

Restrictive Covenants and Their Role in the Rise of Residential Segregation in the U.S. in the First Half of the 19th Century

Environment and Inequality

Abstract

Racial restrictive covenants played a central role in the establishment of residential segregation throughout the nation in the first half of the 20th century. Formally, they are contractual agreements between property owners and neighborhood associations to ban the lease, occupancy, or sale of property to certain racial groups, particularly blacks. Beginning as a predominantly southern phenomenon, racial restrictive covenants did not become widespread in the north until the Great Northern Migration which drastically altered the demographics of northern industrial cities. Though originally racial restrictive covenants operated at the local level, they later garnered support from the federal government through the policies of the Homeowners Loan Corporation (HOLC) created in 1933 and subsequently the Federal Housing Agency (FHA) created in 1934. While the use of racial restrictive covenants was upheld by the Supreme Court in *Corrigan v. Buckley* (1926), they were eventually deemed unconstitutional and in violation of the 14th Amendment in the monumental case *Shelley v. Kraemer* (1948). Therefore, this paper will examine the social, political, and legislative history of racial restrictive covenants.

“It is intended that the said premises are restricted to the use and occupancy of the Caucasian race only.” Underwriting Manual published in 1938 by the Federal Housing Agency

Residential segregation was promulgated in the U.S. throughout much of the 20th century by various players and methods, but perhaps nowhere was its manifestation more blatant than in the form of restrictive covenants. Racial restrictive covenants are contractual agreements between property owners and neighborhood associations to ban the lease, occupancy, or sale of property to certain racial groups, particularly blacks.

This topic interests me for a number of reasons. Firstly, I had not been aware of such an explicit contractual method of residential segregation until we studied them in this class and thus, I was very curious to find out more. Secondly, my mother lives in a suburb north of Chicago and I have considered doing Teach for America there. Knowing that this city was in many ways the model for the implementation of racial restrictive covenants, I wanted to gain a better understanding of what role they have played in shaping the city into the form we see today. The beginning of the 20th century saw a drastic rise in the use of racial restrictive covenants; first in the South and subsequently in the north. I will examine the social, political, and legislative history of the topic of

racial restrictive covenants from the perspective of race as this subject lends itself inherently to this method.

Racial Zoning and the Roots of Racial Restrictive Covenants in the South

Interestingly though the majority of racial restrictive covenants have applied to blacks, the earliest restrictive covenants were created in California toward the end of the 19th century in an effort to ban Chinese immigrants from certain neighborhoods. It was not until the beginning of the 20th century that racial restrictive covenants began to appear throughout the U.S., particularly in the south. In fact, using the appearance of state appeals pertaining to racial restrictive covenants as an indication of their frequency in that region, one can surmise that though they were already gaining popularity in the South and the Border States (Kentucky, Tennessee, etc...) as early as 1905, they did not become prevalent in the North and the Midwest until the 1920's. Initially, the legitimizing of the use of racial restrictive covenants by the courts played a significant role in their promulgation (Jones-Correa 2000).

In the South, the spread of racial restrictive covenants was closely tied to the practice of racial zoning or the explicit designation of separate residential areas for blacks and whites. This phenomenon became widespread throughout the beginning of the 20th century and was applied in practically every large southern city; Baltimore, Richmond,

Atlanta, and Louisville to name a few. Though, it continued subversively, the propagation of explicit racial zoning was brought to a halt in 1917 with the court case *Buchanan v. Warley*, in which the Supreme Court deemed racial zoning unconstitutional on the grounds that it interferes with the property rights of the individual (Gotham 2000). Signifying the loss of one method of racial segregation; this monumental case can be regarded as the origin of a huge growth in the popularity and use of racial restrictive covenants. Though valid with respect to the South, this method of explaining the emergence of racial restrictive covenants loses validity regarding the North as racial zoning was predominantly a southern phenomenon. Thus in examining the appearance of racial restrictive covenants in the North one must look to other influences, particularly those related to the Great Migration.

