

## Seeking Hope at Home

Extensive research has documented how neighborhood conditions affect life outcomes. Entire fields of sociological study are devoted to exploring the ways in which people from areas of concentrated poverty share certain challenges. In light of their work, most researchers agree that the location of a person's home will shape many facets of their life. The discovery underscores the importance of crafting fair housing policy in the United States. Unfortunately, segregation by class and race has persisted throughout the twentieth century. African-Americans in particular have struggled since the Great Depression to find adequate housing. Their efforts have been complicated at times by whites, who have used a variety of tactics to prevent blacks from settling in or near certain neighborhoods. The judicial system supplied some remedies to end these discriminatory acts but most cases had a limited impact because the deciding opinions were narrowly tailored, allowing individuals to carve loopholes into the language. To an extent, the 1948 Supreme Court case of *Shelley v. Kraemer* was an exception for its strong, unanimous opinion. Though it came under fire for its reasoning, the opinion was still regarded as a clear indictment of discriminatory housing policies and emboldened blacks as the Civil Rights Era dawned. For the first time, it provided fair housing advocates a legal foundation upon which they could galvanize change, prompting them to push harder for reform than ever before. The *Shelley* decision did not end a movement but rather sparked one by infusing energy and confidence into fair housing advocates who suddenly enjoyed the backing of Constitutional law.

African-Americans have endured problems trying to secure adequate housing since the beginning of the twentieth century. Demographic changes have only exacerbated the difficulties. In the 1920s, blacks migrated from the rural South to the urban North in huge numbers as the agricultural economy faltered and the industrial economy strengthened. While seeking work in

the factory towns throughout the Midwest and Northeast, blacks settled in the nation's major urban centers, such as St. Louis, New York, and Detroit (Meyer 32). Racial tensions escalated as the soaring demand for housing pushed whites and blacks into closer proximity than ever before. Whites grew afraid the growing black population would drive down property values and began taking steps to drive the new arrivals further from their neighborhoods. The push only heightened tensions and often led to violent disagreements. For example, in Detroit, a mob attacked the home of Ossian Sweet, the lone African-American on a certain block (Meyer 38). The confrontation ignited clashes throughout the city, foreshadowing the many battles that would ensue in the coming years over the integration of neighborhoods.

The housing crisis in urban centers did not improve with the onset of World War II when cities transformed their factories to start producing huge quantities of military arsenal. The new jobs accompanying the change prompted an even larger black migration northward and increased demand for housing in an already tight market. With the housing crisis growing more acute by the year, whites started insulating themselves from the prospect of homelessness or black encroachment. For decades, they had been forming neighborhood associations that could enforce restrictive covenants, which would protect neighborhood assets and keep blacks at a distance. Restrictive covenants "took the form of an appendix or article in the deed not to sell, rent, or lease property to minority groups" (Jones-Correa 544). They are private agreements written by homeowners to keep certain individuals out of particular neighborhoods. They had the practical effect of overtly discriminating against blacks and limiting their choices in the housing market.

Restrictive covenants were not the only tactic employed by whites to unfairly distort the housing market. City governments also incorporated racial zoning into city planning, which were laws that explicitly forbid blacks from settling in certain sections of a city (Jones-Correa 548).

The Supreme Court struck down such ordinances in 1917 in the case of *Buchanan v. Warley*. The justices ruled the ordinances an unfair display of state power that deprived citizens of their individual property rights as guaranteed by the Constitution because they precluded blacks from fully exploring all their housing options (Meyer 26). The *Buchanan* case did little to actually open the housing market, however, because the decision applied only to state governments. Real estate agents could still steer blacks from certain neighborhoods because they were part of a private enterprise. Since restrictive covenants were also the result of private agreements, they too were still allowed under the decision. Only racial zoning, as an act by a public governing body, was banned, which meant other forms of housing discrimination could continue.

