The Misunderstood Consequences of Shelley v. Kraemer
Extended Abstract

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Shelley v. Kraemer (1948) is one of the most celebrated 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. No one questions the legal significance of *Shelley*; in legal circles, it is viewed as a critical precursor to *Brown v. Board of Education* (1954). But housing segregation scholars have tended to minimize *Shelley*'s practical importance. Some have argued that *Shelley* was largely superfluous, because by the late 1940s restrictive covenants were often dismissed by the courts or circumvented by real estate agents. Others have suggested that *Shelley* was ineffective because blacks lacked the capacity to enforce their rights and because white neighborhoods and institutions had so many other methods available to stop black entry. Oddly enough, no one (to our knowledge) has ever undertaken an empirical examination of how Shelley changed the housing opportunities of affected minorities – blacks in particular, but Jews, Asians, and Hispanics as well. In this paper, we attempt such an evaluation, and we find strong support for the proposition that Shelley had a rather dramatic impact upon the housing opportunities available to blacks. Just as important, we find that this shift in opportunities changed the dynamics of black ghettos in ways that have never been understood, and which have important implications for basic debates about urban policy and the black underclass.

The Function of Racially Restrictive Covenants in the Interwar Years

Housing segregation was a comparatively minor issue for American blacks before World War I. Not only was the black population overwhelmingly rural but, most urban blacks lived in the South, where whites generally relied on rigid social codes and Jim Crow laws to enforce social separation. For blacks who lived in northern urban areas in 1910, segregation levels were moderate and not dramatically higher for blacks than for, say, Italian or Polish immigrants. By 1920, however, the situation had changed decisively. The beginning of war in Europe in 1914 fueled large increases in American manufacturing, and a new awareness among southern blacks that genuine economic opportunities awaited them in the North. Some northern factory owners, enticed by the cheapness of black labor and the possibility of using black workers to break the growing power of white unions, actively recruited blacks in the South to migrate north. The black urban northern population roughly doubled between 1910 and 1920. In a number of major cities, blacks by 1920 were the single largest ethnic minority. Since new arrivals in cities tended to cluster close to existing ethnic concentrations, many communities that had been reasonably integrated in 1910 became predominantly black by 1920. White workers often intensely resented

the arriving blacks, for any number of reasons: economic competition, anger at blacks' willingness to work as "scabs," cultural differences, and general concern about black "invasion" into new neighborhoods. When racial tensions erupted into the massive Chicago race riot of 1919, it seemed clear to nearly everyone that "something" must be done. For many white elites, and very widely in ethnic neighborhoods close to black concentrations, a clear delineation of "black" and "white" areas seemed an obvious strategy.

How to accomplish housing segregation was not so obvious. A few southern and border cities had passed "racial zoning" laws in the 1910s, but in 1918 the Supreme Court held (in *Buchanan v. Warley*) that such laws were illegal. Although it is possible that some southern cities continued to use city zoning powers to create racial districts, *Buchanan* eliminated this possibility in large northern cities. Mobilizing the housing industry, including real estate agents, mortgage lenders, and major apartment owners, was an alternative strategy. This became the dominant practice, and probably constituted the single greatest set of forces behind the creation of black ghettos. During the 1920s, segregation levels increased dramatically in nearly every major northern city; by 1930, all of these cities had well defined black ghettos.

What was the role of racially restrictive covenants in this process? As a tool for quickly initiating organized discrimination, restrictive covenants were awkward, if not completely impractical. Covenants were mutual agreements among all the property owners in a particular geographic area to abide by certain restrictions in the use of their property. To be binding, covenants required the initial consent of every property owner affected by the agreement – though once this was obtained, and provided various legal limitations were observed, the covenants were binding on future owners. But getting initial consent was expensive and time-consuming, unless the land was "bound" while it was still undeveloped, and subsequently sold in small parcels with the covenants already established. Thus, homeowners in developed areas that were already somewhat integrated, or that seemed likely to become integrated soon, would be very loath to bind themselves to a restriction that might make one's property untransferable in the future. Racially restrictive covenants were more practical as a sort of "second line of defense" – adopted in areas that wanted to protect themselves from long-term threats of racial "invasion".

