

Covenants & Conventions

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Abstract

This work presents a theory of residential segregation through enforcement of racial restrictive covenants and social conventions. The empirical analysis of the paper demonstrates that covenants had a significant impact on housing prices, an impact that continued to resonate decades after state enforcement of these covenants was ruled unconstitutional. As such, it is argued that formal and informal (or unofficial) uses of racial restrictive covenants played a key role in establishing and perpetuating long-standing racial residential segregation patterns in the North.

*They've got covenants
Restricting me—
Hemmed in
On the South Side.
Can't breathe free.*

— *One-Way Ticket*
Langston Hughes

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1 Introduction

The first “whiteman” to settle at Chicago was black. So goes the Potawatomie aphorism, referring to Jean Baptiste Pointe DuSable, a Haitian fur trader who, in 1779, became the first non-native American to construct a permanent settlement in Chicago.¹ From DuSable to the present, Chicago has come to represent a flashpoint for fiery commentary and controversy concerning race and residential settlement in urban America. And at no other time in Chicago’s history was this controversy as combustible as during the decades attending the great migrations of southern blacks to the North. During this period, Chicago, like many other northern cities, saw its black population double, and then double again and then again.² Yet, while the population grew at geometric rates, the supply of housing for blacks remained relatively fixed in number and confined in location. Black residential expansion was contained through informal and formal sanctions. Violence was common, as were legal restraints on black property ownership—principally through racial restrictive covenants. Racial restrictive covenants are mutual agreements among property owners to prohibit sales, rentals, use or occupancy of their properties to persons of specified races, religions, ethnicities or nationalities. Most scholars agree that racial restrictive covenants were extensively employed in Chicago; according to some estimates, covenants covered up to eight-five percent of the city.³ There is less agreement about the impact of these covenants.

Historian Arnold Hirsch (1983) asserts that covenants had little impact in maintaining

¹DuSable first arrived in Chicago in 1772, and he would later join the Potawatomie tribe in order to court and marry a tribal woman named Kittihawa.

²Chicago’s black population went from approximately 30,000 in 1900 to 236,000 in 1934.

³Robert Taylor, the former chairman of the Chicago Housing Authority (and after whom the infamous Robert Taylor Homes housing project is named) claimed that eighty percent of Chicago was covered by covenants. *See*, Wendy Plotkin (1998, 6), Frederick Frederick B. Lindstrom (1941, 26), and Horace Cayton (1940, 4). Other studies provide more conservative, though still significant estimates of the extent of covenants. St. Clair Drake and Horace Cayton observed “that three-fourths of all residential property in the city was bound by restrictive covenants.” St. Clair Drake and Horace Cayton (1945) at 184.

traditional racial barriers in Chicago.⁴ He notes that covenants were regularly violated by absentee landlords who could earn more money by renting to blacks. When neighbors sought judicial enforcement against these violators, Hirsch argues that the courts were largely unresponsive.⁵ Black housing opportunities, according to Hirsch, were mainly constrained by a general housing shortage and by violence against blacks, not by covenants.⁶ Challenging this argument, scholars such as Gunnar Myrdal (1944) observed that if the U.S. Supreme Court ruled covenants unconstitutional (which it did in 1948⁷), “segregation in the North would be nearly doomed.”⁸ Of course, not only does segregation continue today, it is by most measures considerably worse than it was when Myrdal made this statement. However, the question of whether covenants served a function in maintaining segregation prior to 1948 and in securing racial residential patterns long after remains unanswered.

An answer to the question is offered and tested in this article. The article first develops a norms-based model of residential segregation supported by enforcement of covenants and conventions based on unenforceable covenants.⁹ The model is premised on the assumption that black residential segregation during the first half of the twentieth century was the

⁴ “[R]estrictive covenants in Chicago served as little more than a fairly coarse sieve, unable to stop the flow of [the] black population when put to the test.” Arnold R. Hirsch (1983, 30). *See also*, David Bernstein (1998, 866): “Restrictive covenants certainly played some role in keeping African-Americans out of white neighborhoods, but perhaps not as large a role as is commonly assumed.”

⁵ Hirsch presents evidence that some judges in the Chicago Municipal court refused to uphold covenants, and that many cases were withdrawn, and that those cases that were successful tried were infrequently enforced: “[T]he *Defender* wrote in late April 1948 that the eviction of four [black] families from an apartment building on 60th Street was “the first resulting from a court order upholding covenants in Chicago.” Hirsch at 30-31.

⁶ Hirsch’s argument may be summarized as follows: The general housing shortage in Chicago, which existed before expansion of suburban construction in the 1940s, resulted in significant excess demand among whites. This excess demand bidded up the amount that whites were willing pay, and that (in conjunction with racial prejudice) was the prime reason why blacks were restricted to particular neighborhoods in the city.

⁷ *See, Shelley v. Kraemer*, 334 U.S. 1 (1948), wherein the Court ruled that state enforcement of racial restrictive covenants is unconstitutional (see also discussion below in Section 2.1).

⁸ Myrdal (1944) at 624.

⁹ In addition to conventions involving covenants, the model also allows for other social sanctions (including ostracism, threats and violence) against blacks and the realtors who sold them properties in traditionally white neighborhoods.

product of a base discrimination preference¹⁰ to limit interracial contact. To support this preference, systems of legal and nonlegal conventions evolved. These conventions, perhaps not surprisingly, were markedly different in the North and the South. Established southern communities relied extensively on social roles and unwritten rules of conduct to control interracial interaction. The North, meanwhile, lacked a culture of interracial social control on a scale comparable to that which existed in the South. Thus when confronted with a deluge of black migrants, northern white communities relied less on social distance between the races than they did on spatial distance, or residential segregation. Northern residential segregation, I will argue, was maintained and perpetuated in large part through racial restrictive covenants. I will further argue, contrary to conventional claims, that the effectiveness of covenants was predicated not merely on their legal enforceability.¹¹ Covenants were also valuable as signals which served to coordinate the behavior of a variety of institutional actors seeking to preserve the racial exclusivity of traditionally white communities. Consistent with this claim, the empirical section of the article demonstrates that the impact of racial restrictive covenants was present long after the Supreme Court ruled their enforcement unconstitutional.

The remainder of the paper is organized as follows. The next section briefly describes the mass black migrations of the early twentieth century, the establishment of black urban communities in the North, and rise of racial restrictive covenants. Section 3 presents the theoretical model, which is descriptively applied to Chicago. The principle analysis is presented in Section 4, which begins by discussing the methodology for the empirical investigation of covenants, followed by a description of the data and discussion of the results. The paper is concluded in Section 5, which links covenants to the present widespread property development activities by urban churches, and discusses some potential consequences of the Bush Administration's faith-based initiative proposal for these

¹⁰What Gary Becker (1957) called a "taste for discrimination."

¹¹"The effectiveness of restrictive covenants depends in the last analysis on the court orders enforcing the private agreement." The Report of President Truman's Committee on Civil Rights, *To Secure These Rights*, 1947 (as cited in Clement E. Vose, *Caucasians Only* (1959) at 173).

church activities.

2 Segregation Norms

In the immediate postbellum South, many former slave-owners viewed the freeing of slaves as federal appropriation of private property.¹² Widespread southern sympathy for this view led to the imposition of various legal and nonlegal restrictions on blacks and black property ownership.¹³ Having been denied the fruits of their freedom in the South, blacks (following Reconstruction) increasingly departed for northern cities,¹⁴ cities that held out the promise of property ownership and economic gain.¹⁵ By 1900, eighty percent of Chicago's black population migrated from the South, the majority arriving from the border states of Kentucky and Missouri.¹⁶ The black migration north, however, did not truly swell until the mid-teens of the twentieth century in response to the added weight of a collapsing southern agricultural economy and the start of World War I: The

¹²See generally, Leon F. Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (NY: Vintage, 1998).

¹³On legal restrictions (e.g., Mississippi laws prohibiting the sale or leasing of farmland to blacks) see Litwack (1999, 121) and Imani Perry (2000, 17) "Dusky Justice: Race in U.S. Law and Literature, 1878-1914," Ph.D. Dissertation, Harvard University Graduate School of Arts and Sciences (Program in the History of American Civilization). On nonlegal restrictions (i.e., threats and violence) see Tolnay & Beck (1995), *A Festival of Violence: An Analysis of Southern Lynchings, 1882-1930* (Urbana: U of Illinois Press), esp. Chap. 7, "The Great Migration and the Demise of Lynching;" James R. Grossman (1989), *Land of Hope: Chicago, Black Southerners, and the Great Migration* (Chicago: U. of Chicago Press), esp. Chap. 3., "Tell Me about the Place;" Jasmine Griffin (1995), 'Who Set You Flowin'?': *The African American Migration Narrative* (NY: Oxford UP, 1995), esp. Chap. 1, "'Boll Weevil in the Cotton/Devil in the White Man': Reasons for Leaving the South." and James R. Grossman, "African American Migration to Chicago," Chap. 10 in *Ethnic Chicago: A Multicultural Portrait*, Melvin G. Holli and Peter d'A. Jones (eds), 4th ed. Grand Rapids 1995, especially PP.306-8.

¹⁴There was also considerable migration within the South, as blacks left the southeastern states of North Carolina, South Carolina, and Georgia for better economic opportunities in Louisiana, Mississippi and Texas. See David E. Bernstein, *Only One Place of Redress*, at 10-11 (2001), who notes that this migration was as much a strategy of political protest against the state from which the migrants departed as it was a means of achieving economic improvement.

¹⁵Leon Litwack (1999, 120) argues that former slaves viewed property ownership as an essential part and manifestation of their freedom. See also Grossman (1989, 309), noting "Since emancipation, both migration and persistence had usually involved strategies directed toward a degree of autonomy based on land ownership."

