; if a Black person's social network is comprised of other Black people, most of the information she gathers during her housing search will be about Black communities.

While Black-White segregation has remained a constant, patterns of segregation have shifted over time. Although many large cities continue to have decreasing White populations, micro-segregation (segregation within neighborhoods) has generally decreased over the past several decades while macro-segregation (segregation in metropolitan areas as a whole) has increased.²¹ In some metropolitan cities, the 1990's and 2000's were "decades of extraordinary change" in the racial and ethnic composition of neighborhoods.²² Some cities (such as Washington, D.C.) experienced significant gentrification, with young, affluent Whites returning to the inner city and people of color departing (often because gentrification meant that they could not afford to

²⁰ *Id.* at 41–65 (setting forth the residential sorting perspective).

²¹ Lichter et al., *supra* note 10, at 851; *see also* Claude S. Fischer et al., *Distinguishing the Geographic Levels and Social Dimensions of U.S. Metropolitan Segregation, 1960–2000*, 41 *DEMOGRAPHY* 37 (2004) (measuring segregation for the metropolitan United States and finding Black-White segregation among suburbs growing during the time period studied); Douglas S. Massey et al., *The Changing Bases of Segregation in the United States*, 626 *ANNALS AM. ACAD. POL. & SOC. SCI.* 74 (2009) (finding large declines in Black-White segregation at the neighborhood level but almost no change in segregation levels across cities, counties, or states); Domenico Parisi et al., *Multi-Scale Residential Segregation: Black Exceptionalism and America's Changing Color Line*, 89 *SOCIAL FORCES* 829 (2011) (attributing forty-eight percent of the segregation measured by their study to macro-segregation).

²² Lichter et al., *supra* note 10, at 846; *see also* JOHN R. LOGAN & BRIAN J. STULTS, *THE PERSISTENCE OF SEGREGATION IN THE 21ST METROPOLIS: NEW FINDINGS FROM THE 2010 CENSUS 2* (2011), <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report2.pdf> [<http://perma.cc/KPV9-KP8U>].

stay).²³ Many of these minorities moved outside the city to poorer communities with older housing stock, thereby creating suburbs in which people of color comprise the majority. When demographers zoom in on city neighborhoods in these metropolitan areas, they find less segregation, but when they zoom out to consider a city and all its surrounding areas, they find increasing segregation.

This is the pattern relevant to Ferguson, Missouri, an inner-ring suburb with about 21,000 residents located in the greater St. Louis metropolitan area. Most Americans had never heard of Ferguson prior to August 9, 2014, when a police officer shot and killed Michael Brown, an unarmed Black eighteen-year-old. Unrest erupted later that night, with 300 police officers responding to reports of gunfire, looting, and arson. As protests continued the next day, SWAT units and armored vehicles moved into Ferguson, and police used tear gas and rubber bullets to try to disperse the crowd. Protests continued for the next several days, with violence erupting again on August 15, culminating in the arrests of more than 200 protestors. That same day, Missouri's governor declared a state of emergency and deployed the National Guard. Some amount of calm returned to Ferguson on August 20, and the governor recalled the National Guard the next day.²⁴ However, protests broke out again on November 24 when a grand jury decided not to indict the officer who shot Michael Brown. Angry citizens fired guns, looted businesses, and set cars and buildings on fire.²⁵ Americans old enough to have witnessed the urban unrest and violence of the 1960's had a sense of *déjà vu*.

Ferguson is a suburb that has undergone rapid racial demographic change. Between 1990 and 2010, the number of Blacks who made the suburb their home increased from 25.1 to 67.4% of the city's total population. During the same years,

²³ Lichter et al., *supra* note 10, at 846.

²⁴ Scott Neuman, *Ferguson Timeline: Grief, Anger and Tension*, NPR, (Nov. 24, 2014), <https://www.npr.org/sections/thetwo-way/2014/11/24/364103735/ferguson-timeline-grief-anger-and-tension> [<http://perma.cc/83HK-H42N>].

²⁵ Monica Davey & Julie Bosman, *Protests Flare After Ferguson Police Officer Is Not Indicted*, N.Y. TIMES, (Nov. 24, 2014), <https://www.nytimes.com/2014/11/25/us/ferguson-darren-wilson-shooting-michael-brown-grand-jury.html> [<http://perma.cc/W4SZ-7R95>].

the size of Ferguson's White population dropped by more than sixty-two percent.²⁶ Demographic mapping of the greater St. Louis area over this same time period shows a familiar pattern: Blacks moving out of the highly-segregated city of St. Louis and into surrounding communities and Whites moving out of the communities in which Blacks settle.²⁷ In Ferguson, as in so many other places, the increasing number of Black residents did not translate into a corresponding increase in Black political power. In 2014, the mayor and police chief were White, as were five of the six city council members and all but three of the city's fifty-three police officers.²⁸ The shooting of Michael Brown, and the unrest that followed, have "become symptomatic of racial divisions and conflict in rapidly changing suburban communities."²⁹

One of the many tragedies of Ferguson is that these racial divisions and conflicts were avoidable. Simply put, the suburb did not have to undergo rapid racial change; it could have integrated instead of re-segregating from White to Black. Whites did not have to flee once Blacks began to call Ferguson home. To echo the Kerner Commission, choice was still possible.

B. One Municipality's Deliberate Integration

Back in the 1970's, the Village of Oak Park, Illinois, made the deliberate choice to integrate. It did so in the shadow of Chicago, a city that is consistently at the top or near the top of the list of America's most segregated cities.³⁰ In the mid-

²⁶ Lichter et al., *supra* note 10, at 848.

²⁷ Colin Gordon, *Mapping Decline: St. Louis and the American City*, U. IOWA LIBR. <http://mappingdecline.lib.uiowa.edu/map/> [<http://perma.cc/T9Z5-7NED>] (featuring interactive maps showing increases and decreases in Black and White populations from 1940 to 2010).

²⁸ *The Death of Michael Brown*, N.Y. TIMES (Aug. 12, 2014), <https://www.nytimes.com/2014/08/13/opinion/racial-history-behind-the-ferguson-protests.html> [<http://perma.cc/HW8L-S6Z3>].

²⁹ Lichter et al., *supra* note 10, at 848.

³⁰ See, e.g., Bob Goldsborough, *Chicago Is the 13th Most Segregated Metro Area in U.S., Study Finds*, CHI. TRIB. (May 25, 2018), <http://www.chicagotribune.com/classified/realestate/ct-re-0603-housing-segregation-2018-0525-story.html#> [<http://perma.cc/E5VX-W9TA>]; Lichter et al., *supra* note 10, at 857 ("[B]lack-[W]hite segregation was highest in the Chicago metropolitan area."); Tami Luhby, *Chicago: America's Most Segregated City*, CNN (Jan. 5, 2016), <https://money.cnn.com/2016/01/05/news/economy>

1960's, Martin Luther King identified Chicago as "the most 'ghettoized' city in America, the symbol and capital of segregation in the North."³¹ One civil rights organizer explained,

Chicago's system of separation of the races differs from Mississippi's only in degree In Mississippi, the Ku Klux Klan burns churches. [In 1964] in Chicago, three houses were burned to the ground because they were purchased by [B]lack citizens.³²

When King came to Chicago in 1966 to draw attention to northern housing segregation,³³ his reception revealed the depth of White prejudice and hatred. In one all-White neighborhood, King was met by crowds carrying signs proclaiming "n****r go home" and chants of "I'd love to be an Alabama trooper, and that is what I'd truly like to be, because if I were an Alabama trooper, I could shoot n*****rs, one, two, three."³⁴ In a different march through the same neighborhood a couple of weeks later,

[w]hen King arrived and alighted from his car, he was struck on the head by a rock the size of a fist. Missiles—bricks, bottles, firecrackers, a knife—continued to fly as the march made its way to [a local real estate office] amid shouts of "Get the witch doctor," "We want King," and

/chicago-segregated/index.html [<http://perma.cc/D32E-H24K>]; Nate Silver, *The Most Diverse Cities Are Often the Most Segregated*, CHI. TRIB. (May 1, 2015), <http://www.chicagotribune.com/classified/realestate/ct-re-0603-housing-segregation-20180525-story.html> [<http://perma.cc/E5VX-W9TA>] (naming Chicago "the most segregated city in the country" according to its integration-segregation index).

³¹ STEPHEN B. OATES, *LET THE TRUMPET SOUND: THE LIFE OF MARTIN LUTHER KING, JR.* 416 (1982).

³² JAMES R. RALPH, JR., *NORTHERN PROTEST: MARTIN LUTHER KING, JR., CHICAGO, AND THE CIVIL RIGHTS MOVEMENT* 99–100 (1993).

³³ For succinct discussions of King's reasons for coming to Chicago, see Katherine Gonsalves, *Segregated Housing: Martin Luther King to Cabrini Green*, 15 *RACE POVERTY & ENV'T* 17 (2008), and Ronald A. Shaw, *A Final Push for National Legislation: The Chicago Freedom Movement*, 94 *J. ILL. ST. HIST. SOC'Y* 304 (1998).

³⁴ ALAN B. ANDERSON & GEORGE W. PICKERING, *CONFRONTING THE COLOR LINE: THE BROKEN PROMISE OF THE CIVIL RIGHTS MOVEMENT IN CHICAGO* 223 (1986).

“Kill him, kill him.” King said, “I have never seen such hostility and hatred anywhere in my life, even in Selma.”³⁵

King’s presence in Chicago laid bare many Whites’ determination to live apart from Blacks. This meant that Whites kept Blacks out of White neighborhoods or moved elsewhere once Blacks arrived.

In the 1960’s, Blacks who were seeking to escape Chicago’s inner city began to move westward toward Oak Park. The Village’s eastern border runs along the western Chicago city limit so that the Village is literally across the street from the Chicago neighborhood of Austin. In the 1950’s, a person walking across Austin Boulevard—the major thoroughfare separating Oak Park from Austin—would have noticed almost no meaningful distinction between the two neighborhoods. Both were mostly White and middle class.

This began to change in the early 1960’s. By 1970, Austin was about one-third Black. From that point on, there was “massive [W]hite flight,” and “the city witnessed classic block-by-block re-segregation.”³⁶ By 1980, Austin was three-fourths African American; by 1990 and 2000, Austin was ninety percent African American; and in 2010, Austin was eighty-seven percent African American, nine percent Hispanic or Latino, and four percent White.³⁷ In 2010, the Austin census tracts along Oak Park’s eastern border were as high as ninety-seven percent African American.³⁸

As Austin began to re-segregate from White to Black in the 1960’s, Oak Park became acutely aware that Blacks were likely to continue to move west across Austin Boulevard and into Oak Park. Whites began to leave and the “[V]illage

³⁵ *Id.* at 228.

³⁶ Evan McKenzie & Jay Ruby, *Reconsidering the Oak Park Strategy: The Conundrums of Integration* 8 (Apr. 25, 2002) (unpublished manuscript), <https://astro.temple.edu/~ruby/opp/3qrpt02/gfinalversion.pdf> [<http://perma.cc/M5U5-EH7G>].

³⁷ *Id.*; *Overview of Austin, Chicago, Illinois (Neighborhood)*, STAT. ATLAS, <https://statisticalatlas.com/neighborhood/Illinois/Chicago/Austin/Overview> [<http://perma.cc/Z4JE-5H4L>].