Restrictive covenants were formally challenged in the judicial system in the early 1920s, but the Supreme Court did not offer much relief for blacks then either. In the case of *Corrigan v. Buckley*, the Court concluded covenants were permissible because each citizen possesses the power to decide who to sell their property too, and the government should not attach any stipulations to such private exchanges. “The Constitutional right of a Negro to acquire, own, and occupy property does not carry with it the constitutional power to compel sale and conveyance to him of any particular private property. The individual citizen, whether he be black or white, may refuse to sell or lease his property to any particular individual or class of individuals” (*Corrigan v. Buckley*). Even if discrimination exists, the courts do not hold the power to remedy the situation because no laws mandate whites must consult with blacks before selling their property. In a free market, individuals enjoy the liberty to dispense with their possessions as they see fit without outside interference. Many viewed the decision and its rationale as validation that the Fourteenth Amendment’s due process clause did not extend to private actions (Cahen 724). In matters of criminal law, everyone shares certain protections, but they do not stretch to cover

economic activity. The *Corrigan* decision enabled whites to continue discriminating against blacks and keep them out of their neighborhoods with restrictive covenants. As a result, blacks remained confined to certain sections of cities that were increasingly overcrowded. Despite the deteriorating conditions, the situation was overshadowed throughout the 1930s by the country's economic turmoil. Not until 1940 did the NAACP adopt a formal strategy to address the housing issue and its blatant, discriminatory elements (Meyer 56).

The NAACP launched a two front attack in 1940 to secure fair housing rights for blacks. In part, they would lobby local and state governments, but their main tactic was to bring housing cases before the federal judiciary that could be tried on constitutional grounds. Over the next decade, lawsuits were filed throughout the country to challenge the legality of racial covenants. The first of these to reach the Supreme Court was *Hansberry v. Lee* in 1940. White owners of a tenement in Chicago had threatened a black man, Hansberry, to move off the premises shortly after his arrival. The white owners claimed a covenant denied him a right to occupy the space. The Court found *Hansberry* actually could live in the building, a victory for the NAACP, but the win proved to be symbolic. The justices ruled only on a "technicality...and did not rule on racial deed indentures, nor challenge the *Corrigan* precedent" (Meyer 56). The Court instead found that the original covenant did not include the required number of signers to qualify as enforceable. Rather than banning all covenants, the justices merely voided a single one. The decision did not address any Constitutional questions so it had little practical effect, although it did provide the NAACP with a moral victory on principle.

The NAACP continued to press cases involving covenants throughout the decade, but the Supreme Court did not hear another appeal pertaining to the covenant issue until 1948 when they merged the cases of *Shelley v. Kraemer* and *McGhee v. Sipes*. The *Shelley* case originated in St.

Louis when a black couple, the Shelleys, bought a home on a white block and were promptly sued by the neighborhood association. The NAACP recognized it as an opportunity to force a final confrontation on the covenant issue and took up the case. The first ruling came down in the Shelley's favor, but the Supreme Court of Missouri sided with the neighborhood association, identified as Kraemer because that family had signed the original covenant (Meyer 92). The case then proceeded to the Supreme Court where six justices heard arguments on its merits in January of 1948. In May of 1948, the six justices who heard the *Shelley* case offered a unanimous opinion, authored by Fred Vinson, which, in effect, outlawed racial covenants.

The Supreme Court's decision in *Shelley v. Kraemer* was finely parsed. The justices made two key rulings, one on the validity of racial covenants and another on the right of states to enforce them. The first finding was actually a blow to blacks. The justices decided that racial covenants were permissible under provisions in the Constitution, a ruling they based upon the conclusions reached in the *Buchanan* case (*Shelley v. Kraemer*). Precedence carried great weight in their view. In affirming those earlier decisions, the justices affirmed that the Constitution allowed for covenants because they are contracts between private entities. "That (Fourteenth) Amendment erects no shield against merely private conduct, no matter how discriminatory or wrongful" (*Shelley v. Kraemer*). The opinion reflected a common deference the Court still exhibits today to respect prior decisions. Justices are often weary of invalidating the findings of their predecessors, a practice which has caused inertia in the system and introduced the Latin term *stare decisis*, "let it stand," into the legal lexicon.