But while racially restrictive covenants probably played only a secondary role in the initial construction of ghettos, they plausibly became centrally important as established ghettos began to expand. In the typical northern city, intense black segregation was an accomplished fact by 1930. But during the 1930s, and especially during World War II, black populations in these cities grew dramatically – generally doubling between 1930 and 1945. This meant that existing black areas became increasingly overcrowded, that black housing prices rose relative to white housing prices, and that the economic pressure to "convert" white neighborhoods near ghettos into black neighborhoods became, in many cities, quite intense. In this environment, racially restrictive covenants could be a potent force. The covenants would be a legal means of preventing individual white homeowners in areas close to black concentrations from selling their property to black buyers or "blockbusting" realtors who would often be willing to pay a large premium. In other words, racially restrictive covenants could create a binding "cartel" of white owners who would resist individual economic incentives to sell, and thus make possible a dual

housing market that was both highly segregated and maintained higher housing costs within black ghettos.

The Hypothesized Consequences of Shelley v. Kramer

If this description of the role of racially restrictive covenants in northern cities is accurate, then it would be unsurprising if *Shelley v. Kraemer* had important effects upon black mobility after 1948. Several developments should follow:

(a) With the "cartel" phenomenon gravely weakened, but with other forms of organized discrimination still flourishing, one might expect a pattern of "invasion and conversion", in which white neighborhoods bordering existing black areas witness a few sales of housing to black buyers, followed by rapid entry of many more black families, white flight, and resegregation of the neighborhood to all or predominantly black. In this process, the overall level of segregation between whites and blacks remains high, but the number of black neighborhoods increases rapidly.

(b) Black housing prices begin to fall relative to white housing prices as the cartel loses power and the number of black neighborhoods rises.

(c) The neighborhoods most affected by the decline of restrictive covenants are single-family home areas. The number of homes occupied by blacks thus significantly increases.

(d) Because the new areas occupied by blacks include more single-family homes and generally should have higher quality housing than the pre-Shelley, very overcrowded black ghettos, middle-class blacks play a predominant role as those entering these previously-white areas.

(e) All the prior factors should contribute to an increase in economic segregation within the black community. The new availability of single-family housing in more attractive neighborhoods leads to a predominantly middle-class emigration from the "old" black ghetto, which consequently is more dominated by the black poor.

(f) Many other groups were incidentally affected by racially restrictive covenants. Once the substantial investment in creating the covenants was incurred, the cost of expanding the list of excluded groups was minimal. Consequently, most of these covenants excluded not only blacks, but Mexicans, Jews, and Asians. Plausibly, each of these groups should have experienced greater mobility into areas covered by covenants after *Shelley*.

Our paper is essentially an exploration of these hypothesized developments that, according to our stylized description of typical patterns of northern mid-century housing segregation and the typical role of racially restrictive covenants, should have followed the *Shelley* decision. Note that factor (e) is particularly relevant to some important, long-standing debates among sociologists such as William Julius Wilson and Douglas Massey about the degree to which fair housing laws contributed to the emigration of middle-class blacks from ghettoes and the increasing isolation of low-income blacks. Both Wilson and Massey assumed that this

emigration, if it occurred, would have started during the 1960s, when the federal and many state governments began to move directly against housing discrimination. But if our hypothesis is correct, the key decade in this process may have been the 1950s.

Methods and Data

This paper examines the spatial changes of minority residential patterns precipitated by *Shelley* as well as the effect that the case had on within-group economic segregation. Data for this project come from the 1940, 1950, 1960 and 1970 US Decennial Censuses. We examine changes in key demographic, social and economic characteristics of census tracts across northern US metropolitan areas and model these changes using both descriptive statistics and regression analysis. For all analyses, we normalize census tract boundaries to the lowest common area using published boundary change tables, so that geographic variation in the size and shape of census tracts over time does not influence the analysis. We accessed census tract data through the National Historic Geographic Information System (NHGIS) archive, which houses the digitized versions of historic Census data. Supplementary homeownership and home value analyses are based on data from the Integrated Public Use Microdata Series (IPUMS) – USA, which is a database of high precision samples of the American population drawn from federal decennial censuses.

