



Segregation legal and natural: An empirical study of the legally protected and free market housing ownership on the Peak

Lawrence W.C. Lai*, Valerius W.C. Kwong, Jason W.Y. Kwong

Department of Real Estate & Construction, University of Hong Kong,

A B S T R A C T

Keywords:

Racial segregation
Agglomeration
Crown Leases
Peak
Price control
Zoning

The phenomenon of protectionism in land policy has survived in the globalised age for various reasons. This case study on the destruction of racially discriminatory zoning in laissez-faire Colonial Hong Kong shows what could happen when protectionist measures are removed by the government. Approaching the reality of discrimination from Cheung's (1974) economic theory of price controls, this paper argues, on the basis of the records of official speeches and writings and a small sample of post-war assignments for housing lots, that the pre-World War II segregation law was motivated more by economic protectionism in favour of Europeans rather than by any social stigma against non-Europeans or genuine environmental externalities generated by Chinese housing. The paper approaches the same phenomenon from a new perspective and with a better method. It was revealed that natural or contractual, as opposed to legal, agglomeration could happen even under written discriminatory laws that allowed a degree of inclusion for the ethnic group that suffered discrimination. This revelation was based on an examination of the ethnicity of the original owners and subsequent purchasers of all identifiable 627 housing lots on the Peak in Hong Kong for 115 years from 1876 to 1990, as found in the 421 relevant Crown Leases and 1255 assignments. These housing lots fell into 23 street neighbourhoods and could be classified by altitude. The key findings lend support to the arguments that even if the post-war colonial literature evaded or even distorted the subject, there was no true racial animosity between European and Chinese citizens because the exclusionary laws were driven by economic protectionist motives and the repeal of the laws was socially and economically beneficial for both Chinese and Europeans.

© 2011 Elsevier Ltd. All rights reserved.

Introduction

The persistence of racial segregation under free market conditions, likely a consequence of the positive benefits of agglomeration, has been interpreted largely from an economic perspective (Chung & Kalnins, 2001; Logan et al., 1994; Rosenthal & Strange, 2003; Wheeler, 2001), and suggests that racially discriminatory laws in the past might well have been propelled not just by racial considerations, but *economic* ones, too. Whether or not laissez faire could be a viable policy alternative to positive discrimination against a certain ethnic group after such laws were removed has not been given due consideration. This post-colonial case study of Colonial Hong Kong will shed light on this question, as well as on the persistence of protectionist *land ownership* measures in many countries.

Although ownership in the 'agglomeration' literature has concentrated principally on business ownership rather than on

property (see, for instance, Logan et al., 1994), the issue of *land ownership* in segregation research has been looming, as exemplified by the recent work of Burger (2006) in an European Union context and the works of Uyanga (1989), Christopher (1997, 2001), Huchzermeyer (2001), McConnachie & Shackleton (2010), Firman (2004), and Kalabamnu (2006). It is hoped that this Asian case study will provide useful insights and technical references for researchers and policymakers who are engaged in residential planning in a market economy freed from racially discriminatory laws.

To provide further and better evidence for the hypothesis and correcting certain errors in the pioneering work on housing segregation in Colonial Hong Kong by Lai & Yu (2001), this study on housing agglomeration is original in both theoretical and methodological terms. Theoretically, it reveals an interesting phenomenon of the acquisition and agglomeration of properties by Chinese buyers, notwithstanding the exclusionary zoning that prohibited their residence on such properties, thus providing another real life example of Cheung's (1974) theory of price control that was formally modelled by Lai & Yu (2001). In terms of research methodology, as

* Corresponding author.

E-mail address: wclai@hku.hk (L.W.C. Lai).

revealed in the literature review, this paper will demonstrate the fruitfulness of using reliable, publicly available, and easily verifiable data found in conveyancing documents viz. Crown Leases and assignments to evaluate the degree of segregation or agglomeration present. Besides these research implications, this work should be a useful reference for policymakers who are determined to eradicate segregation by removing artificial barriers in the land market.

The historical background of racial segregation in Hong Kong

Colonial Hong Kong, founded in 1842, was world famous for being economically successful under a laissez-faire economy governed by the rule of law. However, its land market, based on a near universal leasehold system, was regulated well before the enactment of the *Town Planning Ordinance* of 1939.

A survey of the post-World War II writings in English by Lai (2000) on Endacott (1964a, 1964b: 243), (Sayer 1975: 128–9), Evans (1971: 26–7); Hopkins (1971), Hughes (1976: 125–6), Miners (1975), Criswell and Watson (1982: 63), Pryor (1983), Bristow (1984: 258), Miners (1987: 54–5, 290, 293), Wesley-Smith (1987), Morris (1988: 138–0, 190–1), Birch (1991: 46), Cameron (1991: 215), Smith (1993: 132), Welsh (1993: 378–9), Courtauld and Holdsworth (1997: 46), Morris (1997: 141), Flowerdew (1998: 18–9), Carroll (1999: 14), Wiltshire (1995: 11), Owen & Roberts (1999: 18), and Wood (2000), but omitting Briggs & Crisswell (1977), Tsai (1993), Smith (1995), White (1996), Fung (1997), Ting (1997, chapt. 3), Wesley-Smith (1998), Munn (2001), and Tsai (2001), revealed that the presence of racially discriminatory zoning laws driven by *economic protectionist concerns* to favour Europeans was generally either concealed or disguised as a means to keep out the Chinese with undesirable social and housing habits in the literature. These laws evolved in three stages.