³⁸ *Race and Ethnicity in Tract 252000, Cook County, Illinois*, STAT. ATLAS, <https://statisticalatlas.com/tract/Illinois/Cook-County/252000/Race-and-Ethnicity> [<https://perma.cc/J79G-L4WD>].

became genuinely concerned that Oak Park would follow the path of Austin.”³⁹

Government officials and community leaders decided that Oak Park’s best strategy was not to try to exclude Blacks. Rather, Oak Park would market itself as a neighborhood where integrated housing thrived.⁴⁰ This meant that Whites had to be encouraged to stay and that Blacks had to have access to and then choose housing options throughout the entire Village instead of living on blocks comprised only of Black families. For some of Oak Park’s leaders, the deliberate choice to integrate reflected concern for Black people who were trying to escape the inner city. However, the choice was primarily pragmatic; Oak Park knew that, absent integration, Whites would flee as Black people moved into the Village. As between White flight and integration, Oak Park decided that integration was preferable.

Sociologist Carol Goodwin has identified the characteristics that positioned Oak Park to fight White flight, particularly as compared to nearby Austin. In 1966, Project Open Communities (a precursor to King’s Chicago movement), conducted real estate testing that demonstrated that Oak Park realtors were discriminating against Blacks, and then marched in Oak Park every Saturday from mid-May to July.⁴¹ In contrast to many other marches in the Chicago area, the marches in Oak Park were peaceful, and some local White residents joined in. This created the sense among many Oak Parkers that the Village was an “open place, however far from accurate that might have been.”⁴² In addition, Oak Park had a strong degree of local community control,⁴³ particularly as compared with Austin, which was controlled by the City of Chicago. This local control “put in the hands of local elites the means of

³⁹ McKenzie & Ruby, *supra* note 36, at 11.

⁴⁰ See sources cited *infra* notes 156–160 and accompanying text (discussing the Village’s efforts to re-brand itself).

⁴¹ See sources cited *infra* notes 156–160 and accompanying text (discussing the Village’s efforts to re-brand itself).

⁴² CAROLE GOODWIN, *THE OAK PARK STRATEGY: COMMUNITY CONTROL OF RACIAL CHANGE* 205 (1979). Goodwin was a contemporary observer of how Oak Park and Austin responded when African Americans moved west from Chicago’s inner city. Her book provides an exhaustive account of why Oak Park was more inclined to integrate and was better-positioned to exert control over racial change.

⁴³ *Id.* at 207.

influencing the community's fate."⁴⁴ Oak Park also had a strong tradition of activism and volunteerism that became "an ample reservoir of experience, example, and useful outside contacts."⁴⁵ These characteristics enabled Oak Park to launch a full-court press that sought to prevent White flight and to make living throughout the community feasible for and attractive to Black people.

Oak Park's integration strategies were multifaceted and comprehensive. On the legal front, the Village passed a fair housing act that prohibited racial steering and discriminatory lending.⁴⁶ It also prohibited real estate brokers from soliciting property owners who had registered with the Village⁴⁷ and banned residential for sale signs to prevent brokers from using them to signal that homeowners were fleeing the neighborhood.⁴⁸ To address fears that integration would lead to lower home prices, the Village offered insurance that protected homeowners against declines in market value below the purchase price.⁴⁹ It used its fifteen-member Community Relations Commission to coordinate a "variety of auxiliary tactics aimed at manipulating a stably integrated community."⁵⁰ The Village recognized that because tenants can leave more easily than homeowners, blocks with apartment buildings were most vulnerable to White flight. The Village doubled its bets by committing substantial resources to areas with apartments, particularly those near the Austin border. This included relocating the village hall to a new civic center in southeast Oak Park,⁵¹ and significantly increasing the size of the police force and allotting more patrols to areas near the Chicago border.⁵² Oak Park reorganized its school district by creating catchment areas that would help ensure long-term

⁴⁴ *Id.* at 208.

⁴⁵ *Id.* at 205–06.

⁴⁶ OAK PARK, ILL., VILLAGE CODE, § 13-1-1 (1968).

⁴⁷ *Id.*

⁴⁸ *See infra* Part III.

⁴⁹ The insurance program was launched in 1978, with ninety-nine people enrolling in the first four months and 158 enrolling in total. No claims were ever made and only ten houses renewed their policies. For more information about how the program functioned and what was necessary to make a claim, see McKenzie & Ruby, *supra* note 36, at 16.

⁵⁰ GOODWIN, *supra* note 42, at 149.

⁵¹ *Id.* at 124.

⁵² *Id.* at 184.

racial balance between the schools even if a disproportionate number of Black families lived near the Austin border.⁵³ It also made recruiting minority teachers a priority and invested heavily in the schools closest to Austin.⁵⁴ It supported a volunteer housing center that provided housing referral services “aimed at promoting a dispersed pattern of racial integration throughout the [V]illage.”⁵⁵ The Village also embarked on an advertising campaign to attract Whites who wanted to live in integrated communities.⁵⁶ In sum, the Village sought not only to prevent housing discrimination and corrosive real estate broker tactics, but also to actively promote diverse neighborhoods and put Oak Park onto the radar screen of prospective residents who would be attracted to the prospect of a racially integrated village—all critical to interrupting what sociologists Maria Krysan and Kyle Crowder have dubbed “the cycle of segregation.”⁵⁷

The Village’s efforts were astonishingly successful, with the “pattern [of re-segregation] . . . leap[ing] over Oak Park to other suburbs farther west . . . which re-segregated in a relatively short time.”⁵⁸ Instead of re-segregating, the Village gradually integrated at both the macro and micro level. Oak Park’s Black population grew from less than 1% in 1970; to 11% in 1980; to 19% in 1990; and to 20% in 2000.⁵⁹ As of 2010, Oak Park was 21% African American; 68% White; 7% Hispanic or Latino; and 5% Asian.⁶⁰ At the micro level, there is some clustering of Black residents in Oak Park’s southeast corner

⁵³ *Id.* at 93–94.

⁵⁴ *Id.* at 92–93.

⁵⁵ *Id.* at 152.

⁵⁶ See sources cited *infra* notes 156–160 and accompanying text.

⁵⁷ KRYSAN & CROWDER, *supra* note 19, at 221, 226 (discussing the importance of local government support for diverse communities and various strategies to make homeseekers consider these communities).

⁵⁸ McKenzie & Ruby, *supra* note 36, at 7.

⁵⁹ *Id.*

⁶⁰ *Overview of Oak Park, Illinois (Village)*, STAT. ATLAS, <https://statisticalatlas.com/place/Illinois/Oak-Park/Overview> [<http://perma.cc/GR8N-PEEZ>]. By way of contrast, the suburb immediately north of Oak Park (Elmwood Park) is 85% White, 2% Black, 2% Asian, and 20% Latino/Hispanic. See <https://factfinder.census.gov> [<https://perma.cc/K9NQ-B35W>] (search in search bar for “Elmwood Park Village, Illinois”; then follow “Race and Hispanic or Latino Origin” hyperlink under “2010 Census”) (last visited Dec. 28, 2018).

and fewer Black residents in its northwest corner, the expensive “estate section.” Nonetheless, as recently as 2010, no census tract within the Village was more than 76% White or more than 36% African American.⁶¹ Today, this degree of integration makes the racial demographics of Oak Park “stand out so much” from almost every other place in the United States.⁶²

III. THE SIGN BAN

Though Oak Park’s ban on residential for sale signs was just one piece of its integration efforts, Village leaders perceived the sign ban as critical because real estate brokers were helping to fuel Austin’s re-segregation. Real estate agents relied on “blockbusting” and “panic peddling,” tactics in which brokers used the threat of a racially changing neighborhood to convince White homeowners to sell at below-market rates and then made a profit by reselling at a higher price to non-White purchasers. Contemporary accounts from that period accentuate the insidiousness of these practices.

In 1971, the *Chicago Tribune* ran a series of articles about neighborhood change in Chicago. Brokers working in Austin were blunt about their tactics:

We don’t care if the [W]hites run all the way to Hong Kong, as long as they run I go where the money is. I’m a money-oriented guy. It’s a good business for us when they’re frightened.⁶³

Chicago Avenue is the demarcation line right now But one of these days, some [B]lack will move north of Chicago Avenue.

⁶¹ *Race and Ethnicity in Tract 812100, Cook County, Illinois*, STAT. ATLAS, <https://statisticalatlas.com/tract/Illinois/Cook-County/812100/Race-and-Ethnicity> [<https://perma.cc/EC4W-5X9M>].

⁶² *The Great Melting*, ECONOMIST (Jan. 9, 2016), <https://www.economist.com/international/2016/01/09/the-great-melting> [<https://perma.cc/2RHF-UPL3>] (quoting Professor Maria Krysan of the University of Illinois-Chicago).

⁶³ GOODWIN, *supra* note 42, at 68.

When one of them jumps, that's the green light.
Then it's open season.⁶⁴

Open season meant myriad tactics that made White homeowners believe that a quick exit from Austin was in their financial and personal best interest. The tactics included door-to-door and telephone solicitations; dissemination of leaflets saying minorities had purchased property nearby, that schools were going to change, and that effective policing was no longer possible; phone calls in which the caller would apologize for a misdeal and then indicate he was trying to reach "the [B]lack family who had just moved in"; and obtaining numerous listings and then using for sale signs to indicate that a neighborhood was changing.⁶⁵

Brokers used for sale signs to signal that Blacks were moving in and Whites were moving out, and that any remaining Whites who wanted to salvage the values of their homes should get out now. One Austin resident, who purchased his home in 1951 and sold it in 1969 for less than he paid, explained that "there were many 'For Sale' signs in the area, perhaps one or two per block, for six months before he sold; and that the signs frightened him because he thought the area was going to change overnight."⁶⁶ One man recounted that there were as many as ten for sale signs in a single block of forty homes.⁶⁷

Oak Park initially hoped that local realtors simply would agree not to use residential for sale signs. In 1971, Oak Park's Community Relations Commission⁶⁸ asked the local real estate board to formulate a voluntary plan for limiting signage. The board flatly refused on the grounds that for sale signs were part of the profession and a fundamental good marketing technique.⁶⁹ The discussion was heated enough that it "almost

⁶⁴ *Id.*

⁶⁵ *City of Chicago v. Prus*, 453 N.E.2d 776, 779 (Ill. App. Ct. 1983) (discussing the broker techniques that led the City of Chicago to ban residential for sale signs).

⁶⁶ *Id.* at 780–81.

⁶⁷ *Id.* at 780.

⁶⁸ The Community Relations Commission was a fifteen-member body created in 1963 to address racial issues in the Village. *GOODWIN*, *supra* note 42, at 149.

