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The misunderstood consequences of *Shelley v. Kraemer*

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ABSTRACT

Shelley v. Kraemer (1948) was a landmark civil rights ruling, in which the Supreme Court held that private racial covenants could not be enforced by the state to evict black buyers of "restricted" homes. Fair housing scholars have generally dismissed or downplayed the practical effects of *Shelley*, since other forms of housing discrimination remained very powerful. Using spatial lag models and detailed geographic data on the location of covenants and patterns of intra-urban black migration, we compare the role of *Shelley* with other forces shaping mid-century neighborhood change. We find that *Shelley* precipitated white-to-black neighborhood transitions after 1948 and changed the nature of the dual housing market in important ways. We also show that increased black mobility produced a sharp increase in intra-black economic segregation during the 1950s and 1960s.

1. Introduction

Shelley v. Kraemer (1948) is one of the most significant decisions in the history of the United States Supreme Court. By holding that neither federal nor state courts could enforce a restrictive covenant to evict a black homebuyer, the Court signaled its willingness to use the Fourteenth Amendment to strike down even indirect governmental actions that fostered racial segregation. It thus heralded a string of decisions that broadened the Equal Protection clause and culminated, six years later, in *Brown v. Board of Education* (Rose, 2004). Yet fair housing scholars, while conceding the legal significance of *Shelley*, have generally dismissed its practical impact on black segregation as unimportant. Some have argued that by the 1940s, restrictive covenants were disfavored by local courts and circumvented by real estate agents (Hirsch, 1983). Others have pointed out that white neighborhoods and institutions had many other methods available to stop black entry (Hirsch, 1983; Klarman, 2004; Massey and Denton, 1993). If covenants had any impact on the housing opportunities of African Americans, these scholars suggest, it was to send a signal to realtors and financial institutions not to disturb the racial homogeneity of white communities, a signal that did not depend on the enforceability of the covenants (Sugrue, 1996; Brooks, 2011).

The general dismissal of *Shelley*'s significance is surprising, because even a cursory inspection of 20th century urban racial geography shows a sharp change in black residential patterns around 1950. Black districts that had been relatively static for decades suddenly began a rapid expansion in dozens of northern cities. Scholars who have noted this change suggest it occurred because the postwar rise of suburbs caused many whites to abandon inner-city neighborhoods (Hirsch, 1983; Massey and Denton, 1993; Sugrue, 1996). In this paper, we try to distinguish and evaluate this "white abandonment" theory alongside a "*Shelley*" theory that limiting the enforceability of restrictive covenants enabled a new kind of black intra-city migration. In part, we do so by advancing a largely novel method of studying black mobility patterns over multiple decades at the census tract level. We apply this method in Chicago and St. Louis – the two cities where we have detailed geographic

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data on the location and timing of restrictive covenants. Using spatial lag models, we find that immediately after *Shelley*, neighborhoods with restrictive covenants ceased to repel black entry, and instead became magnets for black in-migration, often producing the rapid white-to-black transition that became infamous as "blockbusting." We also use census tract data for a larger set of northern industrial cities to evaluate how well the "white abandonment" and "*Shelley*" theories can account for other patterns of mid-century black housing markets and mobility. While we think that suburbanization and white flight from urban neighborhoods played some role in opening up new neighborhoods to black entry, almost every test we devise suggests that the timing and content of *Shelley* was more critical in changing dynamic patterns in black migration. We also find that the increased housing opportunities opened by *Shelley* produced higher economic segregation within the black community, with important implications for subsequent urban development.

2. Racially restrictive covenants in the interwar years

The construction of 20th century black ghettos – characterized by very rigid and extraordinarily high levels of racial segregation – was largely a project of the 1920s. Urban black populations were small at the beginning of the 20th century, and, to the extent limited census data let us measure it, black segregation in 1910 was not notably higher than that experienced by many foreign-born immigrants, such as Italians, Russians, and Hungarians (Lieberson, 1980). As black migration to cities accelerated after 1910, and especially during World War I, escalating racial friction led to a broad perception among whites, initially shared by some black elites, that urban segregation was necessary to preserve urban peace (Philipot, 1978; Weaver, 1948), a perception solidified by a national wave of urban race riots in 1919.