¹⁶Allan H. Spear, *Black Chicago: The Making of a Negro Ghetto, 1890-1920*, (University of Chicago Press, 1967) at 11.

southern agricultural economy suffered during these years due to the Mexican boll weevil and several large floods;¹⁷ and the war hobbled European immigration to America, which greatly reduced the supply of labor.¹⁸ At the same time, war-time production significantly increased the demand for labor, which in turn, drove up equilibrium wages. All of these factors were the precursors to what is often referred to as the first great migration of blacks from the South.

In addition to available jobs and higher wages, blacks also perceived more opportunities for property ownership in the North.¹⁹ But while they faced fewer barriers in acquiring property, they endured more residential isolation. Whites in cities, such as Chicago, went to great lengths to segregate blacks into their own communities. The norm was quite different in many southern cities. “Southern whites [did] not want Negroes to be completely isolated from them: they derived many advantages from their proximity.”²⁰ A glimpse at the difference in residential segregation norms between the North and the South is revealed in Table 1, which shows dissimilarity indices for Chicago and a number of other cities from 1890 to 1930. The dissimilarity index measures the extent of residential segregation in a city, using the percentage of the black population, for instance, that would have to relocate in order to achieve an even racial distribution.²¹ Figures below 30

¹⁷Neil Fligstein (1981) balances this economic rationale for migration against salient social motivations. Others have argued that the migration was driven solely by economic factors and not social discrimination. See William E. Vickery, “Economics of Negro Migration, 1900-1960”, Ph.D. Thesis, University of Chicago (1969) and Robert Higgs, “The Boll Weevil, the Cotton Economy and Black Migration: 1910-1930”, *Agricultural History*, v.50 April, 1976.

¹⁸In many northern cities European immigration provided an important and steady source of labor. For instance, over half of Chicago’s population just prior to World War I was composed of European born immigrants.

¹⁹Through the pages of the *Defender* many southern blacks were enticed to make the northbound trek with promises of opportunity and limited barriers to property acquisition.

²⁰Myrdal (1944, 621). Though blacks typically lived in the alleys, side streets and backrooms of the whites’ houses—a vestige of the slave quarters in close proximity to the slave master’s house.

²¹There are certainly other available measures of residential segregation; and perhaps multiple measures are needed to reach an accurate assessment of residential segregation in a city or statistical metropolitan area (SMA). Massey & Denton (1987) present a taxonomy of these measures, including (1) evenness (i.e., the distribution of minorities across census tracts, ward, or neighborhood in a SMA), (2) isolation (i.e., exposure: the probability that minorities and majority members have contact by sharing a common census tract); (3) clustering (i.e., the degree to which minority neighborhoods are contiguous or “abut each other.”); (4) concentration (i.e., the relative share of physical space occupied by the minority group); and (5) centralization (i.e., a measure of proximity to central city neighborhoods). The racial dissimilarity

are considered low, while those above 60 indicate hypersegregation.²² Looking at Table

Table 1: Black-White Segregation (Dissimilarity Indices) in Chicago Compared to Other Cities, 1890-1930

Region	City ^a	1890	1900	1910	1920	1930
	Chicago	64	58	69	77	85
Midwest						
	Cleveland	61	62	60	69	80
	Detroit	57	61	64	57	60
	Indianapolis	42	38	44	42	40
	St. Louis	34	41	54	61	76
Northeast						
	Boston	57	56	63	65	68
	New Haven	57	53	53	54	66
	New York	43	46	48	58	64
	Philadelphia	43	38	46	47	51
South						
	Louisville	30	29	34	41	38
	Memphis	19	20	28	34	46
	Nashville	29	34	38	42	54
	New Orleans	17	18	15	18	22
Southeast						
	Atlanta	18	24	34	41	44
	Baltimore	29	37	40	44	54
	Charleston	15	18	17	17	20
	Richmond	34	42	30	20	19
West						
	Los Angeles	21	26	28	48	68
	San Francisco	42	40	35	42	44

^aSource, Cutler, Glaser & Vigdor.

1, first note that Chicago maintained the highest levels of segregation among all these index for blacks, which is used to measure evenness, is calculated as follows:

$$\text{dissimilarity} = \frac{1}{2} \sum_{i=1}^N \left| \frac{\text{black}_i}{\text{black}_{total}} - \frac{\text{nonblack}_i}{\text{nonblack}_{total}} \right|,$$

where black_i and nonblack_i represents the number of blacks and nonblacks in census tract (or ward) i and black_{total} and nonblack_{total} represents the number of blacks and nonblacks in the city or metropolitan area, which contains a total of N census tracts. The index provides the percentage of the black (nonblack) population that would need to change census tracts in order to maintain an even racial distribution throughout the city.

²² See, Massey & Denton (1993, 20, 74-78).

major cities for almost every decade. Only in 1900 were Cleveland and Detroit just slightly more segregated. Next, compare the magnitude of black residential segregation in the other Midwest and Northeast cities, such as Boston, Indianapolis, New York and Philadelphia. The levels of residential segregation in those cities range from moderate (30 to 60) to high (60+) for all reported years. Finally, observe the dissimilarity figures for cities in the South and the Southeast, such as New Orleans, Atlanta and Charleston. These figures reveal the lowest levels of residential segregation among the reported cities, with measures below 30 for many decades.

The relatively low dissimilarity figures for the South should not be read to imply less segregation. Segregation in the South was more extensive in schools, workplaces, public facilities and on common carriers.²³ Gunnar Myrdal described the difference in segregation norms between the North and the South in terms of spatial distance and social distance. He observed that segregation in the South relied relatively less (at least initially) on spatial or physical segregation than it did on social conventions.²⁴ The South had clear, though often unwritten, rules of “etiquette” (holdovers from its slave period) and strong social norms governing interracial interaction: from impersonal and commonplace exchanges such as public greetings and casual conversations, to more intimate encounters like dancing, sexual relations, and marriage. Social segregation norms were less developed in the North.²⁵ So when faced with hundreds of thousands of black migrants—most arriving

²³Heightened southern segregation of schools, restaurants, public restrooms, drinking fountains, buses and so forth is well-documented. More subtle manifestations of the South’s segregationist preferences could also be found in other venues. For instance, Becker (1957) observed that compared to the North, manufacturing industries were 20% smaller in the South on average. Given a stronger taste for discrimination in the South, “[a] relatively large amount of southern resources should be encouraged to enter industries having smaller establishments,” argued Becker (1957, 88), since the costs of occupational segregation is lower in smaller establishments.

²⁴See Myrdal (1944, 606-618). Spatial segregation could be observed in the South too, when “a Southern city received most of its Negro population after the Civil War.” (Myrdal 1944, 621) *Cf.*, Becker (1957, 81, fn. 10), observing that “[i]f northerners objected to physical contact with Negroes more than southerners did, discrimination against Negroes in housing might be less in the South than in the North, although discrimination against them in general was greater in the South.” Becker dismisses this hypothesis as unsupported, relying on segregation measures from Jahn, Schmid & Schrag (1947), which points to higher residential segregation in the South. The study by Jahn et al., however, is limited in a number of ways, some of which Becker acknowledges.

²⁵“Above the Mason-Dixon line there were no established customs or mores restricting race relations”

over a relatively short period of time—northern cities turned to residential segregation as a rough means to control interracial interaction.²⁶

2.1 Residential Segregation Through Formal & Informal Means

Northern residential segregation was achieved through a variety of strategies. Violence, threats, and refusals to sell to blacks by white homeowners and real estate agents were broadly employed tactics. Physical barriers, including railroad tracks, highways, and parks, were used as buffers, separating black and white neighborhoods. Legal barriers, some state-sponsored, were also erected to achieve residential segregation. The most direct means of state-sponsored residential segregation was racial zoning.²⁷ A 1910 Baltimore ordinance was among the first to establish racially zoned communities by officially restricting some neighborhoods exclusively for black occupancy and other neighborhoods for whites.²⁸ Following Baltimore, cities across the country, including Louisville, passed similar ordinances. The Louisville racial zoning ordinance prohibiting blacks from living in designated white neighborhoods and whites from living in black neighborhoods. The

Vose, *supra* note 11, at 9. Black migrants were often unprepared for the racial norms they witnessed in the North. For the first time, these migrants observed blacks and whites sitting side-by-side on streetcars and other forms of interracial social contact. (Grossman 1995, P.318) To be sure, there was social segregation in the North. Indeed, one of Chicago's bloodiest race riots was triggered when a thirteen year old African-American inadvertently swam across an imaginary line separating the black beach from the white beach in a south side community. The boy was stoned to death by an outraged white mob. The ensuing riots lasted for days and claimed thirty-eight lives (mostly black). Still, the implicitness of race and social place was less a part of northern urban culture than it was in the South.

²⁶In the late 1880s most blacks in Chicago did not live in black neighborhoods—that is, neighborhoods where blacks constituted a majority. Racial residential segregation in Chicago occurred with the influx of large numbers of blacks from the south. (Spear 1967, Philpott 1967)

²⁷Municipal authorities were also able to achieve segregation through facially race-neutral zoning ordinances and selective enforcement practices. Selective enforcement of rent-control laws and building codes, for example, provided local governments with tools to achieve racial residential segregation. Additionally, the federal government (through several of its agencies) played an extensive role in maintaining and expanding racial residential segregation. These agencies engaged in red-lining of black neighborhoods, discouraged private banks from lending to blacks, and in some cases advocated the continued use of racial restrictive covenants years after the Supreme Court ruled their enforcement unconstitutional. The federal agencies principally charged are Home Owners' Loan Corporation (HLOC), the Federal Housing Administration (FHA) and the Veterans Administration. *See*, Massey & Denton (1987, 51-57) and Hays (1985)

²⁸*See* Vose (1959, 51) and Massey & Denton (1987, 41).

dual restriction served to align the ordinance with the separate-but-equal doctrine then promoted by the Supreme Court.²⁹ Paradoxically, or at least seemingly so, blacks were able to purchase properties in white neighborhoods under the ordinance, they were simply not permitted to occupy these properties.³⁰ Thus when an African American named William Warley³¹ sought legal occupancy of property (in a white Louisville neighborhood) that he lawfully purchased from Charles Buchanan, the courts were forced to consider the constitutional validity of racial zoning ordinances.³² In *Buchanan v. Warley*, the Supreme Court struck down such ordinances as unconstitutional *state* restraints on property under the Fourteenth Amendment.³³ However, the Court later declared, in *Corrigan v. Buckley*,³⁴ that the Fourteenth Amendment did not prohibit private agreements to maintain racially segregated communities.