The Great Migration, Racial Riots and the appearance of racial restrictive Covenants in the North

Beginning in 1910 and particularly after 1917, the migration of blacks from the South to the North, specifically to northern industrial cities such as Detroit and Chicago, accelerated enormously. For example, statistics show that approximately 500,000 blacks moved from the South to the North between 1910 and 1920. Numerous factors triggered this trend. The devastation of the cotton crop throughout successive years,

tensions from sharecropping, and the widespread occurrences of lynching drove blacks away from the South. On the other end, blacks were attracted to the new job market created by the war and the appearance of anti-immigration laws which shrunk the pool of laborers available (Jones-Corea 2000).

Job competition coupled with the strain the rising population put on the housing market invariably exacerbated tensions between the white and black community. These tensions manifested themselves in the form of increased racial violence and race riots. For example, there were 14 major race disturbances in the U.S. between 1917 and 1921 (Dean 1947). This intensification in racial aggression helped trigger the rise of institutions advocating residential segregation as a solution to racial tension. Thus, the institutionalizing of residential segregation and the proliferation of racial restrictive covenants emerged as central trends in northern industrial cities in the 1920's. Perhaps nowhere were these trends more apparent than in Chicago.

Chicago: The Precedent for Methods of Residential Segregation and the Application of Restrictive Covenants

Because Chicago was one of the forerunners in the North in establishing the use of restrictive covenants and residential segregation, we will examine it as an example to illustrate emergent national trends pertaining to restrictive covenants. Homeowners associations and real estate boards defined themselves as key players in the crystallization of racial segregation. Property owners associations in Chicago, as elsewhere, appointed committees to write up restrictive covenants and purchase property from any remaining blacks on their blocks (Gotham 2000). At the same time, the Chicago Real Estate Board attempted to garner support for block by block segregation from local black leaders without much success. The NAACP had been highly vocal in opposition to racial restrictive covenants from the moment they appeared. In general, the Chicago Real Estate Board promoted a manifesto of racial segregation and any real estate agents who did not agree to abide by this discriminatory ideology were blacklisted and lost many of their critical business contacts (Plotkin 1997).

The creation of a racially restrictive covenant requires the consent and signatures of all property owners in the neighborhood and thus, was time-consuming and sometimes to difficult to implement. For this reason, though extremely widespread (some estimate that more than 50% of Chicago's residential areas were constrained by restrictive covenants by 1947), the abundance of restrictive covenants varied throughout the city.

For example, they were conspicuous in white areas bordering black neighborhoods which were viewed as at high risk of infiltration. They were also quite common in new suburbs where the developer could write them directly into the deed even before the initial sale (Plotkin 1997).

The trends of segregation were not as simple as white and black but also defined themselves on the axis of quality of neighborhood. Often the only neighborhoods left to the black community were those located near industries or other more environmentally degraded, less desirable areas of the city. Furthermore, as a result of overcrowding due to the inability of blacks to find other neighborhoods into which they could move, the cleanliness and overall sanitation of their neighborhoods often deteriorated. Also, the fact that black neighborhoods were predominantly those in the center of the city where structures were old and often difficult to maintain exacerbated the challenge of sustaining necessary hygienic and environmental conditions. In this way, racial restrictive covenants were a means of forcing blacks to remain in crowded environments that were not up to desired or required standards with respect to safety, sanitation services, and general environmental health (James-Corea 2000).

Chicago was not just a city that emerged as a leader simply by the precedent it set but additionally it took an active role in the promulgation and promotion

of the use of restrictive covenants elsewhere through the activities of the National Association of Real Estate Boards (NAREB) founded there in 1908. A doctrine founded on the principle of residential segregation was even added explicitly to their code of ethics in 1924 and here, as was the case with the local Chicago Real Estate Board, those who refused to follow this protocol were excluded from the association at the expense of crucial networking ties. Though the actions of the NAREB established the idea of an institutionalized support for restrictive covenants at the national level, the role of the federal government did not come into play until after 1933. Nonetheless, when it did take on the task of addressing housing issues; the federal government played a critical role in cementing the institutionalization of residential segregation (Jones-Corea 2000).