A number of cities passed racial zoning laws during the 1910s, but the Supreme Court's 1917 decision in *Buchanan v. Warley*, finding that such laws violate the Fourteenth Amendment, seemed to foreclose that strategy (Weaver, 1948; Klarman, 2004; Rose, 2004). Private efforts thereafter assumed the leading role, particularly in northern cities.[1] Bankers agreed not to extend credit to blacks seeking to buy into established white neighborhoods (Spear, 1967; Freund, 2007). Real estate agents adopted professional ethics codes prohibiting the introduction of "undesirables" (Plotkin, 1999; Gotham, 2014). White community leaders sought to define clear "white" and "black" districts and organized "improvement" associations that discouraged new black households from moving in and encouraged existing black households to move out – sometimes with violence or at least the implicit threat of violence (Mika, 1951; Spear, 1967; Gotham, 2014).

The discriminatory policies of banks, real estate agents, and neighborhood associations were mutually reinforcing. As segregation gained momentum, which it steadily did from the end of World War I into the beginning of the Great Depression (Lieberson, 1980; Massey and Denton, 1993; Cutler et al., 1999), the lines became clearer and easier to reinforce. Blacks in white neighborhoods became outliers that were progressively easier to target and pressure into leaving. By 1930, very high levels of segregation were an accomplished fact in nearly all American cities with substantial black populations (Massey and Denton, 1993; Cutler et al., 1999). Black districts with well-defined boundaries frequently contained close to 90 percent of all blacks in major cities (Weaver, 1948). The districts were usually close to the urban core, and were bordered partly by industrial/commercial districts and partly by predominantly white neighborhoods (Weaver, 1948; Hirsch, 1983).

However – and this is a crucial point missing from most histories of segregation – the key actors in this process only gradually realized that there was a critical design flaw in the segregation project: it did not have an effective way to account for black population growth. In 1920, most "black districts" in northern cities had substantial non-black populations, so even the large black migration of the 1920s could be accommodated in these areas, as arriving blacks replaced departing whites. By 1930, blacks had not only been almost completely ghettoized; black districts themselves had become overwhelmingly black. If the black population expanded further, through migration and natural increase, where would new households go?

Already by 1930, there is anecdotal evidence that black rents were well above comparable prices in nearby white communities (Weaver, 1948). If ghetto borders were fixed and black population grew, the price disparity could only increase. These disparities would create an increasing temptation for individual whites to sell or rent previously "white" housing to black buyers. Once a few black buyers breached an existing boundary between a black and a white neighborhood, it would be increasingly difficult for other methods of private discrimination to hold back additional black consumers, and the white neighborhood would "turn" integrated, and, if whites fled, re-segregate as a new part of the black enclave.

The racially restrictive covenant was the one private, legal mechanism that could maintain the racial integrity of white/black borders even when the demand for housing by blacks exceeded white demand. When property owners entered into a valid covenant, they bound both themselves and any future owner of their property to the covenant's terms (Gotham, 2000; Rose, 2004; Freund, 2007). If a covenant provided that every property owner in a neighborhood agreed not to sell or rent to a nonwhite person, then in principle no one could break that agreement and sell out for a higher price (Long and Johnson, 1947; Rose, 2004). White property owners could essentially lock themselves into a cartel by removing housing stock from black occupancy and creating a binding promise that no one of them would act expediently in the future.

Nevertheless, if racial covenants had some unique advantages, they were also the clumsiest of discrimination devices – especially in established urban neighborhoods. As recently as 1900, real estate covenants of any type had been exotic legal

[1] In the South, active efforts to impose racial zoning continued in a number of cities (Myrdal, 1944). Recent case studies of specific southern cities suggest that these zoning efforts were more widespread than previously thought, and sometimes went unchallenged until the modern civil rights era (see, e.g., Connerly, 2005).