⁶⁹ *Id.* at 193–94.

led to a breakdown in the amicable relations between the realtors and the Community Relations Commission.”⁷⁰

With realtors refusing to voluntarily limit the use of for sale signs, in 1972 the Village passed an ordinance stating that

[i]t shall, therefore, be unlawful for any person to construct, place, maintain or install a “For Sale”, “Sold” or “For Rent” sign on any property developed for residential use in the Village. The term “For Sale” sign shall include signs carrying the following or similar words: “Open House” or “Open For Inspection” and shall include any other devices placed on the property to indicate that the property is for sale.⁷¹

Other portions of the ordinance allowed “open house” signs on Sundays for no more than four consecutive hours⁷² and permitted for sale signs for eighteen months following the issuance of an occupancy permit for new construction or following a condominium conversion.⁷³ The ordinance specifically noted that for sale signs tend to promote unfair housing practices.⁷⁴ With the passage of the ordinance, realtors stopped using for sale signs and the Village concentrated on other components of its integration efforts. Then, in 1977, the United States Supreme Court decided *Linmark Associates v. Township of Willingboro*.⁷⁵

In *Linmark*, the Court struck down an ordinance prohibiting the posting of residential for sale signs. Like Oak Park, Willingboro, New Jersey, adopted its ordinance in an effort to stem the flight of White homeowners from the community.⁷⁶ The Court noted the “vital” importance of promoting stable, racially integrated housing but ruled that the ordinance did not simply restrict the time, place, or manner of speech. Instead, Willingboro had “proscribed particular

⁷⁰ *Id.* at 212.

⁷¹ OAK PARK, ILL., VILLAGE CODE, § 13-2-3(B)(5) (2018) (effective 1972).

⁷² *Id.* § 13-2-3.1.

⁷³ *Id.* § 13-2-3(B)(5).

⁷⁴ *Id.* § 13-2-3(A).

⁷⁵ *Linmark Assocs. v. Township of Willingboro*, 431 U.S. 85 (1977).

⁷⁶ *Id.* at 88.

types of signs based on their content.”⁷⁷ This content was “of vital interest to Willingboro residents, since it may bear on one of the most important decisions they have a right to make: where to live and raise their families.”⁷⁸ The ordinance therefore unconstitutionally interfered with the flow of legitimate and truthful commercial information. Willingboro could promote racially integrated housing, but it could not ban residential for sale signs.

Linmark set the stage for courts across the country to strike down ordinances banning residential for sale signs. One such case was particularly close to home for Oak Park. In 1971, also in response to blockbusting and panic peddling, the City of Chicago prohibited residential for sale signs in certain parts of the city—including in Austin, Oak Park’s neighbor.⁷⁹ In 1983, an Illinois appellate court held that “only the existence of an emergency situation could justify the use of a ban, that is, where the situation is such that the alternative remedy of public education and discussion is not viable.”⁸⁰ The court concluded that Chicago was not facing such an emergency⁸¹ and further characterized the ban as providing “at best ineffective and remote support” for Chicago’s “admittedly substantial interest in promoting racially integrated neighborhoods.”⁸² Chicago’s ordinance, the Illinois court held, was unconstitutional under the principles set forth in *Linmark*.

Similar litigation has occurred throughout the United States. In some jurisdictions, litigation yielded cases in which courts deemed sign bans unconstitutional.⁸³ In other jurisdictions, the mere filing of a suit prompted a quick settlement in which the municipality admitted its ordinance was unconstitutional.⁸⁴ Regardless of how far the case actually pro-

⁷⁷ *Id.* at 94.

⁷⁸ *Id.* at 96.

⁷⁹ CHI., ILL., MUN. CODE § 198.7B(4)(H) (1974).

⁸⁰ *City of Chicago v. Prus*, 453 N.E.2d 776, 787 (Ill. App. Ct. 1983).

⁸¹ *Id.* at 791.

⁸² *Id.* at 790.

⁸³ *See, e.g.*, *Cleveland Area Bd. of Realtors v. City of Euclid*, 88 F.3d 382 (6th Cir. 1996) (striking down ordinance requiring that any for sale sign in residential areas be placed in a window).

⁸⁴ *See, e.g.*, *Greater Phila. Ass’n of Realtors v. City of Philadelphia*, No. 2:00-cv-01476 (E.D. Pa. Apr. 28, 2000).

ceeded, the end result was always the same: sellers were free to use for sale signs to market their homes.

Although Oak Park's ordinance has never been challenged in court, it too would be held unconstitutional under *Linmark*.⁸⁵ In 1977, recognizing that further enforcement of its ordinance would invite legal challenge, the Village again sought the cooperation of the local realtors association. This time, only six years after the community first broached the subject, the realtors readily agreed not to use for sale signs, even though *Linmark* had established a constitutional right to such signs.⁸⁶ Sociologist Carole Goodwin explains the realtors' reversal:

Members of the real estate board were also more likely to cooperate with the community's efforts to maintain integration, since Oak Park was their major market. Attempting to exclude [B]lacks from the village was conceded to be futile, while steering [W]hites away from Oak Park and marketing exclusively to [B]lacks was hardly in the long-term interests of the local real estate brokers. Their best chance lay in hoping that the village's policy of dispersed integration succeeded and, therefore, in cooperating with that policy.⁸⁷

By the end of 1977, then, Oak Park had: (1) an ordinance that banned residential for sale signs that (2) it did not enforce

⁸⁵ The one noteworthy change since *Linmark*, and even since the most recent cases challenging bans on for sale signs, is how the Internet has changed the marketing of residential real estate. Prior to the rise of online listings, sellers relied on signs, newspaper listings, word-of-mouth, and other forms of advertising by real estate agents. Today, to use the language of *Linmark*, online listings provide sellers additional "alternative channels for communication." *Linmark Assocs. v. Township of Willingboro*, 431 U.S. 85, 93 (1977). Like the alternatives discussed in *Linmark*, however, online listings are less likely than signs "to reach persons not deliberately seeking sales information." *See id.* Online listings also afford less autonomy than a sign and involve more hassle costs. Though the Internet has provided an alternate means of marketing property, it has not made yard signs irrelevant or changed *Linmark's* fundamental constitutional analysis.

⁸⁶ GOODWIN, *supra* note 42, at 212.

⁸⁷ *Id.* at 210.

because it was unconstitutional, as well as (3) a local realtors association that had agreed its members would not use signs.

Oak Park's sign ban was just one part of a comprehensive integration strategy, and today there is not a concern that for sale signs would lead to 1970's-style blockbusting. Nevertheless, this state of affairs—an unconstitutional ordinance that is on the books but not enforced and an agreement by local realtors not to use signs—has been the status quo for forty years. Through economic upturns and downturns and housing booms and busts (including the worst housing crisis since the Great Depression), most homeowners in Oak Park have not exercised their constitutional right to use for sale signs. When the occasional sign goes up, it usually comes down quickly.⁸⁸ The next section explains how a variety of factors—lack of knowledge about the law, heuristics and herd mentality, external and internal norm-based sanctions, feedback loops, and signaling—all converge to make homeowners and realtors choose the same integration-affirming behavior.

IV. ORDER DESPITE THE LAW

The present-day dynamics in Oak Park are important because the Village's experience illuminates not just what successful integration initially requires, but also what is necessary to sustain it. The Village is not a monolith; rather, it is a municipality of almost 52,000 people and more than 21,000 households.⁸⁹ Similarly, the realtors association has nearly 600 members, with approximately 50 to 100 regularly listing and selling properties in the Village.⁹⁰ The people who

⁸⁸ See Steven Jackson, *Not in Your Front Yard: Why 'For Sale' Signs Are Banned in Oak Park*, WBEZ91.5CHICAGO (Mar. 21, 2016), <https://www.wbez.org/shows/curious-city/not-in-your-front-yard-why-for-sale-signs-are-banned-in-oak-park/5d93f1e7-8540-495c-bbca-6bc7a4430702> [<https://perma.cc/9U6U-8ZBA>] (quoting Cedric Melton, Director of the Oak Park Community Relations Department).

⁸⁹ *Quick Facts: Oak Park Village, Illinois*, U.S. CENSUS BUREAU (July 1, 2018), <https://www.census.gov/quickfacts/fact/table/oakparkvillageillinois#viewtop> [<https://perma.cc/L8XV-CNN2>].

⁹⁰ *Office/Agent/Affiliate Roster Oct. 2017*, OAK PARK AREA ASS'N REALTORS (Oct. 27, 2017), <http://192.169.156.115/~opaaadmin/wp-content/uploads/2017/10/MembershipRoster10-2017.pdf> [<http://perma.cc/SP55-WJD7>].

comprise the Village have varying religions, income levels, education, ethnicities, sexual orientations, familial arrangements, and political preferences. Yet, with rare exception, they all make the same integration-affirming choice and do not use for sale signs even though *Linmark* provided the green light. Understanding why illuminates how integration can perpetuate within a suburb or exurb that deliberately chooses integration instead of segregation.

A. Method

In 2010 and again in 2016 and 2017, I did field research to learn why the residents of Oak Park continue to follow the sign ban that was adopted as the Village began to integrate. I conducted unstructured interviews of local realtors (eight in 2010 and thirteen in 2016 and 2017) and tried to step into the shoes of a homeowner preparing to sell her house.⁹¹ I live in Oak Park and some of my findings come from interactions with various entities within the Village. I was therefore, in the language of sociologists, both a participant in and an observer of what I was trying to understand. Participant observation has well-known disadvantages: a participant's observations will never fully describe a particular event, and the participant's worldview inevitably influences what she sees and how she interprets it.⁹² Moreover, the realtors interviewed were not a representative sample; they were instead the people to whom I had access.

Despite these limitations, however, I am confident that this research explains the continuing non-use of residential for sale signs in Oak Park. Though participant observation has shortcomings, it also affords sensitivity to fine-grain details and awareness of larger community context.⁹³ Although the real-

In realtor interviews, I asked how many realtors were highly active; the range of estimates was from 50 to 100.

⁹¹ In an unstructured interview, the interviewer uses a conversational form, begins with a list of topics to inquire about, and then allows the interviewee to direct the conversation as much as possible.

⁹² For discussions of participant-observer research, see Paul Atkinson & Martyn Hammersley, *Ethnography and Participant Observation*, in *HANDBOOK OF QUALITATIVE RESEARCH* 248 (Norman K. Denzin & Yvonna S. Lincoln eds., 1994), and Morris S. Schwartz & Charlotte Green Schwartz, *Problems in Participant Observation*, 60 *AM. J. SOC.* 343 (1955).

⁹³ Schwartz & Green Schwartz, *supra* note 92, at 344.

tors do not comprise a representative sample, my “insider” status and ability to draw on personal relationships made people more willing to speak with me. Most important, however, the patterns and repetition in what I heard and observed made the big picture difficult to miss.

Shortly after my initial research in 2010, Oak Park began to experience a change in the political guard that had the potential to change its approach to for sale signs and to integration more generally.⁹⁴ First, the Village Attorney—who had held the position since 1984 and had worked on the Village’s integration initiatives in the 1970’s—announced his retirement.⁹⁵ Second, the Village Manager Association (VMA), a local political organization whose candidates had won every election since 1952 and whose “strong, centralized authority” had helped Oak Park integrate,⁹⁶ was losing its influence. In 2013, the VMA-backed candidate lost the election for Village President, and by 2017 the VMA had lost control of the Village Board.⁹⁷ Because the histories of the VMA and the long-serving Village Attorney were interwoven with Oak Park’s push for integration, these changes had the possibility of marking the beginning of the end for Oak Park’s ban. In 2016 and 2017, I therefore repeated some of what I did in 2010 and spoke with additional realtors. However, the 2016 and 2017 encounters and conversations were mostly consistent with those in 2010. Thus far, then, the ban has seemed impervious to political change.