The Endorsement of Race Restrictive Covenants by Federal Institutions

The Home Owners Loan Corporation (HOLC) was created in 1933 with the intent of reducing mortgage foreclosures. Thus, it was designated the purpose of monitoring long-term mortgages and therein, one of its principle tasks was appraising the values of homes. Their appraisals consistently favored all-white suburbs in comparison to older, mixed-ethnicity neighborhoods. In this manner, blacks and other minorities were repeatedly denied mortgage loans (Gotham 2000). This pattern of the systematic

endorsement of racial segregation continued through the action of the Federal Housing Agency (FHA), created in 1934. Deemed responsible for promoting home ownership in the U.S., the FHA does not give mortgage loans itself, but instead insures loans given by private lenders. In the case of the FHA, their underwriting manual, published in 1938, supports explicitly the principles of racial segregation and the use of restrictive covenants. References to racial considerations were not removed until 1947 (Dean 1947). The reinforcement of the racial segregation ideology by these federal institutions is not surprising when one considers that many of the people who had previously been professionals in the real estate sector went on to work for the FHA. The implications of the role they played in systematically promoting racial segregation were nonetheless profound.

The Role of the Court and the Banning of Racial Restrictive Covenants

Though the judicial history of racial restrictive covenants contains numerous instances of local and state appeals, two sets of Supreme Court cases were particularly important in determining the precedent for racial restrictive covenants. In *Corrigan v. Buckley* in 1926, the Supreme Court found that private racial restrictive covenants do not

violate the civil rights clause of the constitution and thus are legitimate. Furthermore, they specified that though an individual has the right to own or occupy property, he does not have the “constitutional power to compel sale and conveyance to him of any particular private property”. Perhaps in an attempt to temper their ruling, they added that both classes exercise the same power and thus a black man can also deny sale of his home to a white man. Thus, this case upheld the idea of racial segregation and aided its proliferation for more than 20 years (James-Corea 2000).

Then in 1948, the Supreme Court was presented with a group of cases all concerning the legitimacy of race restrictive covenants. Generally referred to collectively as *Shelley v. Kraemer* (St. Louis), this ruling also involved *McGhee v. Skypes* (Detroit), *Hurd v. Hodge* (D.C.), and *Urciolo v. Hodge* (D.C.). In this case, the Supreme Court deemed racial restrictive covenants unconstitutional because they deny a group their 14th amendment right; the right to equal protection under the law. However, they once again tempered their statement, though in the opposite direction, specifying that the restrictive covenants themselves cannot be regarded as a violation of the 14th amendment and therefore are legitimate as long as no actions are taken by the state to enforce them. Thus, thanks to this ruling, racial restrictive covenants fell out of practice after 1948 (Gotham 2000).

Therefore, racial restrictive covenants played a central role in the establishment of residential segregation throughout the nation in the first half of the 20th century.

Beginning as a predominantly southern phenomenon where they were often coupled with residential zoning measures, racial restrictive covenants did not become widespread in the north until the Great Northern Migration which drastically altered the demographics of northern industrial cities and exacerbated racial tensions. Chicago, which served as a precedent for the implementation of racial restrictive covenants at this time illustrates the role that Homeowners' Associations and Real Estate Boards often played in their promulgation. Though originally racial restrictive covenants operated at the local level, they garnered support from the federal government at the time of the creation of first, the Homeowners Loan Corporation (HOLC) in 1933 and subsequently, the Federal Housing Agency in 1934. Their actions and policies served to further institutionalize the use of racial restrictive covenants. While the use of racial restrictive covenants was upheld by the Supreme Court in *Corrigan v. Buckley* (1926), they were eventually deemed unconstitutional and in violation of the 14th Amendment in the monumental case *Shelley v. Kraemer* (1948). Despite their decreased use after 1948, restrictive covenants can still be found in many deeds and neighborhood bylaws even today (Dawkins 2004).

Many states and municipalities have made efforts to erase these historic remnants. In

Washington, for example, legislatures passed measures voiding restrictive covenants in 1969 (Motoko 2005). While racial restrictive covenants may have no power today, the effects of residential segregation trends instituted through their proliferation remain prevalent and thus, they hold significance not just from a historical standpoint, but also in the context of examining the existing housing situation.

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