In the wake of *Corrigan*, there was a broad movement among private actors (including real estate boards, developers, neighborhood associations, and individual homeowners) to impose legal restrictions on black ownership and occupancy of properties in traditionally white neighborhoods. These restrictions were affected through *real covenants* and *equitable servitudes*.³⁵ Real covenants are enforceable promises among property owners that,

²⁹Epstein (1998, 78).

³⁰The structure of the ordinance was, in fact, not a paradoxical as it might appear. The ordinance, in all likelihood, was designed to show deference to the long-established common law doctrine against restraint on alienation of property. Under this doctrine, courts look unfavorably upon private or state restrictions on the ability of property owners to dispose of their property. The racial zoning ordinance was probably limited to occupancy in order to avoid invalidation under a claim of restraint on alienation of property.

³¹Warley was an active member of the Louisville chapter of the National Association for the Advancement of Colored People (NAACP), which was then engaged in a broad campaign to challenge the legality of racial zoning.

³²Buchanan (a white real estate agent sympathetic to the NAACP's fight against racial zoning) and Warley arranged the sale of the property explicitly to challenge the validity of the ordinance. The terms of the sale provided that the agreement was not binding unless Warley had the right to occupy the property under state law (Bernstein 1998, 840).

³³*Buchanan v. Warley*, 245 U.S. 60 (1917). *See also, Harmon v. Tyler*, 273 U.S. 668 (1927). After *Buchanan*, many cities responded with more indirect efforts to achieve racially zoned communities. For instance, some municipalities passed ordinances prohibiting the purchase of property in a neighborhood by anyone who could not marry someone of the majority race in that neighborhood. This backdoor attempt at racial zoning through the enforcement of extant miscegenation laws was also deemed unconstitutional by the Court. *See Richmond v. Deans*, 281 U.S. 704 (1930).

³⁴*Corrigan v. Buckley*, 271 U.S. 323 (1926).

³⁵Covenants were traditionally written agreements under seal. The seal requirement has been uniformly

if broken, subject the promisors and subsequent holders³⁶ of their properties to person liability enforced with money damages.³⁷ Since subsequent property owners are bound by the promises of the initial owners, real covenants were said to “run with the land.”³⁸ Equitable servitudes are also promises that run with the land, but they are enforced with equitable remedies, such as injunctions, instead of money damages.³⁹ Agreements among land owners to prohibit sale or occupancy of their properties by persons of designated races—through real covenants or equitable servitudes—are known generally as racial restrictive covenants.⁴⁰

“In some cities, especially Chicago, Detroit, St. Louis, and Milwaukee, [racial restrictive covenants] attained a great significance in coverage [and] enforcement.”⁴¹ These covenants required a minimum number or certain percentage of signers before the agreements could become binding.⁴² In Chicago, the signers typically had to represent at least 75 percent

abandoned. The written requirement has been weakened, but is still mandated across many jurisdictions.

³⁶That is, heirs, successors and assigns of the original promisors.

³⁷The covenants may require an affirmative promise or obligation (e.g., the property owners must cut their lawn every other week) or a negative promise (e.g., the property owners may not park their cars on the street.) Judges have traditionally been reluctant to enforce affirmative covenants because of the costs of court supervision and the potential for extensive liability on subsequent property owners (Dukeminier & Krier 1993, 887). Since the line between affirmative and negative promises is not always clear, parties often attempt to reformulate affirmative obligations into negative ones. Racial restrictive covenants are clearly negative covenants.

³⁸Useful discussions of the history and modern implications of covenants running with the land may be found in Newman & Losey (1970) and Reichman (1982).

³⁹The differences between real covenants and equitable servitudes are largely historical, the former originating in law courts and the latter in courts of equity. The merger of law and equity courts resulted in judges selecting remedies without regard to the legal or equitable origins of the covenant in many cases. Though for liability determination, courts may look to various requirements, such as privity or notice, in order to classify the agreement as a real covenant or an equitable servitude.

⁴⁰Covenants based on certain individual characteristics other than race (including religion, ethnicity and nationality) are also generally referred to as racial restrictive covenants. One of the earliest racial restrictive covenants cases involved an agreement to prohibit property transfers to people of Chinese descent in California. *Gandolfo v. Hartman*, 49 Fed. 181 (C.C.S.D. Cal. 1892).

⁴¹(Plotkin 1998, 3). Estimates suggest that $5\frac{1}{2}$ square miles of St. Louis and 11 square miles of Chicago were covered by racial restrictive covenants (Clement E. Vose, *Caucasians Only* (1959) at 9). The figures become even more significant when the total square miles of these cities are discounted to reflect the fraction land available for residential occupancy.

⁴²This requirement, no doubt, was motivated by a desire to avoid contractual problems. If 100 percent of the street frontage—say, for example, 30 households—was required for enforceability, then the last to sign could hold out and appropriate rents from the the earlier signers. However, if only 70 percent is required (or 21 households) then the last to sign (the twenty-first household) cannot hold out as effectively because there are 9 other household that could serve as the last signer. Additionally, the

of the street frontage.⁴³ The costs associated with acquiring the requisite signatures and incorporating the restrictions into existing deeds were non-trivial.⁴⁴ These costs, as well as those related to covenant enforcement,⁴⁵ suggest that the extensive use of covenants must have brought the signers non-trivial benefits before they were ruled unenforceable. Furthermore, one could argue that these benefits continued to accrue even after the Supreme Court ruled, in *Shelley v. Kraemer*, that racial restrictive covenants were unenforceable. Though unenforceable, racial restrictive covenants were themselves not illegal until the passage of the 1968 Fair Housing Act, some twenty years after *Shelley*.⁴⁶ In the intervening period, and perhaps much later, *unenforceable* racial restrictive covenants served as valuable signals for current and would-be property owners in covenanted neighborhoods. Lawyers, lenders, realtors, insurers and government agencies continued to rely on covenants as proxies for the racial exclusivity and class of neighborhoods. Real estate “attorneys continued to insert racial covenants when drafting a deed to property so covered stating ‘everyone does not know such covenants cannot be enforced... Furthermore it may have a moral or psychological effect upon a prospective purchaser...’ ”⁴⁷ Real estate

required percentage could not be too low. Under such circumstances the early signers would be reluctant to bind themselves knowing that a majority of their neighbors might not. Otherwise the early signers could find themselves in the undesirable situation where they would be the only neighbors unable to unload their properties. Thus, requiring a non-trivial percentage of signers—but less than 100 percent—for the covenants to become binding was a means of solving the hold-out problem and satisfying individual rationality.

⁴³Plotkin (1998, 5).

⁴⁴Neighborhood association groups would pay solicitors to gather enough signatures to meet the minimum requirement. There were also drafting and recordation fees involved in getting these restrictions in deeds of established communities. By contrast, incorporating covenants in new subdivisions was relatively inexpensive for developers, who frequently employed them in Chicago and its suburbs in the 1930s and 1940s.

⁴⁵The high costs of covenant enforcement were recognizable to all parties. NAACP lawyers leveraged the cost of frequent litigation as part of their strategy to challenge covenant enforcement. One of these lawyers observed that “[t]he expenses of constant litigation are militating against those who desire to the [covenant] agreement.” (Vose at 59) The salience of this strategy was not lost on the neighborhood associations and plaintiffs’ lawyers who were seeking to enforce racial restrictive covenants. For instance, flyers distributed to property owners in a Washington DC neighborhood (which described the virtues of these covenants) concluded with, “Your contribution toward the expense of continuous litigation is essential; please respond as liberally as possible immediately.” *Id.* at 76.

⁴⁶The Fair Housing Act was originally incorporated in Title VIII of the Civil Rights Act of 1968 (42 U.S.C.A. §§3601-3631) and later broadened under the Fair Housing Act Amendments of 1988. For example, §3604(a) of the Act makes it unlawful to “refuse to sell or rent ... or otherwise make unavailable or deny any dwelling to any person because of race, color, religion, sex, familial status, or national origin.”

⁴⁷Kenneth D. McCasland, Practical Effects in Tennessee of Non-Enforceability of Restrictive Racial

boards across the country punished agents who sold homes in traditionally white neighborhoods to blacks. The Federal Housing Authority (FHA) refused to insure mortgages for black home-owners who purchased in white communities. The FHA also encouraged banks to use covenants as an indicator for the stability and security of a neighborhood when making lending decisions.⁴⁸ Indeed, the FHA openly encouraged “the placing of racial restrictive covenants on projects supported by government guarantees,”⁴⁹ and officially maintained this policy years after the Court ruled enforcement of racial restrictive covenants denied citizens equal protection under the law. Under political pressure, the FHA leadership was forced to abandon this official policy, but one can only speculate how long it continued unofficially.⁵⁰ The FHA, banks, insurers, neighborhood improvement associations, realtors, sellers and buyers were able to coordinate their activities to maintain traditional white neighborhoods through covenants, despite their unenforceability. In this manner, covenants continued to be valuable long after the 1948 decision in *Shelley*.

3 A Simple Game-Theoretic Model

The model here departs from the premise that historical patterns of urban racial residential segregation are rooted in the underlying preferences of white homeowners to live next to other whites rather than next to blacks.⁵¹ Such base preferences were characterized

Covenants, 20 Tenn. L. Rev. 679, 681 (1949) [and cited in Vose *supra* note 11 at 228.]

⁴⁸ See Jackson (1985, 204-209) and Massey & Denton (1987, 54).

⁴⁹ Vose *supra* note 11 at 225.

⁵⁰ “Actually, the new F.H.A. position would merely require insurance to be withheld if, after [February 15, 1950], a *new* racial restriction [sic] were attached to the property in question.” *Id.*, at 226 (emphasis added).