B. Unawareness of the Constitutional Right

The story of why the ban holds together begins with the difficulty of actually knowing the law. In his ground-

⁹⁴ Oak Park is governed by an elected legislative body consisting of a president and six trustees. See *Your Government*, OAK PARK, <https://www.oak-park.us/your-government-0> [<http://perma.cc/H98L-V8UJ>].

⁹⁵ Marty Stempniak, *Oak Park Village Attorney Retiring After 36 Years*, OAKPARK.COM (May 13, 2011), <http://www.oakpark.com/News/Articles/5-13-2011/Oak-Park-village-attorney-retiring-after-36-years/> [<http://perma.cc/TN5V-4EU2>].

⁹⁶ GOODWIN, *supra* note 42, at 36–37.

⁹⁷ Timothy Inklebarger, *Village Manager Assoc. Strikes Out on Election Night*, OAKPARK.COM (Apr. 11, 2017), <http://www.riverforest.com/News/Articles/4-11-2017/Village-Manager-Assoc.-strikes-out-on-election-night/> [<http://perma.cc/U463-NXPM>].

breaking study of ranchers and straying cattle, Robert Ellickson argued that in close-knit groups, informal norms—not formal law—provide the rules that govern behavior.⁹⁸ One reason the formal law is irrelevant is because of the transaction costs associated with learning it. As Ellickson explains, individuals cannot “effortlessly learn and enforce their initial legal entitlement . . . In a world of costly information . . . one cannot assume that people will both know and honor law.”⁹⁹ In Oak Park, it is not easy to figure out that the law permits for sale signs.

Though every realtor with whom I spoke knew that the local realtors association had agreed not to use signs, many did not know that the First Amendment protected the use of for sale signs.¹⁰⁰ Realtors have little incentive to know the law, because their agreement with the Village means they will not use signs regardless of what the First Amendment permits. In addition, all the realtors I interviewed said that their clients rarely, if ever, asked whether they could use a sign. Some of these clients may not have cared about signs or knew the law and chose not to exercise the constitutional right. Nonetheless, many of them likely used a social proof heuristic and looked to the behaviors of others to determine what was permitted.¹⁰¹ These clients would have assumed, reasonably but wrongly, that the dearth of for sale signs meant that they were not entitled to use them.

⁹⁸ ROBERT C. ELICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991).

⁹⁹ *Id.* at 281.

¹⁰⁰ Of the twenty-one realtors I spoke with, only six understood the big legal picture: that the Village has an ordinance banning signs, but it cannot enforce the ordinance because it is unconstitutional. See Telephone Interview with C (June 8, 2010) (notes on file with author); Interview with D, in Oak Park, Ill. (June 10, 2010) (notes on file with author); Interview with G, in Oak Park, Ill. (June 18, 2010) (notes on file with author); Interview with BB, in Oak Park, Ill. (Oct. 26, 2016) (notes on file with author); Interview with II, in Oak Park, Ill. (Nov. 15, 2016) (notes on file with author); Interview with JJ, in Oak Park, Ill. (Jan. 10, 2017) (notes on file with author). All interviews in 2010 have single letters; all interviews in 2016 and 2017 have double letters. Because I agreed to keep all realtor names anonymous, the names of the realtors are replaced with randomly designated letters.

¹⁰¹ See Young Eun Huh et al., *Social Defaults: Observed Choices Become Choice Defaults*, 41 J. CONSUMER RES. 746, 746–47 (2014) (summarizing research on the social proof heuristic).

Even prospective sellers who actually seek out information about the law may wrongly conclude that they cannot use a sign. The resources that a homeowner might consult—the Internet, the Village itself, and various local institutions—all might lead a prospective seller to reasonably conclude that for sale signs are illegal.

1. The Internet

Presumably, many prospective sellers will use the Internet as their first stop for information. Although it is notoriously difficult to predict what results a search engine will provide for individual users,¹⁰² my experience suggests that in 2010, a Google search¹⁰³ would have shed some—but not much—light on the right to display a sign. In 2017, a search could have revealed that signs are permissible, but only if the prospective seller was diligent. In both years, the Village ordinance forbidding for sale signs was in the top five search results with the headline “Oak Park Village Code 13-2—Unlawful Real Estate Practices.” Also in both years, opinion pieces from the local paper appeared in the top ten results,¹⁰⁴ one arguing that the ordinance should be repealed because it is unconstitutional and others defending the ordinance on the

¹⁰² Internet search results vary from user to user and depend on the search engine used, the algorithm in place at the time of the search, the user’s location, the links the user previously clicked on, and so forth. See generally ELI PARISER, *THE FILTER BUBBLE: WHAT THE INTERNET IS HIDING FROM YOU* (2011); Sandra Garcia-Rivadulla, *Personalization vs. Privacy: An Inevitable Trade-Off?*, 42 IFLA J. 227 (2016) (discussing how search engines and social networks customize results).

¹⁰³ The searches included: “for sale sign Oak Park”; “does Oak Park allow for sale signs”; and “can I use a for sale sign in Oak Park.” Each of these searches returned the same relevant hits in the top ten results, although the order of those hits was different for each search. The computers on which I conducted these searches were all located in Oak Park.

¹⁰⁴ Research has suggested that most users do not look beyond the first page of results that a search returns. See, e.g., Alexander J.A.M. van Deursen & Jan A.G.M. van Dijk, *Using the Internet: Skill Related Problems in Users’ Online Behavior*, 21 INTERACTING WITH COMPUTERS 393 (2009) (finding that ninety-one percent of study participants did not look beyond the first page); Madeline Jacobson, *How Far Down the Search Engine Results Page Will Most People Go?*, LEVERAGE MARKETING, <https://www.theleverage.com/blog/how-far-down-the-search-engine-results-page-will-most-people-go/> [<http://perma.cc/JHH5-3G65>] (using graphic evidence to show the dramatic decrease in click-throughs after the fifth search result).

ground that it promotes integration. One of these opinion pieces was followed by the editor's note: "Contrary to conventional wisdom, there is no formal For Sale sign ban in the village. It's a longstanding, voluntary agreement among local [r]ealtors at the request of the village."¹⁰⁵ A searcher who read to the bottom of the article would see that the law did not forbid for sale signs, although the searcher then would have to reconcile the editor's note with the Village ordinance that also appeared in the search results.

The Internet search in 2017 captured reporting that could either provide clarity or further muddy the waters, depending on the prospective seller's persistence. In 2016, a Chicago public radio station aired a segment that sought to explain Oak Park's non-use of for sale signs. That reporting appears in the top five search results, with the unhelpful headline "Not in Your Front Yard: Why 'For Sale' Signs Are Banned in Oak Park."¹⁰⁶ A searcher who clicked through the headline and kept reading, however, would learn at about word 1,200 that the Village does not enforce its ordinance but rather encourages people to comply.¹⁰⁷

In sum, the results from these searches indicate that the Internet does not readily reveal that for sale signs are legal. In 2017, only a very diligent searcher could have learned the law from the Internet. For many searchers in 2017, and for all searchers in 2010, the results were noisy enough that prospective sellers could reasonably conclude that signs were illegal, particularly when interpreting the results against a

¹⁰⁵ Ed Messina, *Galewood Integrated Without Engineering*, OAKPARK.COM (Apr. 1, 2008), http://www.riverforest.com/News/Articles/4-1-2008/Galewood-integrated-without-engineering/?utm_referrer=https%3A%2F%2Fwww.google.com%2F [<http://perma.cc/KXJ7-4WJW>]. The editor's note is curiously worded, given that the Village does have an ordinance banning for sale signs. Perhaps the note is a shorthand means of explaining that the Village has a formal ordinance that it does not enforce, so the lack of for sale signs results from the realtors' agreement—although only a reader already schooled in the law is likely to interpret it this way. Another possibility is that the editor who wrote the note was, like some of the realtors I interviewed, confused about the status of Oak Park's ordinance.

¹⁰⁶ Jackson, *supra* note 88.

¹⁰⁷ In some of the Internet searches, "Not in Your Front Yard" is the first hit. Marketing research has demonstrated that the click-through rate for the first hit is about thirty percent. Jacobson, *supra* note 104. However, marketing research may not bear on the click-through rate for Internet users seeking to answer a legal question.

backdrop where no other sellers are using signs. For all but the most diligent searchers in 2017, and for all searchers in 2010, it also would have been reasonable to conclude that the Internet had not answered whether signs were legal and therefore, help needed to come from elsewhere.

2. The Village

A prospective seller might simply call the Village and ask whether for sale signs are permitted. I have done this twice per year since 2010 in an informal effort to gauge whether the Village's approach to the ordinance is changing. In each of these conversations, Village employees never stated anything that is technically incorrect, and they emphasized non-legal reasons not to display a sign. However, because employees always referenced the Village ordinance, many prospective sellers would have concluded that for sale signs are illegal.

To illustrate, in one typical call,¹⁰⁸ I spoke with an employee in the Community Relations Department, which is in charge of fair housing policy. When I asked whether I could use a for sale sign, the employee responded that the Village has an ordinance that bans for sale signs; that it "asks people to follow it"; that local realtors do not use them; and that if I used a sign there would be numerous "complaints" and "backlash" from neighbors. Because the employee began by referring to the ordinance, most callers likely would have stopped there and hung up believing that signs are illegal. I, however, asked one final question: "So, I am not allowed to use a for sale sign?" The employee replied, "No, they are banned in Oak Park." Though none of this is technically incorrect, the prospective seller will remain unaware of her constitutional right to use a sign.

Only when I specifically mentioned constitutional concerns did it become clear that sellers can use signs. In one such call,¹⁰⁹ the Village employee initially replied to my inquiry by referring to the ordinance. When I pressed on and said that

¹⁰⁸ Telephone Call with Community Relations Department Employee (Nov. 7, 2017) (notes on file with author).

¹⁰⁹ Telephone Call with Village Employee (June 9, 2010) (notes on file with author).

I had heard something about the ordinance being unconstitutional, the employee said that the Village did not enforce it because “certain courts in other jurisdictions” raised concerns that such bans interfere with free speech. The employee then mentioned the realtors’ agreement and said that the Village asks people to comply with the ordinance. Further, the Village employee spoke about how the ban has helped the Village avoid the White flight that has occurred in neighboring communities. Had I not pressed on after the employee cited the ordinance, however, I would have ended the call thinking that I could not use a sign.

3. Local Resources

Prospective sellers seeking a quick answer about whether they can use a sign may turn to two additional resources: the local library or the real estate agencies that dot Oak Park’s major thoroughfares. When I put the question to Oak Park librarians in 2010 and 2017, they helped find the ordinance banning signs. When I visited real estate agencies in 2010 and 2017, those at the front desks stated that for sale signs were banned, in some instances advising me to contact the Village if questions remained. It was unclear whether these individuals were referring to the ordinance, the realtors’ agreement, or both. Regardless, the prospective seller would have left each of these encounters with the impression that signs are prohibited.

C. The Prospective Seller’s Norm-Based Incentives

Thus far, this Article has suggested that the ban on for sale signs hangs together because many homeowners do not know the law. Yet, the municipality is also home to attorneys and others whose life experiences will have made them aware that they possess the right to use a for sale sign. However, they neither use signs nor seem to ask realtors to use them. Some of these homeowners may not use signs out of respect for the ban’s underlying purpose of promoting integration,¹¹⁰ while

¹¹⁰ This possibility should not be discounted. Several realtors volunteered that even if the Village repealed its ordinance, they would still not

others may appreciate the ban's aesthetic benefit of reducing visual clutter.¹¹¹ Still, some are likely reluctant to incur the potential costs—both personal and financial—of violating the Village norm.