Each of the hypotheses sketched out in the last section has a testable empirical implication. Our general approach is threefold. First, we treat the 1940-50 period as a "pre-Shelley" era and the 1950-60 period as a "post-Shelley" era. We examine the degree to which changes in the 1950s, compared to the 1940s, occurred (at the metropolitan level) in the direction predicted by our hypotheses in a large sample of major northern cities. The tables and maps appended to this abstract illustrate some of our initial findings. We have found, for example, that the geographic size of predominantly black areas in these cities did, indeed, accelerate dramatically in the 1950s relative to the 1940s, that middle-class blacks were the dominant occupiers of the newly acquired "black" housing (Figures 1 and 2), and that economic segregation levels within the black community did increase sharply in the 1950s (Table 3), even as overall black/white segregation levels remained essentially unchanged (Table 1).

Second, we use tract-level regression analysis to test whether the neighborhoods entered by blacks during the1950s were different from those entered in the 1940s in ways that fit out hypotheses: for example, were they areas that had larger proportions of single-family homes? Were they areas adjacent to middle-class portions of the existing black ghetto? Specifically, we will model the percent minority residents within a neighborhood in 1950 as well as 1960 using information on the characteristics of the same neighborhood ten years prior, such as the percent minority, the distance to the nearest census tract with high minority concentration, the percent black in adjacent tracts, the percent of residents who have resided in the same unit for more than 20 years as well as for less than a year, and the percent owner-occupied housing. This regression model will allow us to trace any changes in the determinants of racial succession in the period after *Shelley* compared to the one before.

Third, we use metropolitan-level regression analysis to test whether there was an association between urban areas that made greater use of restrictive covenants, and areas that saw a more dramatic shift, in the ways that we have described, from the pre-Shelley to post-Shelley eras. While there is no complete analysis of the extent of restrictive covenants across all cities, there are a number of primary and secondary sources that allow us to roughly group urban areas according to "high", "medium", and "low" use of restrictive covenants. Our hypotheses predict that the nature and pace of change in the 1950-60 decade, relative to the 1940-50 decade, should be much more sharply distinguished in cities with high use of racially restrictive covenants.

Conclusion

While *Shelley v. Kraemer* is one of the seminal civil rights cases of the US Supreme Court, some have argued that is had no practical implications for the dynamics of racial segregation. Nevertheless, preliminary evidence suggests that it had a dramatic impact upon the housing opportunities available to blacks as well as upon the dynamics of black ghettos. By examining the spatial changes of minority residential patterns precipitated by *Shelley* as well as the effect that the case had on economic segregation, this paper sheds light on basic debates about urban policy and the black underclass.

Table 1. Index of Dissimilarity

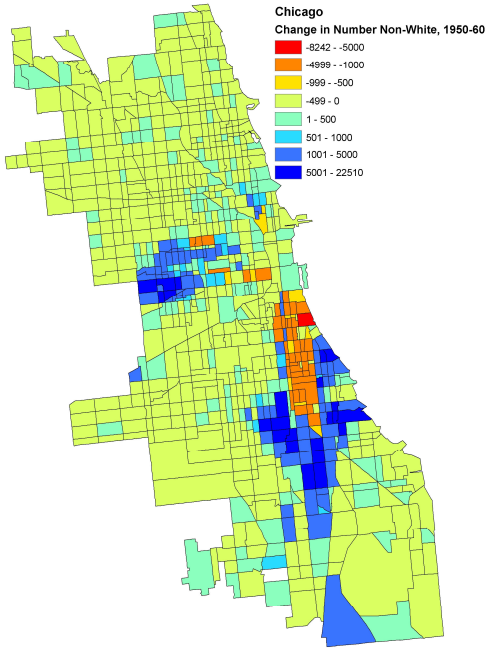
		Chicago	Detroit	St. Louis
1940	White & Black	0.94	0.84	0.85
	White & Russian	0.56	0.6	0.67
	White & Hispanic	0.67	0.54	0.44
1950	White & Black	0.91	0.83	0.85
	White & Russian	0.53	0.6	0.65
	White & Hispanic	0.61	0.49	0.33
1960	White & Black	0.92	0.84	0.85
	White & Russian	0.54	0.51	0.53
	White & Hispanic	0.76	0.78	0.82