⁵¹ As discussed previously, this may be more true for northern than southern cities, but in all cases I maintain that white residential preferences were more determinative of segregation outcomes than black preferences. Preferences of blacks to live next to other blacks as an explanation for segregation is unconvincing for two reasons. First, African Americans traditionally have had significantly less economic and political power to effectuate their residential preferences. [mention black towns: their creation and destruction.] Thus even if black Americans preferred segregation, they often lacked the resources to realize or maintain these preferences. Second, decades of survey data indicate that African Americans, by large majorities, more strongly embrace integration than do white Americans. Studies consistently show that the majority of blacks have a preference for living in mixed neighborhoods. See Massey & Denton (1993, Pp. 88-96) for a summary of the survey data on black-white residential segregation preferences.

by economist Gary Becker as reflecting a “taste for discrimination.”⁵² Individuals with a taste for discrimination act as if they discount transactions involving persons outside of their relevant group. For instance, white home-buyers (or homeowners) with a taste for discrimination against blacks must behave as though they are willing to pay less for (or discount the value of) homes in a neighborhood with blacks compared to a neighborhood without, other things being equal. Label the factor by which these individuals discount as d (Becker’s discrimination coefficient), where $0 < d < 1$.⁵³ Now take a neighborhood (labeled j) composed of entirely of homeowners with the same preference for segregation, each valuing his or her home at v . If a white purchaser offers one of the homeowners, i , a price (p_w) that is greater than v , then homeowner i will sell and get p_w and the remaining neighbors will continue to each value their homes at v .⁵⁴ A successful competing bid from a black purchaser (p_b) must be greater than p_w after being discounted—assuming that i has a preference for residential discrimination as well as segregation. For simplicity, and to focus on the impact of preferences for segregation, the analysis at this point assumes that homeowners in neighborhood j do not discount payments from prospective black buyers, they only discount the value of living near blacks. That is, i will sell to an African American if $p_b > p_w$, and the sale would result in a reduction in home values of each remaining neighbors, i.e., $(1 - d)v < v$.⁵⁵ It is important to note that the fall in home values is based entirely on the segregation preferences of the remaining neighbors, and

⁵²In some ways, it might be more appropriate to refer to these preferences as a taste for segregation, rather than a taste for discrimination. As Becker (1957, 78) points out, “[r]esidential segregation is often confused with residential discrimination.” They are, however, not the same. “[T]he unwillingness of whites to live near Negroes ... implies that these tastes are directly relevant to residential segregation and not to discrimination.” (Becker 1957, 80). For example, a white landlord with a preference to live among other whites, may be willing to rent units to blacks at non-discriminatory prices, so long as those units are not in white neighborhoods or in the landlord’s neighborhood specifically. Bearing the difference between residential segregation and residential discrimination in mind, the analysis will continue to use the “taste for discrimination” terminology for consistency.

⁵³See Becker (1957, Pp. 14-15).

⁵⁴Transaction costs associated with the sale are normalized at zero for simplicity.

⁵⁵The discount rate for selling to blacks is normalized to zero. The model could accommodate preferences for residential discrimination (i.e., a non-zero discount rate for selling to black) in addition to residential segregation preferences without changing any of the intuition of the analysis. See *infra* note 70 for an argument that residential discrimination and residential segregation were both operative during the period of this study.

not due to a perceived market response.⁵⁶

Since they face a more restricted housing market, blacks are willing to pay a premium for a house in neighborhood j . If there is only one house in the neighborhood for sale to African Americans then competition among them for the single offering will drive up the equilibrium price, which is labeled p_b . If there are multiple homes for sale to African Americans, then the price (\hat{p}_b) that those homes will command will be lower, $\hat{p}_b < p_b$.⁵⁷ Assume that whites are only willing to pay up to v for homes in neighborhood j .⁵⁸ So the relevant strategies available to homeowners in neighborhood j are (1) sell to blacks and (2) stay in their homes (or equivalently sell to a white buyer for v at most). The payoffs from these strategies are represented in the matrix below. The rows of the matrix show the strategies available to homeowner i ; the strategies of the other homeowners in neighborhood j are depicted by the columns. The first figure in each cell of the matrix reflects homeowner i 's payoff, followed by the payoff for each of the other homeowners.

⁵⁶If the market is composed of only individuals like i , then the discounted value of homes due to discriminatory preferences will be fully reflected in the market price. The market simply mimics the remaining neighbors. Alternatively, if the market is composed only of people who do not share i 's taste for discrimination, then the fall in the remaining neighbor's valuation will be completely unrelated to the market adjustment. Reality, of course, lies somewhere between these two extremes. However, whether it is closer to one extreme or in the middle, it is important to observe that it is a taste for discrimination by the remaining homeowners and not discrimination or ignorance in the marketplace that causes home values to fall when blacks move in. Market discrimination or ignorance could be included in the model without significantly altering the analysis.

⁵⁷Since $\hat{p}_b < p_b$ there is a first-mover's disadvantage. However, this disadvantage will not discourage blacks from initially bidding on the first home for sale. Recall that price is determined endogenously in the model. That is, the reason why the first house is sold at a higher price (p_b) is due to the fact that there is only one house for sale. With only one house for sale, prospective black buyers have to compete more fiercely among themselves for the single offering and that competition drives up the price. The costs of being the first to buy (i.e., the cost of winning the competition — known as the winner's curse) is that the first buyer pays more than the subsequent black buyers when multiple homes later go up for sale. However, the same rational agents who would want to avoid being the first to buy, will include these costs in the initial bidding process and discount the amount that they are willing to offer at that earlier stage. If these costs are substantial, then the bidding process will be muted (i.e., bids will be discounted), and the costs of the winner's curse reduced. Yes, buyers have some reluctance to buy first, but that reluctance should be realized in a lower offer price for the first house to sell. So the cost of going first is reduced until the parties are indifferent between buying first and going later. (These prices need not converge if there is some value to getting in sooner rather than later.)

⁵⁸This assumption reflects the notion that the residents of neighborhood j place high idiosyncratic value on an exclusively white neighborhood; while the equilibrium market price that whites in general will pay is determined by a combination of prospective residents without an idiosyncratic valuation for white residential exclusivity and some with.

Thus, if homeowner i and the other homeowners sell to blacks (the upper left cell) then they each receive \hat{p}_b . If homeowner i sells to blacks and all other homeowners stay put (the upper right cell) then homeowner i gets p_b and the others get $(1-d)v$, the discounted value of living in their homes with African Americans in their neighborhood. If homeowner i stays put and all other homeowners sell to blacks (the lower left cell) then homeowner i gets $(1-d)v$ and the others get \hat{p}_b .⁵⁹ Finally, if everyone stays put then each homeowner gets a payoff of v .

		All Other Homeowners			
		<i>Sell to Blacks</i>		<i>Stay Put</i>	
Homeowner i	<i>Sell to Blacks</i>	\hat{p}_b	\hat{p}_b	p_b	$(1-d)v$
	<i>Stay Put</i>	$(1-d)v$	\hat{p}_b	v	v

There are many variables in the matrix above, yet an analysis of interaction among the homeowners can be simplified by observing that there are only three relevant scenarios. First, if v is greater than p_b (i.e., $v > p_b > \hat{p}_b$), then no homeowner in neighborhood j would ever sell to an African-American. The value that these homeowners place on living in an exclusively white neighborhood simply exceeds the amount that blacks are willing to pay. Second, if v is less than \hat{p}_b (i.e., $p_b > \hat{p}_b > v$), then all homeowners will sell to blacks. The third and most interesting scenario is where $p_b > v > \hat{p}_b$. In this case, there are two possible outcomes: when $(1-d)v > \hat{p}_b$, there is a mixed strategy solution which results in some homeowners selling to blacks and others staying put; and when $(1-d)v < \hat{p}_b$, the matrix looks much like the well-known *prisoner's dilemma* game, resulting in each neighbor preferring to stay put and get a payoff of v rather than the payoff of \hat{p}_b , the undesirable yet inevitable outcome.⁶⁰ To see why this outcome occurs, focus first on the

⁵⁹If only one of the other neighbors (not i) sells, then the seller gets p_b and neighbor i and the others get $(1-d)v$. Thus while the payoffs change slightly, the equilibrium does not.

⁶⁰In the prisoner's dilemma game (which is reproduced in the appendix at the end of the paper) two prisoners are apprehended and taken to separate interrogation rooms. Each prisoner is given the

left column (where all other homeowners are following the strategy to sell to blacks.) Since $\hat{p}_b > (1-d)v$, if the other homeowners sell to blacks then homeowner i 's optimal response is to sell to blacks too. Now focus on the right column (where all other homeowners stay put.) Since $p_b > v$, then homeowner i 's optimal response is to sell to blacks if the other homeowners stay put. Indeed, it is optimal for i to sell to blacks regardless of what the other homeowners do. Given that i always finds selling to blacks optimal, the best response of the other homeowners is to sell to blacks as well (earning \hat{p}_b , which is greater than the $(1-d)v$ payoff of staying put.) Under these circumstances a most perverse outcome is obtained: the homeowners in neighborhood j sell their homes to blacks at prices that are lower than they would sell to whites and less than they would otherwise value their homes.

This self-defeating outcome results from the fact that the neighbors cannot credibly commit to staying put or to selling only to whites.⁶¹ The consequences of this inability to commit are great. A selling spree of homes at rates far below their *ex ante* value is a likely equilibrium. The homeowners in neighborhood j , therefore, have strong incentives to form commitment mechanisms through formal and informal sanctions.⁶² They could, for instance, counter the self-defeating outcome by encouraging norms against selling to blacks.