As to the personal costs, Richard McAdams has theorized that norms function primarily as sources of external sanction. McAdams argues that people follow established norms to avoid “a loss of esteem” or, in other words, to avoid being thought poorly of by others.¹¹² As compliance with the norm becomes more widespread, the anticipated loss of esteem becomes greater. Once compliance reaches a particular threshold, the anticipated loss of esteem is so great that it deters most deviance from the norm.¹¹³ Recall the Village employee who warned that a sign would generate “complaints” and “backlash” from neighbors.¹¹⁴ These are the type of external sanctions about which McAdams theorizes. Moreover, the widespread misunderstanding of the law likely strengthens the external sanction, because neighbors may perceive the seller as both a norm-breaker *and* a lawbreaker.

Many sellers are moving out of the area, however, and not just out of their home. Sanctions from a neighbor probably have less bite when the neighbor is soon to be an ex-neighbor. This is a variant on the economist's classic tipping problem: If a person is at a restaurant to which she never expects to return, why does she tip?¹¹⁵ The tip adds to the cost of the meal that has already been eaten and will not help guarantee good service in the future. Similarly, why curry the good favor of—or seek to be held in high opinion by—neighbors a seller may not see post-move?

Economist Robert Cooter argues that the internalization of norms resolves the tipping problem. The diner tips because

use signs because they respect the ordinance's underlying purpose. *See infra* Section IV.E.3.

¹¹¹ *See, e.g., City of Ladue v. Gilleo*, 512 U.S. 43 (1994) (striking down sign ban that had the purpose of minimizing visual clutter).

¹¹² Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 360 (1997).

¹¹³ *Id.* at 368.

¹¹⁴ *See* Telephone Call with Community Relations Department Employee, *supra* note 108.

¹¹⁵ Christine Jolls et al., *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471, 1492–93 (1998).

she has internalized the pro-tipping norm, and once internalized, the norm becomes an obligation. Once the norm is an obligation, the person feels guilt or shame when she fails to comply.¹¹⁶ Building on Cooter's work, McAdams writes that internalization is most likely to occur with abstract norms such as "be a good citizen" or "be a good neighbor."¹¹⁷ More concrete norms, like "vote" or "do not use a for sale sign," indicate how to comply with the abstract norm. Thus, deviation from the concrete norm results in self-sanction through guilt or shame for failing to be a good citizen or neighbor, or whatever the abstract norm might be. A seller can discount a loss of esteem among soon-to-be ex-neighbors, but cannot discount the self-imposed guilt or shame.

As to the financial costs, sellers may worry about a sign's market signal to prospective buyers. When signs are ubiquitous, sellers expect a sign to simply convey that the house is available for purchase. However, when many houses are for sale and only one displays a sign, the sign stands out like an inflatable arm-flailing tube man. Therefore, buyers may perceive the sign as signaling that the seller is desperate or that the house is of relatively lesser quality. Either of these perceptions can negatively affect buyer interest or the ultimate sales price.

D. Intrepid Sellers and Feedback Loops

What about the intrepid seller who does put out a sign? According to the Village's Community Relations Department (and consistent with anecdotal observation), signs go up "a few times a year" but almost always quickly come down.¹¹⁸ Once again, lack of information about the law and norm-based sanctions likely explain why.

A seller who displays a sign will receive a call from the Village's Community Relations Department. What happens during that conversation is unclear and in any event, will vary depending on the homeowner and which Village

¹¹⁶ Robert Cooter, *Structural Adjudication and the New Law Merchant: A Model of Decentralized Law*, 14 INT'L REV. L. & ECON. 215, 224 (1994).

¹¹⁷ McAdams, *supra* note 112, at 384, 395.

¹¹⁸ Jackson, *supra* note 88 (quoting Cedric Melton, Director of the Oak Park Community Relations Department).

employee makes the call. In 2010, I met with an employee from the Community Relations Department. The employee advised that when the Village calls homeowners, it cites the ordinance and references integration; if pressed about the validity of the ordinance, the Village might describe it as “questionable.”¹¹⁹ In a 2016 interview with local radio, the director of the Department described these calls differently:

I'll explain to them that the local [real estate] board does not put up signs because of the historic symbolism, and hopefully they'll take it down. I let them know that the Supreme Court has ruled that you can put a sign up if you want to, but you will receive many, many calls from residents who will be in opposition to that sign And in almost all the cases they say to me “Well I'm going to do exactly what your local board is doing, I want to be in lockstep with them. . . . I'm going to take it down and use alternative methods.”¹²⁰

In both descriptions, the Village employee explains that the ban is connected to integration. Upon hearing this explanation, a homeowner might remove the sign because of support for the ban on its merits. But a homeowner who receives the type of call described to me in 2010 may think it an instruction to take down the sign because it is illegal. If instead the call unfolds as the director described in 2016, the homeowner will hear the explicit threat of external sanctions from “many, many” fellow residents. Either way, lack of information about the law and norms-based sanctions help explain why the intrepid seller eventually falls into line.

Sellers who put out a sign and remove it unwittingly add to the confusion about the law and fears of external sanctions, creating a feedback loop.¹²¹ Described colloquially,

¹¹⁹ Interview with Community Relations Department Employee, in Oak Park, Ill. (June 17, 2010) (notes on file with author).

¹²⁰ Jackson, *supra* note 88 (quoting Cedric Melton, Director of the Oak Park Community Relations Department).

¹²¹ Economists use the term “feedback loop” to describe scenarios in which an output of one situation becomes an input in a new situation. For a discussion of feedback loops in human behavior, see Dawn T. Robinson,

the loop here is “misinformation feeds misinformation,” or “fear of sanctions feeds fear of sanctions.” When other homeowners see a sign go up and then quickly down, they are likely to conclude that the Village has ticketed the seller or has otherwise enforced its ordinance, or that neighbors have prevailed upon the seller. In trying to buck the status quo, the seller instead reinforces it.

E. Realtor Non-Use of Signs

The prospect of personal financial gain is the most obvious explanation for why realtors comply with the sign ban. Such calculations have been important in the past, although it is unclear that they remain so today. The distinction between what motivated realtors to comply in the past and what may motivate them today is worth pausing over, especially since the term “voluntary agreement” may spark antitrust concerns for some readers. Although personal financial gain may have been important in the past, my conversations suggest that today realtors are making norms-based calculations.

1. Financial Gain

Between 1971 and 1977, the local real estate association radically changed its position on for sale sign bans. In 1971, the association refused when the Village asked it not to use signs, prompting the Village to pass the ordinance it has today.¹²² After the Supreme Court issued *Linmark* in 1977, however, the association readily agreed to ban signs. Carole Goodwin explains that realtors had come to see integration—and the accompanying prevention of White flight—as the best strategy for maintaining property values.¹²³ Because realtors’ incomes depended on property values, the agreement to not use signs was in the realtors’ best financial interest.

If maintaining integration maintains property values, then Village priorities conveniently align with legitimate

Control Theories in Sociology, 33 ANN. REV. SOC. 157 (2007) (reviewing how sociologists use feedback loop systems to explain a wide variety of behaviors).

¹²² See GOODWIN, *supra* note 42, at 193.

¹²³ *Id.* at 160–62.

realtor priorities. A ban on residential for sale signs, however, may have additional financial benefits for realtors. Specifically, the ban may discourage people from selling by owner or keep non-local realtors from entering the market. Either outcome would provide realtors reason to voluntarily ban signs or not challenge the Village's ordinance.

Reporting by a regional newspaper suggests that at least early in the ban's history it may have kept non-local realtors from selling in the Village. In an article about how Oak Park prevented White flight, the then-director of the Village's Community Relations Department commented, "We will continue to ban the signs on the basis that our ordinance has not been challenged." The article then goes on to explain:

Realtors objected to the ban at first. But [Oak Park] gets cooperation from [r]ealtors today. The key reason [the director] said, is that they're making money.

Most homes are sold by local [r]ealtors who have access to the multiple listings. Outside [r]ealtors also aren't allowed to erect signs and aren't encouraged to sell in Oak Park. [The director] estimated that 75% to 85% of the real estate agents who sell in the village belong to Oak Park's Board of Realtors, and consider themselves a part of the community and its efforts.¹²⁴

At this juncture—almost twenty years into the ban—a prominent Village employee perceived it to lessen competition by deterring non-local realtors from entering the market.

But fast-forward to the 2010's, and none of my interviewees thought the ban had much effect on the market—either by discouraging sale by owners or by excluding non-local realtors. Instead, they emphasized that signs do not move houses. The Internet, not a yard sign, is what makes houses sell. Homeowners can easily list their house on a free or paid

¹²⁴ Fran Bauer, *Sherman Park Finds a Way: Chicago Suburb Shows Path to Stability*, MILWAUKEE J., Mar. 2, 1989, at 1B.

sale-by-owner website.¹²⁵ Out-of-town realtors put a home on the multiple listing services just as local realtors do. Once the listing is up, it is available to any prospective buyer who conducts an Internet search. Cell phone applications even send electronic notifications of what is for sale as buyers move around an area. Online listings—not signs—sell houses.

Still, interviewees said they use signs when they list houses outside the Village. One realtor summed by stating, “I tell my clients that houses don’t sell because of an open house. But we have one anyway because you never know.”¹²⁶ Signs also help agents market themselves, because placing a realtor’s name on the sign advertises that the agent landed the listing.¹²⁷ Whatever the residual value of a sign, however, none of the realtors interviewed perceived the ban as actually benefitting their bottom line.

The realtors interviewed could have been dissembling when they said that neither they nor their peers complied with the ban out of financial interest, or when they appeared puzzled at my suggestions that the sign ban might discourage sale by owners or out-of-town realtors from entering the market. But these realtors appeared genuine. They seemed to either not have thought much about the ban’s potential anti-competitive effects and/or to believe that any such concerns reflected an outdated understanding of the role of signs in real estate markets.

Of course, realtors may *think* that the sign ban does not lessen competition when *in fact* the ban deters prospective sales by owners or non-local realtors. Quantitative empirical analysis comparing the Village’s sale-by-owner rates and non-local realtor activity to that of nearby municipalities with similar housing stock could measure whether the ban actually

¹²⁵ Many websites provide advice about how to market one’s own house online. See, e.g., Carla Toebe, *How to Sell a House Online*, WIKIHOW, <https://www.wikihow.com/Sell-a-House-Online> [<http://perma.cc/UC5W-PSBM>].

¹²⁶ Interview with MM, in Oak Park, Ill. (Jan. 17, 2017) (notes on file with author).

¹²⁷ Telephone Interview with A (June 3, 2010) (notes on file with author); Interview with E, in Oak Park, Ill. (June 11, 2010) (notes on file with author); Interview with CC, in Oak Park, Ill. (Oct. 27, 2016) (notes on file with author); Telephone Interview with EE (Nov. 2, 2016) (notes on file with author).

has anti-competitive effects.¹²⁸ Because the real estate market has changed dramatically since the advent of the Internet, the results of such analysis would likely vary depending on the time period studied.