The justices were not truly willing to let racial covenants stand in the *Shelley* case. After reaching their first conclusion on the validity of the private contracts, the justices continued to delve deeper into the matter because "there was more" beyond just contracts. Private citizens had

drawn up the terms in covenants, but those individuals were not the sole enforcer of the deed. In many situations, the judiciary had also played a role in the implementation of the agreements. The plaintiffs in the case, the Shelleys, claimed the judiciary's involvement amounted to a State action, which would have violated the law under *Buchanan v. Buckley (Shelley v. Kraemer)*. The justices agreed on the grounds that the decision of a state court is, in effect, a state action because their prescriptions must be carried out by a state official. "That the action of state courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment" (*Shelley v. Kraemer*). The justices again invoked the Fourteenth Amendment. This time, though, they pointed toward the equal protection clause, which mandates states provide equitable shelters against discrimination or abuse for all citizens. In shifting focusing from the due process clause, which had been at the center of earlier covenant cases, to the equal protection clause, the 1948 Supreme Court found legal ground on which to ban racial covenants. An examination of the definition of state action was the crucial feature in their opinion because it enabled them to discover "enforcement of racial covenants by state courts constitutes state action prohibited by the Fourteenth Amendment" (McGraw and Nesbitt 280). It was an innovative line of legal reasoning, but the Court needed to adopt a novel approach to render racial covenants unconstitutional given earlier precedent. "We hold that in granting judicial enforcement of the restrictive agreements in these cases, the States have denied petitioners the equal protection of the laws and that, therefore, the action of the state courts cannot stand" (*Shelley v. Kraemer*).

The NAACP again celebrated their victory at the Supreme Court, particularly because it was viewed as more consequential due its grounding in constitutional law. Still, the decision had limits because covenants had not been explicitly banned, only their enforcement by state officials

(McGraw and Nesbitt 280). Furthermore, the Court's definition of "state action" confused many in the judiciary. "*Shelley v. Kraemer* injected something new into the state action doctrine of the fourteenth amendment" (Cahen 727). The Court revised precisely what constituted a legal action on the part of the state. The Court did not clearly define all activities that would be included under this new umbrella, but instead referenced just one, a choice that opened up the prospect for new legal challenges in a variety of other cases. Plaintiffs and defendants could suddenly begin examining government actions and search for maneuvers that would qualify as unconstitutional. It was a scary prospect for lower courts, which were left to sort out the mess. At least initially, many of them simply refused to jump into the debate. Instead, most courts "(refused) to give effect to the full scope of the decision, many of them either ignoring *Shelley* or summarily dismissing it" (Cahen 727). Lower courts could not decipher the justice's intent in the decision outside their desire to ban covenants. Rather than trying to re-write the law on their own, they just fell back on old statutes when assessing state action. In spite of the civil rights advance *Shelley* was actually damaging to the judicial system due to its vaguely defined decision.

The Court's convoluted opinion sowed much confusion into the judicial system, a reality that reflected the justice's desire to correct an egregious violation of citizen rights in spite of little legal basis. The justices knew racial covenants should be outlawed, but they struggled to find solid lines of judicial reasoning in support. Therefore, they rationalized in order to achieve "a morally justified outcome" (Strauss 975). A similar conundrum consistently faced courts throughout the civil rights era as they settled other discrimination suits. It was difficult to strike a balance between protecting private rights, such as when the owner of a personal business wants to set company policy, and protecting constitutional liberties, such as allowing every individual to frequent that business (Strauss 976). The *Shelley* case represented merely the first attempt at

reaching the delicate equilibrium. As such, the decision was examined frequently for direction on the matter, and subsequent rulings used narrowly reasoned lines of thinking to justify choices that, while morally correct, were legally questionable.