That is, residential discrimination norms develop to support residential segregation pref-

option of cooperating with the police (*Fink* in the matrix) or not cooperating (i.e., *Mum* is the word.) Cooperation is rewarded: if Prisoner 1 cooperates, then Prisoner 2 gets a payoff of 1 by cooperating, and 0 by not cooperating. Prisoner 2 also does better by cooperating when Prisoner 1 does not (i.e., assume that Prisoner 1 does not cooperate, then Prisoner 2 gets a payoff of 5 by cooperating, and 4 by not cooperating.) The Nash equilibrium outcome of this game is $\{Fink, Fink\}$, generating a joint payoff of 2. The prisoners would certainly do better by agreeing to play $\{Mum, Mum\}$, for a joint payoff of 8. However, their inability to commit prevents them from achieving this outcome.

⁶¹Consider the Prisoner's Dilemma again. If prisoner 1 is committed to Finking, prisoner 2 might make the following offer to prisoner 1: "play Mum and I will also play Mum and give you half of my payoff." This offer—where Prisoner 2 makes a side payment to prisoner 1—is attractive to prisoner 1 because she ends up with a total of 6, which is more than she could ever earn by Finking. The offer is also attractive to prisoner 2 because he earns a payoff of 2, which is more than he would earn if prisoner 1 Finks. Unfortunately the $\{Mum, Mum\}$ outcome is not achievable because agreements are not available in this game. The same is true for the homeowners in neighborhood j , which suggests a solution to their problem.

⁶²Criminals solve the prisoner's dilemma problem through strong norms against "ratting out" accomplices. These norms are strongly internalized in criminal circles and they are supported by credible threats of violence against the "rat" and his family.

erences. These norms may be reinforced by social sanctions, such as ostracism or threats, directed toward neighbors contemplating a sale to blacks. Over time, as these norms become internalized they become self-supporting, which tends to increase the neighbors' taste for discrimination (i.e., $d \rightarrow 1$.) As d approaches unity, prospective black purchasers must offer ever increasing amounts to convince homeowners in neighborhood j to sell to them.

In Chicago, during the early twentieth century, simple informal norms against selling to blacks effectively impeded the “threat” of black succession to traditionally white neighborhoods. In time, however, this simple solution was undermined by two factors. First, as blacks continued to migrate north their unmet demand for housing grew at unchecked proportions, which meant that better off blacks were offering ever increasing amounts for homes in white neighborhoods. The economic pressure created by the restricted housing market could not be withstood using the simple informal norms against selling to blacks. Second, white homeowners who sold to blacks and moved away were able to put distance between themselves and their old neighborhoods, which reduced the impact of informal social sanctions against them.

Homeowners in Chicago's white neighborhoods responded to these limiting factors by raising the stakes. Residents of some neighborhoods chose to increase the informal sanctions against blacks who purchased (and whites who sold) homes in their neighborhoods. The extent to which these sanctions were employed, primarily threats and violence, is well documented.⁶³ The homes of black families who moved into white neighborhoods were often bombed.⁶⁴ There was, for instance, an average of one bombing every twenty days for nearly a four year period from 1917 to 1921 in Chicago's racially contested working class neighborhoods.⁶⁵ Other neighborhoods relied largely on legal sanctions (i.e., racial restric-

⁶³ See Hirsch (1983, 40-67).

⁶⁴The properties of white real estate agents suspected of selling blacks homes in white neighborhoods were also bombed (Drake 1940, 178).

⁶⁵ See Drake (1940, 178).

tive covenants) to buttress norms against selling to blacks.⁶⁶ Covenants were regularly included when new subdivision were developed and deeded.⁶⁷ As mentioned previously, the costs of including covenants in new deeds were relatively low and they quickly became boilerplate.⁶⁸ The costs of including covenants in existing deeds was more prohibitive—yet, following World War I, this practice became quite common.⁶⁹ From this period through World War II, blacks were largely kept out of Chicago’s white neighborhoods.

3.1 Rise & Fall of Covenant Enforcement in Chicago

Hirsch (1983) claims that blacks were kept out of traditionally white neighborhoods because of the constrained housing market facing all Chicagoans; his claim implies that blacks had few housing opportunities because they had to compete with whites who were willing and able to pay more. This implication, however, does not withstand the scrutiny of the available data. There is considerable evidence showing that blacks paid significantly more than whites for comparable housing in Chicago.⁷⁰ Indeed, Hirsch’s own

⁶⁶“For the most part, the communities that most enthusiastically adopted covenants were more affluent [and] better educated than the white communities not covered by covenants.” (Plotkin 1998, 7). However, some less wealthy neighborhoods used both violence and covenants as their strategy to maintain the racial exclusivity of their community. This mixed strategy was often born out of mixed motives. That is, neighborhood associations from middle and upper class neighborhoods often ran campaigns to have covenants installed in working class white neighborhoods that abutted black communities. The apparent motivation for this behavior was to firm up the “threatened” working class neighborhoods to serve as buffer zones between the more affluent neighborhoods and the black neighborhoods. Individuals in these working class neighborhoods also employed violent tactics (especially through bombings) against blacks who attempted to relocate there.

⁶⁷Plotkin (1998, 3) identified extensive use of race restrictions in Chicago, and its suburbs including Evanston, Glencoe, Lincolnwood, and Skokie. See also, Philpott (1967).

⁶⁸Wendy Plotkin has identified many of the developers who were responsible for the lion’s share of racial restrictive covenants in Chicago’s new developments following World War I. [cite]

⁶⁹The Supreme Court ruling in *Corrigan* was both a response and a stimulus to this practice. The Chicago neighborhoods largely covered by covenants included Auburn-Gresham, Beverly, Calumet Heights, Chatham, Clearing, Englewood, Greater Grand Crossing, Hyde Park, Kenwood, Morgan Park, Oakland, Roseland, South Chicago, South Shore, Washington Heights, West Lawn, West Pullman and Woodlawn. The neighborhoods that were partially covered included East Garfield Park, Humboldt Park, Near North Side, Near West Side, and North Lawndale. (Plotkin 1998, 7).

⁷⁰Racial residential discrimination may or may not account for the higher housing prices paid by blacks. As noted by Becker (1957), racially non-discriminatory forces, such as rent control or asymmetric information, could explain the difference in housing prices. That is, since blacks were new to the Chicago during this period, they (as new residents in the city) paid more than older residents in rent-controlled

account provides evidence that blacks had relatively higher housing costs: he observes that “[r]ents in black areas ranged from 15% to 50% higher than that paid by whites for similar accommodations.”⁷¹ Furthermore, the dual housing market was not limited to poor blacks.⁷² “[W]ell-to-do class blacks complained bitterly and loudly about their increasing confinement within crowded, dilapidated neighborhoods inhabited by people well below their social and economic status.”⁷³ Given that blacks, paid significantly more on average for housing, it is implausible that their nearly complete exclusion from approximately 85% of Chicago’s community areas was driven mainly by nondiscriminatory market operations—threats and violence notwithstanding.⁷⁴

The boom in suburban residential construction following World War II significantly improved the supply of housing in Chicago.⁷⁵ This new construction hastened the departure of upper and middle class whites from the city, which left vacancies in tracts that were adjacent or close to overcrowded black neighborhoods. Blacks with sufficient wealth were

communities. “Nevertheless, [Becker (1957, 79) observes,] Negroes still (1957) appear to pay significantly more than whites for equivalent housing in cities like Chicago, *where rent control and restrictive covenants have been abolished for several years.*” (emphasis added.) Becker speculated that the continued higher rents paid by blacks might be due to a price adjustment lag, as leases run their course and homeowners make decisions about moving. Additionally, “[r]estrictive covenants probably increased this lag and slowed down the adjustment process,” (Becker 1957, 80, fn. 8). The lag theory is plausible, yet very recent studies have shown considerable discrimination against blacks (cite Yinger). It is likely that there was some price adjustment lag and some discrimination, which continues today. For the purposes of this study, the source of the differential rents is less important than the fact that blacks paid more.

⁷¹Hirsch (1983, 29) (citing a 1944 Illinois Inter-Racial Commission report.) Hirsch also points out that Chicago Public Assistance Administrators noted that black welfare recipients paid two to three times the rent than white welfare recipients (Hirsch at 18).

⁷²“The housing problem for Negroes was not restricted to the poor; even the affluent were blocked in their quest for a decent place to live.” (Spear 1967, 23)

⁷³Massey & Denton (1987, 33). Black doctors and lawyers who had the resources and the willingness to buy houses in middle class white neighborhoods, and did at one time reside in elite community areas such as Hyde Park, later found themselves confined to Chicago’s Black Belt by covenants and violence. See Spear (1967, 21-24), and Philpott (1967, 155-156).

⁷⁴The 85% figure is based on the fact that as late as 1940, blacks essentially lived in only nine out of the seventy-five Chicago community areas; and of these nine communities, most blacks lived in only three areas (the other six community areas having a relatively small percentage of blacks.) When these six community areas are examined more closely (i.e., by census tract) it is immediately clear that there were black tracts and white tracts in these “mixed” areas. Covenants were often used in these “mixed” areas to prevent further black incursion.

⁷⁵[cite for suburbanization of Chicago and the North generally] Between 1945 and 1960 there was significant new construction, but most of it was in the suburbs and for upper and middle class whites (except for the public housing in the central city. (Hirsch 1983, 27-28).)

able to gain access to these properties. The pattern of racial succession due to suburbanization was so clear that estimates were calculated to show that for every 100 suburban units constructed, 15 city units changed from white to black occupancy.⁷⁶ Hirsch uses this pattern of neighborhood racial transformation to support his claim that covenants were ineffective. However, the logic behind the claim misses the crucial connection between covenant enforcement and residential turnover. As long-time white residents left their urban middle class neighborhoods for the the suburbs, they were replaced with new residents, which weakened the social network and norms of the neighborhood. In other words, the effect of neighborhood turnover was to reduce the likelihood of covenant enforcement, which occurred in two distinct ways. First, new property owners were less likely to share the internalized norms of the former owners. Second, even if the norms were shared across new and old property owners, the option of moving to the suburbs was, for many, a superior alternative to seeking legal remedies against covenant violators. Thus suburban residential expansion had a salient impact on covenant enforcement in the city.⁷⁷ Furthermore, profiteering real estate agents engaged in elaborate campaigns to undermine the existing norms against selling to blacks. These agents would first buy a house in a white neighborhood and install a black family, typically a family that fit the most negative stereotypes held by the white residents. Next, they sought to convince the remaining white residents that their neighbors were all poised to sell to families just like the one installed. This process, known as blockbusting, effectively destroyed the norms supporting white residential exclusivity in many of Chicago's south side community areas.⁷⁸ By the time the Supreme Court ruled that state enforcement of racial restrictive covenants was unconstitutional (meaning there was no penalty for their breach), the norms driving covenant

⁷⁶*See*, Hirsch (1983, 28, 281 fn.61). Landlords could earn much more money renting a single apartment to several black families than to a single white family. An apartment in the south side neighborhood of Oakland could be rented for \$25 per month to one white family or to three black families for \$100 per month. (Hirsch 1983, 35)

⁷⁷Many of the new suburban residences were covered by covenants.