2. Necessary Cooperation

Among the realtors I spoke with, norm-based considerations—not financial gains—were the overriding concern. Eric Posner theorizes that norms are not the source of internal or external sanctions, but are rather “behavioral regularities that emerge as people interact with each other in pursuit of their everyday interests.”¹²⁹ Individuals use norms to signal that they are of a “good type”—people with whom others should cooperate.¹³⁰ The desired cooperation varies depending on context. A lawyer may supply a client with sought-after sports tickets to signal that she is worthy of continued business, or a prospective job candidate may dress carefully for an interview to signal that she will be a good employee. Here, a real estate agent might refrain from using a sign to signal that she plays fair.

Many of the realtors interviewed described a real estate community that is tightly-knit and in which all agents are interdependent.¹³¹ Indeed, even those realtors who thought the Village had an enforceable ordinance seemed concerned about what their peers and the local realtors association would do if they used a sign—not about what the Village would do. Most interviewees emphasized that if a realtor uses a sign, the local

¹²⁸ In most cases striking down residential for sale sign bans, realtors bring the challenge to the ban. See cases cited *supra* notes 84–85. This may suggest that realtors do not perceive that sign bans squeeze out sale-by-owners.

¹²⁹ POSNER, *supra* note 6.

¹³⁰ *Id.* at 19.

¹³¹ See Telephone Interview with A, *supra* note 127; Interview with B, in Oak Park, Ill. (June 5, 2010) (notes on file with author); Telephone Interview with C, *supra* note 100; Interview with E, *supra* note 127; Interview with AA, in Oak Park, Ill. (Oct. 10, 2016) (notes on file with author); Interview with CC, *supra* note 127; Interview with KK, in Oak Park, Ill. (Jan. 12, 2017) (notes on file with author).

association will call and tell the realtor to take it down.¹³² Other interviewees spoke about how realtors in the Village count on one another to show one another's listings and for honest feedback about how a home should be priced, staged, and so forth. This may all at times run counter to a realtor's immediate self-interest. As one realtor summarized, however, "What comes around goes around and I'm going to need the same kind of thing down the road."¹³³ Other realtors explained the importance of a level playing field with no agent or realty overtly trying to gain a competitive advantage. A realtor who used a sign "would be jockeying" and would "make a lot of people angry."¹³⁴ For the sake of everyone's business, it is important that people get along. By not using a sign, realtors signal that others should cooperate with them.

3. Respect for the Ban's Purpose

As previously mentioned, only six of the realtors interviewed understood that the Village has an ordinance but that it is unconstitutional.¹³⁵ Each realtor had been an agent or lived in the Village for at least ten years. When asked why they complied with the ban, the realtors all began by speaking to its underlying purpose: "I respect what the Village is trying to do"¹³⁶ or "You know the history, right?"¹³⁷ When interviewed about the ban by local radio in 2016, the president of the local real estate association said, "Personally, it just doesn't feel right to start dismantling, piece by piece, a human rights program that served our town so well, and helped to make it a desirable destination for many home buyers."¹³⁸ Similarly, several of the realtors who were unaware of the First Amendment issue volunteered that even if the Village got rid

¹³² See Interview with B, *supra* note 131; Interview with BB, *supra* note 100; Interview with DD, in Oak Park, Ill. (Nov. 1, 2016) (notes on file with author); Interview with MM, *supra* note 126.

¹³³ Telephone Interview with A, *supra* note 127.

¹³⁴ Interview with MM, *supra* note 126.

¹³⁵ See *supra* text accompanying note 100.

¹³⁶ Telephone Interview with C, *supra* note 100.

¹³⁷ Interview with II, *supra* note 100.

¹³⁸ Jackson, *supra* note 88 (quoting Jane MacClelland, President of the Oak Park Area Association Board of Realtors).

of its ordinance, they would still abide by it out of respect for the Village's integration efforts.¹³⁹

These sentiments are particularly striking because no realtor interviewed thought that the ban currently prevented White flight. Thus, the realtors who said they would abide by the ban because of its underlying purpose could not have been worried that a return of signs would change the Village's racial demographics. The Village's community relations director has explained that the association "does not put up signs because of the historic symbolism."¹⁴⁰ If realtors—many of whom live in the Village—perceive the ban as a symbol of the Village's commitment to integration, they may be inclined to treat it with reverence.¹⁴¹

In addition, regardless of whether they understood the current state of the law, all of the realtors interviewed knew why the Village had adopted the ordinance. Several spoke about how local real estate agencies became committed to integration after witnessing what happened in nearby communities during the 1960's and 1970's.¹⁴² They also projected a sense of pride about the extent to which the Village had successfully integrated. The general sense gathered was that these realtors considered themselves partners in the Village's efforts to promote integration.

4. Relationship with the Village

One of the realtors I spoke with in 2010 was a particularly prominent member of the local realtors association who clearly understood the law.¹⁴³ This individual was careful to say that one reason for personally not using signs is because the Village still formally forbids them, and the realtor "respects

¹³⁹ See Interview with E, *supra* note 127; Telephone Interview with H (Aug. 25, 2010) (notes on file with author); Interview with DD, *supra* note 132; Telephone Interview with EE, *supra* note 127; Telephone Interview with GG (Nov. 11, 2016) (notes on file with author).

¹⁴⁰ Jackson, *supra* note 88 (quoting Cedric Melton, Director of the Oak Park Community Relations Department).

¹⁴¹ See *infra* text accompanying notes 177–179 (discussing how realtors benefit from marketing integration).

¹⁴² See Interview with D, *supra* note 100; Interview with G, *supra* note 100; Interview with II, *supra* note 100.

¹⁴³ Telephone Interview with C, *supra* note 100.

the authority of the Village.”¹⁴⁴ Similarly, in a 2016 interview with local radio, the president of the realtors association noted that “the local board complies with the sign ban because it is still technically a village ordinance.”¹⁴⁵

It is unclear why these individuals emphasized the ordinance. They may be aware that the term “voluntary agreement”—often used to describe the association’s arrangement with the Village—may spark questions about unlawful anti-competitive behavior. They also simply may have been expressing a rule-abiding tendency: the ordinance is still on the books and therefore one must comply. Alternatively, because their business dealings make them “repeat players” with the Village,¹⁴⁶ they may benefit from reminding the municipality that they are willing to play by its rules, regardless of the constitutionality of those rules.

V. THE VILLAGE

The discussion thus far has focused on realtors and homeowners, but the Village itself has a role in almost every part of the story that the previous section told. It has kept its ordinance on the books. It has secured the cooperation of the local realtors’ association in voluntarily banning signs. It answers inquiries in ways that might lead citizens to conclude that the law forbids signs. It asks homeowners using signs to take them down. In the 1970’s, when blockbusting and panic peddling were literally taking place across the street, the reasons for the ban were obvious. But why does the Village work to preserve the ban in 2017, when White flight is no longer an immediate threat and other parts of the Village’s efforts play a far bigger role in maintaining integration?¹⁴⁷ This section draws on cultural property scholarship to suggest that the Village is akin to a source community trying to protect its cultural resource: integration.

¹⁴⁴ *Id.*

¹⁴⁵ Jackson, *supra* note 88 (quoting Jane MacClelland, President of the Oak Park Area Association Board of Realtors).

¹⁴⁶ For a classic article on repeat players and their various incentives, see Marc Galanter, *Why the “Haves” Come out Ahead: Speculations on the Limits of Legal Change*, 9 L. & SOC’Y REV. 95 (1974).

¹⁴⁷ McKenzie & Ruby, *supra* note 36, at 13.

A. Integration as a Cultural Resource

The concept of cultural property initially grew out of a concern about the plundering of antiquities and wartime destruction of physical objects that are “designated by a state ‘as being of importance for archaeology, prehistory, history, literature, art or science.’”¹⁴⁸ In time, the notion of cultural property expanded beyond “specific, unique objects” to include intangibles that embody cultural values or heritage but lack individual authorship.¹⁴⁹ In the United States, the most well-known claims to intangible cultural property involve Native American symbols, rituals, and likenesses.¹⁵⁰

Most scholarship about cultural property has focused on objects and ideas that are reducible to ownership through the traditional rules governing real and personal property or through intellectual property doctrine. Susan Scafidi, however, has argued that cultural property is properly understood as including “unprotected intangibles” that are beyond the boundaries of property law.¹⁵¹ Unprotected intangibles lack an individual author and a precise moment of creation,¹⁵² and are “the creative expressions of an unincorporated group” that are “created deliberately or as a by-product of social interaction over time.”¹⁵³ Scafidi writes about a variety of cultural products—ranging from dance (e.g., the tango), to dress (e.g., the sari), to language (e.g., American Sign Language)—that are important because of their role in and significance to the

¹⁴⁸ Naomi Mezey, *The Paradoxes of Cultural Property*, 107 COLUM. L. REV. 2004, 2010 (2007) (quoting UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property art. 1, Nov. 14, 1970, 823 U.N.T.S. 231) (tracing the emergence of cultural property).

¹⁴⁹ SUSAN SCAFIDI, WHO OWNS CULTURE? APPROPRIATION AND AUTHENTICITY IN AMERICAN LAW 48 (2005).

¹⁵⁰ See, e.g., MICHAEL F. BROWN, WHO OWNS NATIVE CULTURE? 13–15 (2003) (discussing Hopi rituals); Rebecca Tsosie, *Reclaiming Native Stories: An Essay on Cultural Appropriation and Cultural Rights*, 34 ARIZ. ST. L.J. 299 (2002) (suggesting taxonomy for appropriated Native American cultural property).

¹⁵¹ SCAFIDI, *supra* note 149, at 21–22.

¹⁵² Marc R. Poirier, *The Cultural Property Claim Within the Same-Sex Marriage Controversy*, 17 COLUM. J. GENDER & L. 343, 375 (2007).

¹⁵³ SCAFIDI, *supra* note 149, at 21.

source community. While none of these cultural products are legally understood as property, they nonetheless “serve as the chief repository of social memory around which the community conceives or imagines itself”¹⁵⁴ and “instantiate the internal dynamics, shared experiences, and value systems that bind the community together.”¹⁵⁵

Integration—and its cousin, “diversity”—is the Village’s “unprotected intangible.” In the 1970’s, Oak Park launched a calculated strategy designed to halt at its borders White flight and Black re-segregation. As the strategy unfolded, Oak Park reimagined and re-branded itself both for the world at large and for residents living within the Village. Goodwin describes the perception of Oak Park prior to the 1970’s:

[T]he image of community held by Oak Parkers and promoted through the local media rested far more on such things as its expensive homes, architectural landmarks, quality stores, favorite sons, and a few affluent citizens than it did on any average measures or objective criteria of housing and population characteristics.¹⁵⁶

But as the 1970’s unfolded, a community which had rested its laurels on being the home of Frank Lloyd Wright and the birthplace of Ernest Hemingway sought to be known for something else: successfully integrating.

Oak Park leaders actively sought to portray the Village “as a liberal community striving to make integration work.”¹⁵⁷ They repeatedly emphasized that “Oak Park was a proving ground for integration, with the whole world watching.”¹⁵⁸ The Village became “Oak Park, the People Place,” with advertisements in national and regional publications aimed at young, White, liberal, and upwardly-mobile families.¹⁵⁹ These advertisements had an unmistakable message: “Oak Park is a place where Blacks, Whites, and other races live, work, and

¹⁵⁴ *Id.* at 35.