The strained legal reasoning in the *Shelley* case created an opening for citizens still vehemently opposed to open housing to craft policies that would keep blacks out of their neighborhoods. Despite the rulings, discrimination did not fade quickly in the housing market. Neighborhood associations revised the wording in some of their mortgage contracts in order to replace references to race, which were unconstitutional, with references to certain types of unwanted individuals (Sugrue 222). Implicit in the wording was an understanding blacks would not qualify. In addition, lending institutions became reluctant to grant loans to blacks if they intended to move into a white neighborhood (Meyer 116). The practice, which was labeled redlining, became a form of de facto segregation with blacks still being relegated to only certain sections of cities. The end result was that in the decade following the *Shelley* decision “Blacks remained overwhelming concentrated in the central city” (Darden 681). Most still lacked equal access to the real estate market.

The housing situation began improving incrementally during the 1960s as the civil rights movement gained momentum. Two crucial factors played a role. First, President Kennedy shifted the housing issue into the public spotlight shortly after taking office. He signed an Executive Order that outlawed discrimination on the part of lenders or landlords. It also mandated the federal government practice fair housing principles in its public housing units (Meyer 169). The Executive Order had come after years of aggressive lobbying by the NAACP. Once the organization had identified housing as a central issue, they started pressuring legislatures throughout the country and promoted individuals within the system that would



advance the cause. The efforts cultivated a favorable policy environment for Kennedy's order, which "marked the first time that the federal executive had declared its support for the philosophy of open housing" (Meyer 171). Unfortunately, the pronouncement did not cure all problems in the marketplace. The government agencies responsible for enforcing the regulations never applied the scrutiny necessary to ensure all states and municipalities followed the guidelines. Plus, the housing industry and homeowners kept resisting the reforms. Still, the open housing movement had been placed on the national agenda. It was clear the issue had to be resolved.

Civil Rights activists in the 1960s situated open housing as a central plank in their equality campaigns of the decade. Community organization played an increasingly active role in keeping the public's attention fixed on the issue too. Grassroots activists coordinated "conscious political efforts with broad community support" (Yates 218) to demonstrate against the housing injustices. Major leaders in the civil rights movement, such as Martin Luther King Jr., and the NAACP also kept pressure on authorities by organizing marches in metropolitan centers throughout the North and Midwest. Marches were planned in Chicago and Detroit to highlight the problem and demand a fair resolution that drew thousands of supporters (Meyer 183). With so much emphasis placed on the issue, housing was conflated with the entire civil rights movement, and when the landmark struggle finally achieved its legislative goals in 1968, housing was not forgotten. Part of President Johnson's Great Society platform included passage of the Fair Housing Act of 1968, which codified into federal law equitable treatment in the housing market and the ban on covenants blacks had been seeking for decades (Yates 218).

The signing of the Fair Housing Act did not mark the end of residential segregation. Throughout the 1970s and 1980s black segregation actually increased (Darden 683). Blacks

remained isolated from whites throughout the country and still endured great difficulties when trying to buy a home. Segregation remained intact with whites settling in the suburbs and blacks concentrated in urban neighborhoods. “Regardless of socioeconomic status most blacks remain highly segregated in central cities of metropolitan areas” (Darden 684). Part of the problem can be attributed to discriminatory selling practices. The unfair treatment of blacks common in the first half of the twentieth century still prevailed. “Housing audit studies show high levels of direct racial discrimination by realtors and landlords against African-Americans... There is mounting evidence that mortgage lenders discriminate against African-Americans” (Bobo, Kluegel, and Smith 18). The practices lenders and realtors now employ to steer blacks from certain neighborhoods are more discrete but have equally as pernicious consequences as those used earlier in the century. They also produce the same effect of keeping blacks from settling in particular sections of a city.