Table 2. Homeownership Rates, (Percent of Occupied Housing by Race)

		Chicago	Detroit	St. Louis
1940	White	26	43	30
	Non-White	7	17	7
	Total	24	41	27
1950	White	33	60	38
	Non-White	11	35	18
	Total	30	57	35
1960	White	39	70	42
	Non-White	16	40	27
	Total	34	64	38

Table 3. Index of Dissimilarity: Non-White Families by Income, Chicago

1950		**0-2000**	**2000-3500**	**3500-5000**	**5000-7000**	**7000+**
	0-2000		0.12	0.2	0.27	0.29
	2000-3500	0.12		0.13	0.2	0.23
	3500-5000	0.2	0.13		0.13	0.17
	5000-7000	0.27	0.2	0.14		0.18
	7000+	0.29	0.23	0.18	0.18	
1960		**0-3000**	**3000-5000**	**5000-7000**	**7000-10000**	**10000+**
	0-3000		0.16	0.27	0.35	0.44
	3000-5000	0.16		0.18	0.24	0.35
	5000-7000	0.27	0.18		0.15	0.24
	7000-10000	0.35	0.24	0.15		0.19
	10000+	0.44	0.35	0.24	0.19	
1970		**0-5000**	**5000-7000**	**7000-10000**	**10000-15000**	**15000+**
	0-5000		0.18	0.27	0.38	0.49
	5000-7000	0.18		0.18	0.29	0.4
	7000-10000	0.27	0.18		0.17	0.29
	1000-1500	0.38	0.29	0.17		0.18
	15000+	0.49	0.4	0.29	0.18	



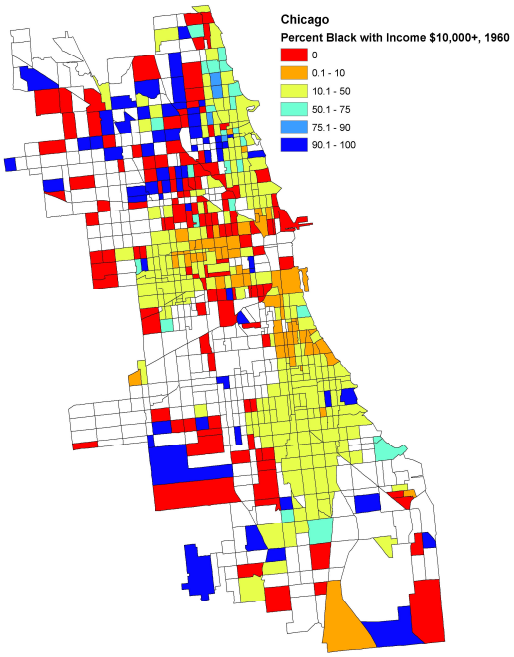


Fig 1. Change in Number Non-White, 1950-60 **Fig 2. Percent Black with Income $10K+, 1960**

Bibliography

Massey, Douglass and Zoltan Hajnal. 1995. "The Changing Structure of Black-White Segregation in the United States." *Social Science Quarterly* 76(3): 527-542.

Minnesota Population Center. National Historical Geographic Information System: Pre-release Version 0.1. Minneapolis, MN: University of Minnesota 2004. http://www.nhgis.org

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

Steven Ruggles, Matthew Sobek, Trent Alexander, Catherine A. Fitch, Ronald Goeken, Patricia Kelly Hall, Miriam King, and Chad Ronnander. Integrated Public Use Microdata Series: Version 4.0 [Machine-readable database]. Minneapolis, MN: Minnesota Population Center [producer and distributor], 2008.

U.S. Bureau of the Census. 2000 Census of the Population and Housing: Characteristics for Census Tracts and Block Numbering Areas. Washington, D.C.: Government Printing Office.

Wilson, William Julius. 1987. *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy*. Chicago: University of Chicago Press