The European district reservation ordinance

The first exclusionary zoning law in Hong Kong was the *European District Reservation Ordinance* of 1888. It prohibited the building of any 'Chinese tenement' within the so-called "European District". It also prohibited the division of residential buildings in the district by more than one person to every one thousand cubic feet of clear internal space. The Ordinance defined a "Chinese tenement" as "any tenement of the type usually designed for habitation by Chinese other than domestic servants". The "European District," defined in Section 2 of the ordinance, referred to a zone in which most hilly residential areas on the Island of Hong Kong were located. It includes the area known as the Mid-Levels. The core of the European or Hill District was the highest mountain on Hong Kong Island, Victoria Peak, or the Peak. The Peak has, since its opening to the general public, been a famous tourist attraction, with excellent views over Hong Kong's Victoria Harbour on a clear day.

Hill district reservation ordinance

The second exclusionary zoning law, the *Hill District Reservation Ordinance* (Ordinance No. 4 of 1904), gave the Peak a *de jure* status as a zone that expressly excluded Chinese inhabitants. It was a successor to the *European District Reservation Ordinance* that had been repealed by the *Public Health and Building Ordinance* of 1903. The *Hill District Reservation Ordinance* defined the Hill District as an "area in the Island of Hong Kong situated above the 788-foot contour and to the west of a line drawn in a north and south direction through Middle or Cemetery Gap, including the hills known as Mount Cameron, Mount Gough, Mount Kellett, and Victoria Peak. The *Hill District Reservation Ordinance* explicitly and

unambiguously prohibited the Chinese from residing in the Hill District zone. Section 3 of the ordinance read:

It shall not be lawful (save in accordance with the provisions of this Ordinance) for any owner, lessee, tenant or occupier of any land or building within the Hill District to let such land or building or any part thereof for the purpose of residence by any but non-Chinese or to permit any but non-Chinese to reside on or in such land or building.

The Peak District (Residence) Ordinance

The third and last phase of exclusionary zoning was embodied in the *Peak District (Residence) Ordinance* of 1918. Sub-section 1 of Section 3 of this ordinance stated:

Subject to the provisions of section 4 of this Ordinance, it shall not be lawful for any person whatsoever to reside within the Peak District without the consent of the Governor in Council.

In 1919, a similar ordinance to restrict the hilly part of Cheung Chau, an island in the New Territories, for consented persons was passed. This was known as the *Cheung Chau (Residence) Ordinance* (Ordinance No. 14 of 1919). The purpose was for the benefit of vacationing British and American missionaries.¹ Although the Chinese members of the Legislative Council were silent during the reading of the bill for the *Peak District (Residence) Ordinance*, they objected and voted against the bill for Cheung Chau. Mr. Lau Chupak said that he could not believe that "of all people, they could have made such a request – preachers and teacher of equality and fraternity that they are" (*Hong Kong Hansard*, 1919: 63–4). Mr. Fok Ho (known to Chinese people as Mr. Ho Fok), another brother of Sir Robert Ho, was more explicit. He said:

In view of the fact that the war had been won by all races in the Empire I cannot be a party to the passing of this Bill which, in my opinion, is nothing more or less than racial legislation (*Hong Kong Hansard*, 1919: 64).

The general requirement for all to obtain consent was apparently based on physical or town planning considerations, as literal interpretations of the 1918 and 1919 ordinances seemed to suggest. However, Lai & Yu (2001) took that the intent of the 1917 law was to ensure that no Chinese could purchase property in the *European* reserves. Their evidence was based on two sources. Note that Governor May was prepared to give his assent to these ordinances because he was surprised that Section 3 of the older law, the *Hill District Reservation Ordinance*, "did not, in law, prevent a Chinese from acquiring his own house in the district and living in it" (Wesley-Smith, 1987: 22). Besides, they were inspired by the Sir Robert Tung Ho saga. Sir Ho (referred to as Robert Ho Tung in materials in the English language and "Mr. Ho Tung" by the Chinese), a Eurasian who was extremely successful in business and held in high regard by the colonial administration, had, by 1917, owned three houses in the Peak District, and his brother, Mr. Kam Tong Ho (known to the Chinese as "Mr. Ho Kam Tong"), had bought another.

The story began when Sir Ho bought a house on the Peak and began to live in it in 1906. A constitutional row occurred in 1908 "when the Chief Justice, Sir Francis Piggott, a tenant of the Eyrie which overlooked the Governor's summer retreat Mountain Lodge, proposed to let the house to Mr. Ho Tung" (Wesley-Smith, 1987: 21).

¹ There was no record of attacks by local Chinese on foreign missionaries in Cheung Chau or other parts of Hong Kong. Indeed, missionaries were generally respected for their charity and education endeavours. The local Chinese Christian population (Catholics and Protestants) has been growing since missionaries came to Hong Kong.

Download English Version:

<https://daneshyari.com/en/article/1048168>

Download Persian Version:

<https://daneshyari.com/article/1048168>

[Daneshyari.com](https://daneshyari.com)