The most common form of discrimination against blacks in housing today is mortgage redlining. Similar to FHA policies in the 1950s, redlining today involves “the denial of credit to low income or minority communities” (Silverman). Many studies have shown that minorities do not have the same access to credit as their white counterparts unless they choose to locate in specific areas. Blacks are encouraged to move into only a few communities. Often these neighborhoods are undergoing demographic shifts so that within a few years they will comprise mainly of minority residents (Silverman). Redlining constitutes a form of de facto segregation. Even though many laws explicitly outlaw discrimination in housing, race still plays a role in the process. The same tactics adopted decades ago in response to *Shelley* are still being used today although not as overtly. “The racial composition of neighborhoods remains a significant factor in the lending process” (Silverman). Lax oversight has allowed the situation to reach the point

where discrimination is still a pressing issue. The country has come a long way, but segregation still exists, just in modified forms.

It is unfortunate race still plays such a prominent role in so many facets of the American experience. Despite the existence of some disparities, it would be false to insinuate the country has failed to make progress on this issue. It should be noted, however, that most advances blacks make are met with resistance. Those with power generally can develop new ways to keep the system tilted in their favor. There is a clear narrative throughout the housing story that displays this reality. When racial zoning was deemed unconstitutional in the *Buchanan v. Warley* case, racial covenants proliferated. Then, in the 1950s, redlining became the primary mode of discrimination, in part, to subvert the Supreme Court's *Shelley v. Kraemer* decision. Today redlining still exists, though federal authorities are improving their oversight of the problem. In response, other methods have surfaced that prey upon blacks looking for a new home. Some unscrupulous mortgage lenders have targeted blacks seeking credit that have limited access to other lines due to lingering and misguided concerns about their ability to make payments. The deals offered through these outlets contain unfavorable terms with interest rates that escalate quickly, leaving homeowners unable to pay the bills. As a result, some families have drowned in debt. The fact a large number of them are minorities shows there are still elements of the housing market in need of reform before the system qualifies as fully fair and equitable.

The current housing turmoil that resulted from predatory lending attests to the need for additional scrutiny and oversight of the industry. Many of the problems that have plagued housing throughout the century are the result of lax enforcement. Had the federal government properly followed the Court's wishes in the *Shelley* decision, the discrimination of the 1950s might have been reduced. Similarly, if the federal bureaucracy was more willing to implement

the policies of President Kennedy's open housing orders, then the need for a mass movement in the latter half of the 1960s might have been diminished. Today, increased oversight of the financial community might result in improved standards that minimize predatory lending while opening avenues for minority investment. The current disregard in government for such a move reflects the bureaucracy's general apathy toward housing issues. The repeated failure of the government to address the problem has incited many activists to push the issue. Without their enthusiasm, many gains in housing would never have materialized. Organizers and firebrands deserve the most recognition for pushing the open housing movement forward. The judicial system has offered limited support and only in brief instances.

It is interesting when studying the open housing movement to note that the Supreme Court's seminal decision on the subject, *Shelley v. Kraemer*, did not so much victoriously conclude the movement as galvanize it. Previously, the Court's rulings had helped perpetuate racist housing practices. Decisions in *Buchanan*, *Corrigan*, and *Hansberry* had the effect of institutionalizing covenants and providing a sort of government endorsement. In 1948, when the Court was willing to reconsider its past decisions, the justice's authoritative voice had the opposite effect. It threw the weight of law and government behind open housing advocates and their arguments. The newfound support provided the impetus that permanently situated open housing on the nation's agenda. The NAACP had done a good job keeping the issue alive by pushing many cases forward, but they had yet to achieve a monumental victory that could spark a broader movement and bolster flagging morale. *Shelley* provided that boost, not so much because of how its prescriptions equalized the market but because of the moral authority it added to the group's activities. Disparities still existed in the housing market, but the public started realizing for the first time the blatant discrimination was truly a betrayal of the country's ideals.

With the knowledge that the Supreme Court was now squarely on their side, activists pressed forward to finally resolve the problem of discrimination in housing. They struggled throughout the 1950s to gain traction, but President Kennedy supplied another lift with his Executive Order. It gave all the organizers hope once again. It proved to those toiling at a grassroots level that success was possible. And so they kept pressing the issue with marches and speeches and events. It was through these local campaigns that people began to recognize the urgent need for housing reform. Eventually, the efforts paid off with the passage of the Fair Housing Act of 1968. The calls had become too loud. The *Shelley* decision's moral challenge from the Supreme Court to end discriminatory housing policies finally translated into a legislative initiative twenty years after the fact. The only reason it remained a priority in the intermittent decades was the vigorous participation of citizens concerned about the subject.