⁷⁸While few contenders in the battle over racial restrictive covenants held "blockbusting" real estate agents in high esteem, these realtors did play a key role in the legal strategy to defeat covenant enforcement. By placing blacks in neighborhoods that were covered with covenants, they gave the NAACP legal defense team opportunities to challenge the constitutionality racial restrictive covenants. NAACP lawyers labored over the costs and benefits of implicitly utilizing these agents. See Vose at 59.

enforcement had already begun to erode under the pressure of suburban development. The evisceration of the social and legal sanctions supporting segregation, meant that the commitment mechanism of covenant enforcement was not longer viable. But covenants were not valueless: they still retained their value as coordinating mechanisms. Covenants were signals to realtors (who directed blacks to non-covenanted neighborhoods), lenders (who would not grant mortgages to blacks in covenanted neighborhoods), federal housing agencies (that would not guarantee mortgages granted to blacks in covenanted neighborhoods), and insurers (who would not insure blacks in covenanted neighborhoods). These intermediaries used unenforceable covenants to coordinate transactions to maintain the racial exclusivity of traditionally white neighborhoods.

4 Empirical Analysis

Chicago’s Community Areas & Black Population Chicago was incorporated in 1833 with an estimated 200 residents. Within ten years there was a small homogeneous black population concentrated between Clark and State Streets just south of Harrison Street.⁷⁹ By the close of the nineteenth century Chicago became the second largest U.S.

Table 2: Chicago’s Black Population, 1840-1940

Year	Population	Black Population ^a	Percent Black
1840	4,479	53	1.2%
1850	29,963	323	1.1%
1860	109,206	983	0.9%
1870	298,977	3,588	1.2%
1880	503,298	6,543	1.3%
1890	1,098,570	14,831	1.4%
1900	1,698,575	30,574	1.8%
1910	2,185,283	44,143	2.0%
1920	2,701,705	110,770	4.1%
1930	3,376,438	232,974	6.9%
1940	3,396,808	278,538	8.2%

^aSources: The Chicago Commission on Race Relations (1922), Hodges & Levene (1964), Consortium (1996), Skogan (1976).

city, fueled predominantly by a steady stream of European immigrants (more than half of Chicago’s population at that time was foreign-born) and to a lesser extent by the black migration from the South after the Civil War. Chicago’s black community first settled near the business district. This settlement survived the Great Fire of 1871, but a second

⁷⁹(Drake 1940, P.34). The area that was to become Bronzeville (i.e., Chicago’s Black Belt) was not yet a part of the city of Chicago. The Douglas community area was founded in 1856 when Senator Stephan Douglas purchased lake-front property between what is now 33rd and 35th Streets for a private residence and the site of the University of Chicago. This area, immediately south of the city, developed a fashionable reputation and quickly became the place where Chicago’s wealthy chose to reside. The two other communities that would comprise Bronzeville (i.e., Grand Boulevard and Washington Park) were part of the Village of Hyde Park. Being further south, their development and reputation as a site for the city’s elite grew slower than in Douglas. However, those areas did eventually “arrive”. By 1889 all of Bronzeville was incorporated into Chicago. By 1890 the area’s reputation and prominence had seen its peak. After this point the wealthy residents of the south side began to make their way north to what is now Chicago’s Gold Coast. This movement prefaced the Black community’s growth in Bronzeville, a growth that seemed to follow fires and wars.

large fire in 1874 forced the community to relocate as far south as 22nd Street.⁸⁰ After the Fire of 1874, most sources still place the majority of the black population just north of Douglas. By 1890 the black belt (so-called because it represented a narrow strip of black residential occupancy on the south side) extended from the edge of downtown to 35th Street between State and Wentworth.⁸¹ Table 2 shows the growth of Chicago’s black population from 1840 to 1940. The decade starting in 1910 experienced an 151% growth in the black population, most of which occurred between the years of 1914 and 1920.⁸² As early as 1920 the vast majority of the city’s black residents were clustered in the black belt. By 1940, there were only nine Chicago communities areas (out of the seventy-five)

Table 3: Chicago Community Areas with Significant Black Populations, 1940

Community Area	Population	% Native White	% Foreign Born	% Black	% Other	Extensive Covenants
Near West Side	136,518	59.6%	21.2%	18.9%	0.3%	Yes
Near South Side	7,306	60.5%	13.0%	25.9%	0.6%	No
Armour Square	18,472	53.1%	20.1%	22.0%	4.8%	No
Douglas	53,124	75%	1.2%	93.8%	0.1%	No
Oakland	14,500	65.5%	11.4%	22.2%	1.0%	Yes
Grand Boulevard	103,256	1.3%	0.5%	98.1%	0.1%	No
Washington Park	52,736	1.7%	1.0%	97.3%	0.0%	No
Woodlawn	71,685	70.7%	12.2%	16.9%	0.2%	Yes
Morgan Park	15,645	54.3%	6.1%	39.5%	0.1%	Yes

whose black residents accounted for more than ten percent of the population. Various characteristic of these nine communities are shown in Table 3. While most of these nine community areas were roughly 20% black, the three community areas of Douglas, Grand Boulevard and Washington Park were almost exclusively black. These three areas, jointly known as as *Bronzeville*, serve as a proxy for Chicago’s black community for the period of

⁸⁰(Drake 1940, P.60). It is difficult to establish exactly how many Blacks moved into Bronzeville between 1840 and 1890. From 1840 to 1870 the percentage of Chicago’s black population living in Bronzeville was negligible. (Part of the difficulty of assessing populations in Community Areas in 1800s is that the system of partitioning the city by Community Areas effectively did not exist until 1930.)

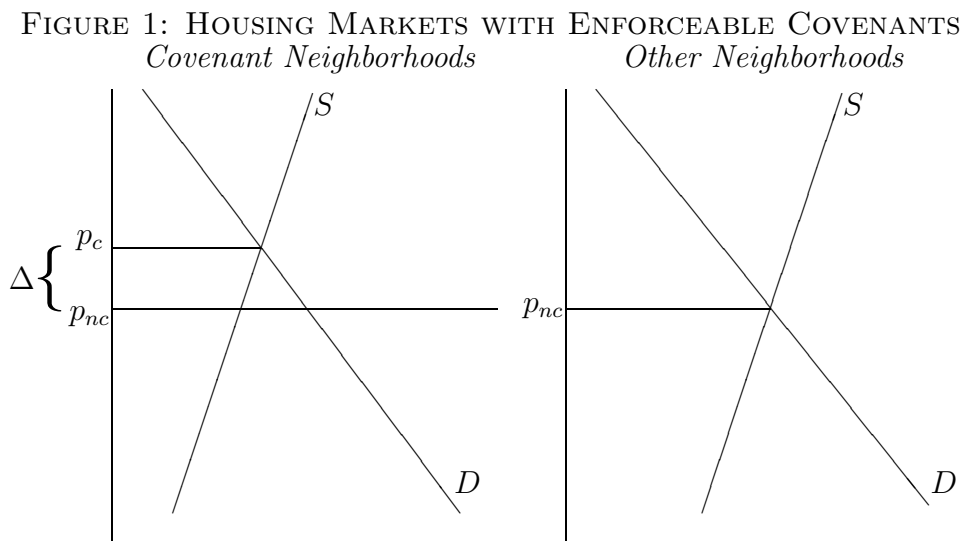
⁸¹There were also some black settlements on 47th Street. By 1890, “an almost continuous belt of Negro occupancy had been formed from the edge of the downtown business district to Thirty-fifth Street between State and Wentworth.” Drake (1940, P.86)

⁸²Chicago’s black population grew by 148% between 1914 and 1920. (Drake 1940, 119).

this study.⁸³ (See the three highlighted areas in Community Area map of the appendix.) The discussion now turns to the methodology for analyzing the impact of covenants.

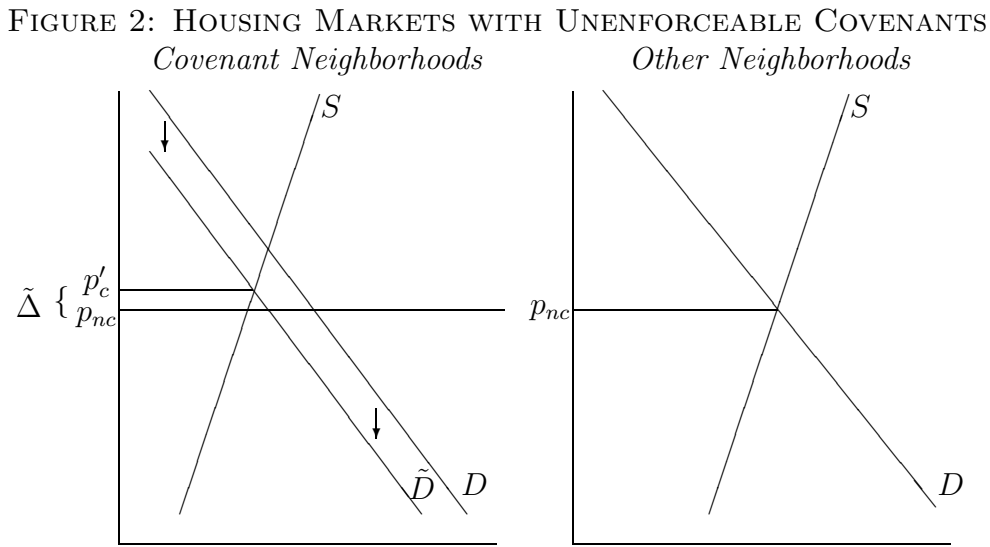
4.1 Methodology

Take two classes of neighborhoods, one with racial restrictive covenants (i.e., neighborhoods N_c) and the other with no covenants (N_{nc}). Let's focus on the difference in housing prices between the neighborhood classes. This difference is labeled Δ in Figure 1, where $\Delta = (p_c - p_{nc})$ and p_c is the equilibrium housing price in neighborhoods with covenants and p_{nc} the equilibrium price in neighborhoods without covenants. Other things being equal, Δ should be non-trivially greater than zero if covenants are valuable. Unfortunately, things are often not equal, though time-series data may be employed to control for many (observable and unobservable) variables.