¹⁵⁵ *Id.* at 24.

¹⁵⁶ GOODWIN, *supra* note 42, at 35 (footnote omitted).

¹⁵⁷ *Id.* at 160.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 169.

get along together.”¹⁶⁰ Integration had replaced architecture and favorite sons as the community’s single most positive attribute.

Like Scafidi’s “unprotected intangibles,” integration continues to be the cultural product “around which the community conceives of or imagines itself.”¹⁶¹ Almost 50 years after the Village set out to integrate, it still conceptualizes itself as a community that is striving to make integration work or that is “constantly pushing.”¹⁶² Most recently, this has meant taking a hard look at racial inequities at the public high school.¹⁶³ The Village strives to keep integration at the root of public life. It has a “diversity statement” that its Board reaffirms every two years with great fanfare; diversity parades and ethnic festivals; an annual dinner series that promotes “candid dialogue about race, diversity, and inclusion”; housing counseling that discourages self-segregation; and regular street closures for citizen-sponsored block parties because they allow diverse neighbors to meet and mingle. The local newspaper is filled with reporting about and opinions on the by-product of integration—figuring out how diverse people can live side-by-side equitably and amicably. Integration is the value system around which Oak Park imagines itself.

Scafidi and others who have written about intangible cultural property are mostly concerned with questions of copying and exclusion: To what extent should a source community be able to exclude others from copying cultural products? The concern is that copying by those outside the source community changes and dilutes the cultural product in ways that make it difficult to preserve and perpetuate group identity over time. When change and dilution are the central concerns, imitation is far from the sincerest form of flattery. Instead, it is “theft by copying” or “appropriation.”¹⁶⁴

¹⁶⁰ *Id.*

¹⁶¹ SCAFIDI, *supra* note 149, at 35.

¹⁶² Jackson, *supra* note 88 (quoting Cedric Melton, Director of the Oak Park Community Relations Department).

¹⁶³ See, e.g., ‘America to Me’ Makes Oak Park Debut, OAKPARK.COM (Aug. 14, 2018), <http://www.oakpark.com/News/Articles/8-14-2018/%27America-to-Me%27-makes-Oak-Park-debut-/> [<http://perma.cc/S68G-PKNN>] (discussing Steve James’ documentary about Oak Park’s high school).

¹⁶⁴ SCAFIDI, *supra* note 149, at 30–31 (“All cultural products, like all forms of intellectual property, incorporate an intangible element that

Because of this emphasis on how and when the law should prevent imitation, fitting integration into the cultural property paradigm initially may seem to require a sturdy shoehorn. Oak Park would neither object to other municipalities imitating what Carole Goodwin labeled the “Oak Park Strategy” as a means of creating integration nor would it want integration to exist only within its borders. However, Oak Park does want to ensure that integration continues to exist within the Village, and this requires aggressive management of its intangible cultural product.

B. A Source Community Manages “the Commons”

Building on Scafidi’s work, Mark Poirier has argued that many intangible cultural products without an individual author or a precise moment of creation are best understood as “cultural resources” that are analogous to “the commons.”¹⁶⁵ In traditional property doctrine, the commons encompasses physical resources that are freely available to everyone unless a governing body intervenes.¹⁶⁶ Examples include pastures for grazing cattle in feudal England, groundwater, and the Earth’s atmosphere. Like these physical resources, intangible cultural products that have not been reduced to ownership are free for the taking. Anyone can do the tango, wear a sari, learn American Sign Language, and so on.

Poirier’s key insight is that source communities fear degradation of a cultural resource in the same way that environmentalists fear depletion of a natural resource. As Garrett Hardin’s classic article explained, the “tragedy of the commons” is that because each individual benefits from using the common resource for her own purposes, the resource is

may be subject to theft by copying. . . . [F]or cultural products, the intangible element may be an expression of community beliefs, values . . . or practices.”)

¹⁶⁵ Poirier, *supra* note 152, at 362, 375–76.

¹⁶⁶ This broad definition blurs the distinction between two different kinds of commons property—open access and a more limited commons. Open access property is characterized by a lack of governing law (for example, the middle of the ocean), while limited commons property is owned or controlled by a group of individuals who jointly manage the resource and exclude outsiders (for example, a tennis court in a homeowners association or the grazing pasture in feudal England). See Hanoch Dagan & Michael A. Heller, *The Liberal Commons*, 110 YALE L.J. 549, 557 (2001).

susceptible to degradation or depletion from misuse.¹⁶⁷ With natural resources, for instance, fishermen may harvest a species to the point of extinction. With cultural resources, actions from those outside the source community may debase, devalue, or irrevocably change a cultural product.¹⁶⁸

Poirier was primarily interested in conceptualizing marriage as a kind of commons. Because Poirier was writing when marriage was still restricted to opposite-sex partners, marriage fit neatly into the paradigm of a “limited commons,” where a group of individuals (religious conservatives) controls a resource and excludes outsiders (same-sex couples). In contrast, integration and its benefits are more akin to an “open access commons” that is freely available to all.

In addition to being available to all who are interested, integration and its benefits are non-rivalrous in that use by one individual does not reduce the availability of the resource for others. A resource that is both non-excludable and non-rivalrous is typically described as a public good instead of a commons, particularly when government is involved in providing or securing the resource.¹⁶⁹ But unlike the theoretical construct of a commons, the construct of a public good does not reflect concern about degradation. Textbook examples of public goods include public firework displays, national defense systems, and street lighting—hardly fragile resources. Integration, on the other hand, is an inherently fragile resource that faces the threat of degradation from a mere shift in neighborhood demographics. As Hanoch Dagan and Michael Heller have written, property constructs like the commons “are generally understood as ideal types, never present in pure form on the ground”¹⁷⁰ but nonetheless useful in conceptual-

¹⁶⁷ Garrett Hardin, *The Tragedy of the Commons*, 162 SCI. 1268 (1968).

¹⁶⁸ See Antonia Finnane, ‘Not Your Prom Dress’: *Why a Chinese Dress Set Off a Cultural Debate About Identity and History*, CONVERSATION (May 6, 2018), <https://theconversation.com/not-your-prom-dress-why-a-chinese-dress-set-off-a-cultural-debate-about-identity-and-history-96020> [http://perma.cc/K9Z7-T3SF], for a discussion on the controversy that erupted when a non-Chinese American used the Chinese *qipao*, a traditional dress with a history that dates to the 1920’s, as a prom dress; see also Mezey, *supra* note 148, at 2005–08 (discussing University of Illinois mascot Chief Illiniwek).

¹⁶⁹ See Paul Samuelson, *The Pure Theory of Public Expenditure*, 36 REV. ECON. & STAT. 387, 387 (1954).

¹⁷⁰ Dagan & Heller, *supra* note 166, at 555.

izing the management of a resource. Here, integration's fragility makes it more akin to an open access commons than a robust public good.

Carol Rose has summarized three popular strategies for managing a common resource.¹⁷¹ A "RIGHTWAY" strategy proscribes limits on an individual's use of the resource.¹⁷² A "KEEPOUT" strategy excludes some groups in order to protect the resource, while still allowing insiders to have unfettered access.¹⁷³ Finally, a "PROP" strategy creates individualized property rights in the common resource as a means of incentivizing individuals to restrain their use.¹⁷⁴

Each of the strategies that Rose outlines helps explain why Oak Park continues to rely on a sign ban. Such explanation would be cleaner if empirical research had demonstrated that banning for sale signs—whether in the 1970's or the 2010's—actually stemmed White flight or otherwise promoted integration. In the 1970's, however, given what had happened in nearby Austin, Oak Park had every reason to think that a proliferation of signs would encourage White flight. To apply Rose's formulation, the ban (particularly when coupled with the Village's anti-solicitation ordinance) functioned as a KEEPOUT strategy that deterred unscrupulous real estate brokers from entering the market and encouraging White flight. Alternatively, in the early days of integration, the ban served as a RIGHTWAY strategy that prohibited an action (displaying a sign) that could jeopardize a burgeoning cultural resource.

In the 2010's, the Village may perceive residual value in this kind of KEEPOUT or RIGHTWAY strategy. Just as no empirical studies prove that for sale sign bans prevent White flight, no empirical studies disprove it either. The mere possibility that for sale signs *might* threaten the cultural resource may be reason enough to ban them. Under this way of thinking, implementation of the ban coincided with the rise of integration in Oak Park, so why mess with success?

Even if the ban does not actually prevent White flight, however, it still acts as a strategy that preserves the cultural

¹⁷¹ Carol M. Rose, *Rethinking Environmental Controls: Management Strategies for Common Resources*, 1991 DUKE L.J. 1, 9 (1991).

¹⁷² *Id.* at 9.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 9–10.

resource. The non-use of for sale signs makes a drive through Oak Park different than a drive through any other Chicago suburb. Prospective home purchasers will notice that none of the properties they see have for sale signs. Some buyers will know that residential for sale sign bans are aimed at preventing White flight; other buyers will ask the real estate agent about the lack of signs, and the agent's response will likely refer to integration or diversity.¹⁷⁵ The palpable absence of signs therefore signals the municipality's commitment to integration and sends a message to potential residents about the values the community embraces.

Some potential buyers will consider these values a positive; others will not. However, because people who move tend to choose communities whose values and preferences mirror their own,¹⁷⁶ the ban serves a subtle KEEPOUT function: if you do not value integration and diversity, then Oak Park is not the municipality for you. Maintaining integration, just like creating integration, requires citizens who are inclined to support it.¹⁷⁷ Integration is a fragile resource facing threats from multiple factors: who uses the public schools and how many dollars fund them, the availability of affordable housing, who goes and who stays, and many other decisions that citizens make either directly or at the polls. One effective way of preserving integration is to attract individuals who are inclined to support it and to exclude individuals who are not. Even in the 2010's, then, banning for sale signs serves a useful KEEPOUT role.

¹⁷⁵ See GOODWIN *supra* note 42, at 210–12.

¹⁷⁶ See BILL BISHOP, *THE BIG SORT: WHY THE CLUSTERING OF LIKE-MINDED AMERICANS IS TEARING US APART* 5–7 (2008) (“When people move, they also make choices about who their neighbors will be and who will share their new lives.”); see also KRYSAN & CROWDER, *supra* note 19, at 66–67 (discussing how social networks shape residential choices); CAMILLE Z. CHARLES, *WON'T YOU BE MY NEIGHBOR: RACE, CLASS, AND RESIDENCE IN LOS ANGELES* 125–30 (2006) (concluding that active racial prejudice helps explain the persistence of racial segregation and is a critical factor that determines whether neighborhoods integrate); Reynolds Farley et al., *The Residential Preferences of Blacks and Whites: A Four-Metropolis Analysis*, 8 HOUSING POL'Y DEBATE 763, 763 (1997) (concluding that race continues to be a significant factor in residential decision-making, with Whites' willingness to move to a neighborhood inversely related to the number of Blacks living there and Blacks preferring integrated neighborhoods with a substantial number of Black residents).

¹⁷⁷ GOODWIN, *supra* note 42, at 169–70.