Today, grassroots advocates are still seeking to construct an equitable housing system. Small entities, such as Community Development Corporations and ACORN branches, are the primary vehicles. They maintain the legacy of local organizers that pushed so vehemently for increased accessibility to housing earlier in the century. There has been progress, but injustices remain. The history of the open housing struggle encapsulates the fluidity of the social change process. Not one actor or branch of government alone can catalyze a movement. Nor is there a single chain of events that leads to substantive changes. Rather, there is always a mix of turning points, activists, and policies that contribute. In some situations, like the open housing case, the judiciary offers a needed endorsement on the merits of an issue that propels a movement forward. In other situations, the courts render a final verdict that effectively marks the conclusion of an activist group's long journey. It all depends on the circumstance. And that is the critical point. Circumstance dictates strategy in a social movement. It is impossible to determine when a

turning point will arrive in the scheme, but one can easily chart a course that brings it closer to realization. The key is to keep moving forward in spite of setbacks and always be prepared to adjust tactics. Without resilience and flexibility nothing can be accomplished. They are the two most important ingredients for creating social change.

### Works Cited

- Bobo, Lawrence, James Kluegel, and Ryan Smith. "Laissez Faire Racism: The Crystallization of a Kinder, Gentler, Antiblack Ideology" Published in *Racial Attitudes in the 1990s: Continuity and Change*. Ed. Steven Tuch and Jack Martin. Westport, CT: Praeger. 1997. pg. 15-44
- Cahen, Donald. "The Impact of *Shelley v. Kraemer* on the State Action Concept" *California Law Review*. Vol. 44, No. 4 October 1956. pg. 718-736

*Corrigan v. Buckley* 271 U.S. 323. 1926

Darden, Joe. "Black Residential Segregation Since the 1948 *Shelley v. Kraemer* Decision" *Journal of Black Studies*. Vol 25 No. 6 July 1995. pg. 680-691

Jones-Correa, Michael. "The Origins and Diffusion of Racial Restrictive Covenants" *Political Science Quarterly*. Vol. 115, No. 4 Winter 2000-2001. pg 541-586

Marcuse, Peter and Dennis Keating. "The Permanent Housing Crisis: The Failures of Conservatism and the Limitations of Liberalism" Published in *A Right to Housing: Foundation for a New Social Agenda*. Ed. Rachel Bratt, Michael Stone, and Chester Hartman. Philadelphia: Temple University Press. 2006. pg. 139-162

McGraw, B.T. and George Nesbitt. "Aftermath of *Shelley v. Kraemer* on Residential Restriction by Race" *Land Economics*. Vol 29, No. 3 August 1953 pg. 280-287

Meyer, Stephen. *As Long as They Don't Move Next Door: Segregation and Racial Conflicts in American Neighborhoods*. New York: Rowman and Littlefield. 2000

Silverman, Robert. "Redlining in a Majority Black City?: Mortgage Lending and the Racial Composition of Detroit Neighborhoods" *Western Journal of Black Studies*. Vol 29, iss 1, pg. 531

*Shelley v. Kraemer* 334 U.S 1. 1948

Strauss, David. "Discriminatory Intent and the Taming of Brown." *University of Chicago Law Review*. Vol 56, No. 3. Summer 1989 pg 935 – 1015

Sugrue, Thomas. *Origins of the Urban Crisis*. Princeton: Princeton University Press. 1998

Yates, Larry. "Housing Organizing for the Long Haul: Building on Experience" Published in *A Right to Housing: Foundation for a New Social Agenda*. Ed. Rachel Bratt, Michael Stone, and Chester Hartman. Philadelphia: Temple University Press. 2006. pg. 213 - 239