⁸³See Drake (1940). [quick note about Bronzeville's etymology.]

For instance, we can look at the difference in housing prices between the neighborhood classes in 1940 (when covenants were enforceable), and then again in 1950, just after the U.S. Supreme Court ruled that covenants were unenforceable. The Court’s decision presumably lowered the value of the covenants and in turn reduced the demand by whites for housing in covenanted neighborhoods. Figure 2 shows the shift in demand from D to \tilde{D} for neighborhoods with covenants. The new equilibrium price, p'_c in this market generates a new difference in housing prices across the neighborhood classes,⁸⁴ $\tilde{\Delta} = (p'_c - p_{nc})$.



⁸⁴The equilibrium housing price in noncovenanted neighborhoods is treated as unchanging from 1940 to 1950. This treatment is taken to simplify the depiction of the problem. Prices in both covenanted and noncovenanted neighborhoods could be modeled as changing over time, where the only key requirement is that the change across the two classes of neighborhoods is statistically different if covenants had any meaningful impact. Additionally, the downward shift in demand in covenant neighborhoods is also made for illustrative purposes. It is possible that demand could actually increase in response to black entry into the covenant neighborhoods.

Now we can estimate the impact of covenants by comparing the difference in prices before and after covenants were deemed unenforceable. Label this estimate δ , where

$$\delta = \Delta - \tilde{\Delta} = (p_c - p_{nc}) - (p'_c - p_{nc}).^{85}$$

The estimate δ is generally referred to as the difference-in-differences estimator, and it can be derived through the following equation:

$$price_{i,t} = \alpha + \beta year1950 + \gamma covenant_i + \delta year1950 * covenant_i + \rho Z_{i,t} + \varepsilon_{i,t}. \quad (1)$$

The dependent variable ($price_{i,t}$) is the equilibrium price of an average housing unit in community area i during time period t , i.e., 1940 or 1950. The independent variables are $year1950$ (a year dummy variable for 1950) and $covenant_i$, which is equal to one if community area i was heavily covered by covenants and equal to zero otherwise. The variable $Z_{i,t}$ represents neighborhood dummies and the error term is $\varepsilon_{i,t}$. The intercept, α , represents the average price of a housing unit in a community area *without* covenants in 1940; β reflects the change in price for *all* housing units between 1940 and 1950; the coefficient γ indicates the impact of covenants on housing prices prior to 1950; and the difference-in-difference estimator, δ , measures the change (presumably decline) in housing prices due to the unenforceability of racial restrictive covenants in 1950.

While this focus on covenants may be revealing, it is important to be cognizant of the fact that housing prices between the two neighborhood classes may systematically differ due to factors other than the existence and enforceability of covenants. For instance, the class of the neighborhood, or the proximity to high-density black communities may be the underlying factor behind both the existence of covenants and difference in housing prices across neighborhood classes. To explore these possibilities, as well as increasing the accuracy of the estimators, the basic difference-in-difference model in equation 1 may

be expanded to explicitly account for various observable factors and additional years of data:

$$price_{i,t} = \alpha + \beta year + \gamma covenant_i + \delta year * covenant_i + \rho Z_{i,t} + \bar{\phi} \bar{X}_{i,t} + \varepsilon_{i,t}, \quad (2)$$

where *year* represents a vector of years of data and $\bar{X}_{i,t}$ represents a vector of independent variables. These variables, along with the other data employed, are described in greater detail below.

4.2 Data

The data for this study were taken from the *Local Community Fact Book for Chicago (Fact Book)* 1940 to 1970, which reports detailed community area data compiled from decennial census reports and various Chicago area agencies, such as the Chicago Department of Health and the Cook County Department of Welfare.⁸⁶ The *Fact Book* reports the estimated median value for one-dwelling-unit structures in each community area, which is the proxy for housing prices in the present study. In addition to housing value, the *Fact Book* presents data on the median age of housing structures, various plumbing data (e.g., the number of units without toilets, without indoor running water, and without hot water) and other dwelling characteristics (such as the number of dilapidated units, the average number of persons per room, and the number of units that are owner-occupied.) Complementing the dwelling characteristics are a variety of aggregate measures on the residents and households of each community area, including gender, race, nationality, median age, income, education, occupational prestige, employment and marital status.

⁸⁶I rely principally on the 1940 and 1950 *Local Community Fact Book for Chicago*, by the Chicago Community Inventory, (1940 eds. Louis Wirth and Eleanor H. Bernert; 1950 eds. Philip M. Hauser and Evelyn M. Kitagawa) University of Chicago Press. Other years of the *Factbook* are used with respect to other issues in this study. Analysis using Factbook data from 1930 and 1934 was limited because those years reported a distinct and incompatible measure of property values.

Table 4: Characteristics of Chicago Community Areas with Extensive Covenants, 1940

Community Area	Population	% Native White	% Foreign Born	% Black	% White Collar ^a	Median Housing Value	% Sub-standards ^b	Persons per Room	Proximity to Bronzeville ^c
Oakland	14,500	65.5%	11.4%	22.2%	40.0%	\$3,000	48.6%	0.86	1
Kenwood	29,611	82.6%	16.4%	0.9%	62.0%	\$6,212	21.4%	0.80	1
Hyde Park	50,550	78.8%	19.7%	1.1%	73.2%	\$6,230	12.6%	0.77	1
Woodlawn	71,685	70.7%	12.2%	16.9%	51.1%	\$3,436	34.6%	0.83	1
Englewood	92,849	81.4%	16.4%	2.2%	44.3%	\$3,048	17.3%	0.74	1
G. Grand Crossing	61,554	83.2%	16.4%	0.5%	49.8%	\$4,534	10.4%	0.71	1
South Shore	79,593	85.5%	14.2%	0.3%	71.6%	\$6,300	3.0%	0.69	2
Chatham	37,788	84.4%	15.5%	0.1%	60.0%	\$5,197	4.1%	0.70	2
Auburn Gresham	57,293	86.2%	13.8%	0.0%	56.0%	\$5,770	3.9%	0.71	2
South Chicago	55,090	77.6%	20.8%	1.6%	29.8%	\$3,916	18.4%	0.80	3
Calumet Hgts	7,417	81.5%	18.4%	0.1%	34.9%	\$3,801	21.4%	0.75	3
Roseland	44,009	73.5%	22.3%	4.1%	42.8%	\$4,105	11.9%	0.70	3
Beverly	15,910	91.7%	7.9%	0.4%	73.9%	\$9,861	2.0%	0.58	3
Washington Hgts	19,370	87.2%	12.5%	0.2%	56.0%	\$5,766	7.5%	0.70	3
West Pullman	27,834	74.7%	24.9%	0.4%	28.8%	\$3,593	17.6%	0.76	4
Clearing	6,068	83.4%	16.5%	0.1%	26.3%	\$3,908	14.2%	0.80	4
West Lawn	10,289	82.8%	17.2%	0.0%	35.3%	\$4,934	6.9%	0.76	4
Morgan Park	15,645	54.3%	6.1%	39.5%	55.3%	\$5,785	11.4%	0.66	4
Covenant Areas	38,725	79.2%	15.7%	5.0%	49.5%	\$4,966	14.8%	0.74	2.4
Noncovenant Areas	47,364	71.6%	20.2%	6.8%	38.1%	\$3,652	18.3%	0.75	3.2

^aThe percent of white collar workers is equal to the sum of the percentages of professional, managerial, sales, clerical and office workers in the community area.

^bThe percent substandard is equal to the sum of the percentages of dilapidated structures and units with substandard plumbing and toilet facilities in the community area.

^cThis figure is equal to the number of essentially nonblack community areas to the Black Belt from (and inclusive of) the community area.

The data measuring the extent of covenants in community areas were taken from various sources compiled by Plotkin (1998).⁸⁷ Table 4 shows various characteristics of the community areas where covenants were extensively employed. The last two rows of the table compare the averages for the covenanted areas and the rest of Chicago. The covenanted areas tended to have smaller populations, higher housing values, more native whites and more white collar workers as a percentage. On average, the covenanted community areas were also closer to neighborhoods with high concentrations of black residents. This is shown in the last column, which measures the number of areas away from the community area at hand is from Bronzeville, Chicago's black belt. Thus community areas bordering on Bronzeville received a score of 1, and community areas separated from Bronzeville by one nonblack area received a score of 2, and so forth. Moving away from these aggregated figures, a significant amount of variance is observable among the covenanted community areas. Some of these areas were middle class and others were working class; some were close to Chicago's black community and others were quite far away. In addition to variance within the covenanted communities, many of the covenanted areas looked quite similar to some noncovenanted areas in terms of neighborhood class and proximity to Bronzeville. For instance, focusing on the average housing value in the covenanted areas (i.e., \$4,966), there was an equal number of community areas that exceed this average in both the covenanted and the noncovenanted sample. There were also thirteen noncovenanted (and ten covenanted) areas that had a greater percentage of white collar workers than the average figure in covenanted areas (i.e., 49.5%). In other words, the covenanted areas were not exclusively the better-off communities nor were they exclusively the communities that bordered black community areas. Table 5 shows the mean values for selected community area variables for the four decades of data used in this study.