Rose's PROP strategy—creating individualized property in the common resource—is also relevant and explains why the Village has successfully secured realtor cooperation with the ban. Though integration cannot be divided into privately-owned pieces, Oak Park itself consists of tract after tract of privately-owned land. The value of this land creates an incentive to maintain integration, perhaps particularly for realtors whose livelihoods depend on taking a percentage of the sales price. In the 1970's, when Oak Park feared massive White flight, integration was a route to maintaining property values.¹⁷⁸ In the 2010's, and in the preceding three decades, owners in Oak Park have had access to a scarce cultural resource. This resource—integration—helps realtors sell the municipality to prospective residents and in turn, sell the private property located within the municipality. Strong schools and a convenient commute to Chicago are relatively easy to come by, but integrated neighborhoods are not. So long as Oak Park preserves integration, realtors can offer buyers a resource not readily available elsewhere. Moreover, because the realtors themselves tend to be local and therefore property owners themselves, they have an additional incentive to preserve integration. Here, the influence of private property is more nuanced than in the PROP examples that Rose discusses,¹⁷⁹ but privatization nonetheless incentivizes realtors to exercise restraint.

In sum, then, the Village may be intent on keeping for sale signs outside its borders because it is trying to avoid a classic “tragedy of the commons.” Cultural resources such as integration—like environmental resources such as air and water—are readily degraded unless individuals exercise restraint. Today, the Village's ban is a strategy that helps preserve the cultural resource of integration, albeit in ways that are far subtler than what the Village envisioned when it passed its ordinance in 1972 to eliminate visible signals of White flight.

Oak Park is just one community, and the sign ban is just one norm within that community. However, as suburbs and communities on the metropolitan fringe become even

¹⁷⁸ *Id.* at 160–62; Bauer, *supra* note 124.

¹⁷⁹ See Rose, *supra* note 171, at 10–11 (describing PROP strategies that include cap and trade and setting prices at levels that encourage restrained use of the common resource).

more segregated, the Oak Park example is instructive. If other communities make the deliberate choice to integrate, norms and other behavioral phenomena will help sustain that integration.

VI. DRAWING ON OTHER COMMUNITIES' SUCCESSES

Maria Krysan and Kyle Crowder have described plainly the perceptions that shape residential decision-making:

For [W]hites, negative associations with a community's racial composition (higher crime, poor school quality, lower property values) often lead them to eliminate diverse or predominantly [B]lack communities from the very start. African Americans, for their part, may presume that a predominantly [W]hite community will be hostile to African Americans and eliminate it from consideration for this reason.¹⁸⁰

Unfortunately, "there is a kernel of truth to people's heuristic-driven beliefs—there are in fact profound differences and inequities across [places] based on their racial compositions and some [places] are indeed unwelcoming to people of color."¹⁸¹ Communities that choose integration instead of segregation must distribute resources in a manner "that defies the stereotypes and unravels the correlated characteristics that outsiders or potential new residents bring with them."¹⁸²

The good news is that shifting patterns of segregation make it easier to defy these stereotypes. Because on average segregation is declining within major metropolitan cities but increasing in the surrounding metropolitan areas,¹⁸³ suburbs and exurbs are integration's new ground zero. These communities, which have fewer square miles and people than metropolitan cities, also have correspondingly fewer challenges when it comes to resource allocation.¹⁸⁴ Allocating resources among the 21,000 citizens who live in Ferguson, Missouri, is

¹⁸⁰ KRYSAN & CROWDER, *supra* note 19, at 225.

¹⁸¹ *Id.* at 228.

¹⁸² *Id.* at 229.

¹⁸³ See sources cited *supra* notes 21–23 and accompanying text.

¹⁸⁴ KRYSAN & CROWDER, *supra* note 19, at 231.

easier than allocating resources among the 311,000 who live in St. Louis—just as Oak Park’s population of 52,000 makes resource allocation simpler than Chicago’s 2.7 million.

Municipalities that choose integration do not need to figure out how to achieve it on their own. Instead, they can draw from other communities’ successes. For instance, affordable housing is essential for communities that want to welcome Black people and is often the “elephant in the room” that stands in the way of progress.¹⁸⁵ However, housing experts know how to make affordable housing available. It begins with zoning that permits higher-density developments, because communities with higher-density zoning have higher rates of integration.¹⁸⁶ Affordable housing advocates have also developed “a range of local policies that tap the economic gains from rising real estate values to create affordable housing, thus tying the creation of homes for low- or moderate-income households to the construction of market-rate residential or commercial development.”¹⁸⁷

One typical application of these policies is to require that a developer rent or sell a certain percentage of new housing stock to lower-income residents.¹⁸⁸ Experts have also already found that successful integration depends not only on the availability of affordable housing, but on making that housing available in ways that interrupt the pattern of Whites searching for housing in White neighborhoods and Blacks searching for housing in Black neighborhoods.¹⁸⁹ Places like Montgomery County, Maryland, have done exactly this,

¹⁸⁵ *Id.*

¹⁸⁶ Douglas S. Massey & Jonathan Rothwell, *The Effect of Density Zoning on Racial Segregation in U.S. Urban Areas*, 44 URB. AFF. REV. 779, 781 (2009).

¹⁸⁷ KRYSAN & CROWDER, *supra* note 19, at 232 (quoting RICK JACOBUS, INCLUSIONARY HOUSING: CREATING AND MAINTAINING EQUITABLE COMMUNITIES 7 (2015)).

¹⁸⁸ *Id.*

¹⁸⁹ GARY ORFIELD & CHUNGMEI LEE, WHY SEGREGATION MATTERS: POVERTY & EDUCATIONAL INEQUALITY (2005), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/why-segregation-matters-poverty-and-educational-inequality/orfield-why-segregation-matters-2005.pdf> [<http://perma.cc/SVB3-84LE>] (comparing the affordable housing that was made available through normal channels in New Jersey with the affordable housing made available through a lottery system in Montgomery County, Maryland).

pioneering approaches that help ensure that affordable housing is distributed in ways that increase racial integration.¹⁹⁰

Making affordable housing available to Black people is one way that mostly White communities can defy the stereotype that White communities are unwelcoming to Black people. Communities can also combat the negative assumptions that Whites make about crime, school quality, and property values in areas that are racially diverse or predominantly Black. Often this will occur through efforts that are creative and hyper-local. In New Jersey, for instance, the South Orange-Maplewood Community Coalition on Race makes loans to homeowners who want to spruce up the exterior of their homes, in an effort to ensure that no part of the community looks different from the rest.¹⁹¹ Local housing counseling centers can show potential White home buyers housing stock in mostly-Black neighborhoods that is nicer than what they have seen in mostly-White neighborhoods.¹⁹² Developments at the state level can also help contest stereotypes, such as when the Washington Supreme Court held that heavy reliance on local bonds to fund K-12 education exacerbated the differences in school quality throughout the state. This reliance, impermissible under the state's constitution, "reinforced the perception that residential areas containing large populations of color offer only poor services and structural deficiencies."¹⁹³

As these examples suggest, strategies are available to help create racially-integrated localities. Unraveling segregation is not an insurmountable task, but because segregation is so baked into American society, the unraveling will not happen by accident. Communities must deliberately choose

¹⁹⁰ Florence Wagman Roisman, *Opening the Suburbs to Racial Integration: Lessons for the 21st Century*, 23 W. NEW ENG. L. REV. 65 (2001) (detailing Montgomery County's lottery system); see also KRYSAN & CROWDER, *supra* note 19, at 233–34 (explaining that the lottery system disrupts the normal social processes through which people end up living where they do).

¹⁹¹ KRYSAN & CROWDER, *supra* note 19, at 229.

¹⁹² *Id.* at 228–29.

¹⁹³ *Id.* at 230; see Joseph O'Sullivan, *Washington Supreme Court Ends Long-Running McCleary Education Case Against the State*, SEATTLE TIMES (June 7, 2018), <https://www.seattletimes.com/seattle-news/washington-supreme-court-ends-100000-per-day-sanctions-against-state-in-mccleary-education-case/> [<https://perma.cc/XX66-M9U8>] (summarizing litigation history and the economic benefits for Washington's school districts).

integration and then go about effectuating that choice. The choice can be driven by a firmly-rooted belief that Black people should have access to the same opportunities as Whites or by the pragmatic realization that deliberate integration stems White flight. This is the choice the Village of Oak Park made in the 1970's right along the border of the city that had more hostility and hatred than Martin Luther King had ever seen. Other suburbs can make this same choice.

The additional good news is that once a community deliberately chooses integration instead of segregation, norms and other behavioral phenomena will help reinforce that decision. This Article has looked closely at one such norm—the non-use of residential for sale signs. However, this is only one of the integration-affirming norms that might arise. For example, consider the loans that the South Orange-Maplewood Community Coalition on Race makes to homeowners for exterior repairs. As the number of dilapidated-looking homes decreases, homeowners who have the resources to make repairs on their own but previously have not might decide to “keep up with the Joneses.” Other homeowners may want to stay ahead of the Joneses, so they will invest in landscaping and other exterior improvements. All of this activity will create positive norms about the exterior appearance of houses in that area. Most of the citizens who comply with these norms will not be making deliberate integration-affirming choices; instead, they will just be thinking about the curb appeal of their homes. The norm, however, will help push back against the stereotypes about the quality of housing stock in diverse communities.

Some of the norms that develop in communities that deliberately choose integration will signal to prospective residents that the community welcomes diversity. For example, block parties are another integration-affirming norm that has developed in Oak Park. After the Village began integrating, it promoted them as a means of “getting to know each other,” thus humanizing neighbors who otherwise might initially be perceived as just Black or White. Over time, block parties have taken on lives of their own. Prospective residents who tour the Village in the summer and fall will see the parties and notice the racial diversity of the neighbors gathered around bouncy houses and barbecues. The norm thereby generates a visible indicator of integration, making the Village appeal to prospective residents who value racially diverse places. When the

community makes decisions about zoning, schools, and other policy issues, these residents are likely to support choices that foster integration.

Still more good news is that the residents attracted by these integration-affirming norms will become sources of information about life in communities that have achieved integration or are working towards it. This information will influence the housing choices of the residents' families, friends, and larger social circles.¹⁹⁴ Some of these individuals will already perceive integration as a positive attribute, but others will not. What residents say about their experiences in racially integrated places, or what friends and family see when they visit, can help combat stereotypes about unwelcoming Whites, lesser public services, and so forth. This dismantling of pre-conceptions will encourage more people to consider racially-integrated communities.

VII. CONCLUSION

Faulkner's famous words about how the past is not even the past are part of "a transcendent message" about people eventually rising above racial divisions and recognizing "the ties that bind us all."¹⁹⁵ This Article argues that segregation is a past and present that communities can move beyond. It begins with municipalities deliberately choosing integration instead of segregation. Once a community chooses integration, it creates integration-affirming norms. These norms then promote integration and signal to the world at large that the community values racial integration. This attracts new members who similarly value integration and are likely to support policies and engage in behaviors that foster it. As this process unfolds, racial segregation becomes part of the community's past and integration becomes part of its present. However, all of this depends on a crucial first step: communities making the deliberate choice to integrate.

¹⁹⁴ See KRYSAN & CROWDER, *supra* note 19, at 220–23.

¹⁹⁵ Scott Horton, *The Past Is Not the Past. Or Is It?*, HARPER'S MAG.: BROWSINGS (Mar. 24, 2008, 9:07 AM), <https://harpers.org/blog/2008/03/the-past-is-not-past-or-is-it/> [<http://perma.cc/9ZYT-RQ5D>].