⁸⁷Plotkin (1998, 6) notes that the "most extensive study of covenants done in Chicago was undertaken by local NAACP attorney Loring Moore in connection with the covenant case, [*Tovey v. Levy*, 401 Ill. 393, 82 N.E. 2d 441 (1948)], in 1947." To this study, Plotkin adds her own extensive field research and the work of several other scholars to create the most comprehensive extant account of covenants in Chicago.

Table 5: Means and Standard Deviations of Selected Community Area Variables, 1940-1970

Community Area Variable	Means ^a 1940	Means 1950	Means 1960	Means 1970
<i>median housing value</i>	\$3,980 (1,681)	\$11,456 (3,611)	\$16,919 (3,655)	\$20,858 (7,264)
<i>population</i>	45,291 (38,525)	48,279 (38,318)	47,339 (32,895)	44,752 (29,880)
<i>median years of school</i>	8.7 (1.3)	9.9 (1.4)	10.1 (1.3)	11.0 (1.2)
<i>percent male unemployment</i>	11.0% (4.4)	4.5% (3.2)	5.3% (3.9)	4.2% (2.5)
<i>percent male professional</i>	5.0% (4.1)	8.7% (5.3)	9.4% (5.5)	11.0% (7.0)
<i>percent owner occupied</i>	33.2% (19.4)	41.5% (24.0)	43.5% (27.1)	43.8% (26.5)
<i>percent black</i>	6.4% (19.8)	11.6% (25.4)	20.0% (33.5)	30.7% (38.5)
<i>median age</i>	31.3 (3.6)	33.1 (3.8)	3.3 (6.0)	NR ^b —

^aStandard Deviations in parentheses.

^bNot Reported

4.3 Results & Discussion

Results from the analysis of housing values for the pooled sample of decennial data (1940 to 1970) are reported in Table 6. The dependent variable for all regressions is the natural log of value, i.e., $\log(\text{value})$. The first column of figures in the table shows the regression estimates for the basic model (standard errors are reported in parentheses below the coefficient estimates). The coefficient on *covenant* measures the impact of extensive covenants in community areas for 1940. The coefficient is positive and significant at the 0.05 level, suggesting that the spread of covenants in community areas had value. The median value of housing units in community areas that were heavily covered with covenants was roughly 34% higher than community areas without covenants. Moreover, the interaction terms *year1950*covenant* and *year1960*covenant* indicate that the suggested impact of covenants did not completely diminish following the Court's determination that their enforcement was unconstitutional. The coefficient on *year1950*covenant* (-0.163), which is

Table 6: Regression Coefficients on Housing Unit Value (Dependent Variable: $\log(\text{value})$.)

Independent Variables ^a	Basic Model	Model with Neighborhood Class Controls	Model with Exposure to Blacks
<i>covenant</i>	0.293** (0.121)	0.516** (0.202)	0.495** (0.200)
<i>year1950*covenant</i>	-0.163** (0.063)	-0.110** (0.060)	-0.109** (0.060)
<i>year1960*covenant</i>	-0.278*** (0.062)	-0.179*** (0.061)	-0.206*** (0.062)
<i>year1970*covenant</i>	-0.219*** (0.062)	-0.120** (0.062)	-0.169*** (0.064)
<i>education</i>	—	0.058*** (0.022)	0.053** (0.022)
<i>male unemployment</i>	—	-0.023*** (0.006)	-0.026*** (0.006)
<i>male professionals</i>	—	0.006 (0.005)	0.010** (0.005)
<i>owner-occupied</i>	—	-0.005** (0.002)	-0.004* (0.002)
<i>overcrowded</i>	—	-0.001 (0.034)	-0.012 (0.034)
<i>percent black</i>	—	—	0.002** (0.001)
<i>proximity to Bronzeville</i>	—	—	0.100*** (0.035)
<i>year dummies</i>	Yes	Yes	Yes
<i>community area dummies</i>	Yes	Yes	Yes
Observations	290	290	290
R-Squared	0.96	0.97	0.97

^aStandard errors are reported in parentheses. Heteroskedasticity-robust standard errors were also calculated (but not shown), producing the similar levels of significance.

* Estimated coefficient statistically significant at the 0.10 level.

** Estimated coefficient statistically significant at the 0.05 level.

*** Estimated coefficient statistically significant at the 0.01 level.

also significant at the 0.05 level, implies that the value of covenants fell by half (or about 17%) in 1950. An additional decline is revealed by the coefficient on *year1960*covenant* (i.e., -0.278), which shows that the relative decline in housing values for covenant and noncovenant areas between 1940 and 1960.⁸⁸ Rather than immediately becoming valueless after the Court's constitutionality ruling, extensive covenants in community areas continued to be impactful.

The results described above are consistent with well-known accounts of the continued use of covenants—despite their legal unenforceability—by government agencies, banks, and insurance companies.⁸⁹ These organizations along with individual homeowners, property owner's associations and real estate boards were able to limited the access of blacks long after the Court ruled enforcement of racial restrictive covenants unconstitutional.⁹⁰ By 1950, only three covenanted community areas (Oakland, Woodlawn and Roseland) out of eighteen experienced significant increases in the percent of their black populations;⁹¹ and these increases were largely attributable events that pre-dated the Supreme Court's decision.⁹² The continued limited access of blacks in covenanted areas can be observed

⁸⁸The coefficient on *year1960*covenant* is significant at the 0.01 level and statistically distinct from the *year1950*covenant* at the 0.10 level. The coefficient on *year1970*covenant*, while significant is not statistically different from the other interaction terms.

⁸⁹See discussion *supra* Section 2.1

⁹⁰“Without legal support but with the compulsion to segregate remaining, white property owners ... received the cooperation of real-estate boards in keeping Negroes from buying homes in residential areas traditionally reserved for whites.” Vose, *supra* note 11, at 223. Non-cooperating realtors who sold to blacks in traditionally white neighborhoods “were disciplined by local [real-estate] boards.” *Id.*, at 224.

⁹¹By Significant, I mean increases of ten percentage points or more. Kenwood and Englewood had observable increases of roughly eight percentage points in their black population.

⁹²In Oakland, the Oakland-Kenwood Property Owner's Association (OKPOA) entered into negotiations with the City of Chicago, the Chicago Urban League and the NAACP to use “conservation agreements” proscribing economic standards to effectively manage racial tension and transitions in the community area. Vose, *supra* note 11, at 229-30. “[A]s part of the program, [OKPOA] ceased prosecuting its pending covenant cases.” Hirsch, *supra* note 4 at 38. Following World War II, the more affluent black population of Oakland, and Kenwood to a lesser extent, expanded as a consequence of these agreements, though OKPOA maintained its commitment to restricting black occupancy. In Woodlawn, the Woodlawn Property Owners' Association, with its legal costs largely underwritten by the University of Chicago, lost a key court battle to maintain white residential exclusivity through covenants. In *Hansberry v. Lee*, 311 U.S. 32 (1940), the Court invalidated the covenant at issue on procedural grounds, thereby making way for black occupancy in Woodlawn and the Washington Park subdivision. Finally, in Roseland, substantial black residential penetration occurred years before the Court's enforcement ruling on covenants, when (in 1943) the Chicago Housing Authority began construction on housing projects for blacks in the area.

more generally through regressions analogous to those used in the basic model described above, but treating *percent black* as the dependent variable. These regressions reveal that from 1940 to 1950, the overall change in the percent black in covenanted areas was trivial and not statistically distinguishable from no change at all.⁹³ Thus the Supreme Court's decision in *Shelley* appears to have had little immediate impact on African-American access to Chicago neighborhoods covered by covenants.

Though African-Americans continued to be excluded from these neighborhoods, recall that relative prices for housing in covenanted areas did fall significantly. The fall in prices may have been in anticipation of increased probability of future integration. The pattern of falling prices and an unchanging racial mixture was most likely connected to the explosive suburban development following World War II. During the post-war development, individuals who previously demanded covenanted city neighborhoods increasingly turned to the suburbs.⁹⁴ This substitution to the suburbs depressed prices in the covenanted city neighborhoods, while the continued use the existing—though unenforceable—covenants by the FHA, banks, insurers, real estate boards and their agents served to maintain the racial exclusivity of these city neighborhoods. Yet alternative explanation may be that blacks were kept out of these community areas through a substitution to increased use of threats and violence when covenants became unenforceable in 1948.⁹⁵ It is certainly true that the late 1940s and early 1950s was a particularly violent period along Chicago's racialized neighborhood boundaries.⁹⁶ Yet, not all of Chicago's racially contested neighborhoods resorted to violence. The use of threats and violence for maintaining racial exclusivity was highly (though not perfectly) correlated with the class of the community area.

⁹³There were statistically significant increases of roughly 15% in the black population of covenanted areas by 1960.

⁹⁴See *supra* note 76 and accompanying text.

⁹⁵This alternative explanation, however, does not well account for the fall in prices in covenanted areas.

⁹⁶“[L]arge housing riots — the mobbing of black homes by hundreds, if not thousands, of whites — broke out, thus revealing a form of resistance rarely seen outside the context of a large citywide disorder.” (Hirsch 1983, 41)

A more precise picture of this class dynamic may be drawn by expanding the basic model to include various neighborhood class controls. When these controls added to the model, as shown in the second column of figures in Table 6, the coefficient on *covenants* (i.e., 0.516) increases in magnitude and remains significant at the 0.05 level. The coefficient on the interaction term *year1950*covenant* also remains statistically significant, though it falls slightly in magnitude, going from 17% to 11%.⁹⁷ Statistically speaking, the model is more precise when neighborhood class characteristics are included because it reduces the error variance and thus the standard errors of the coefficients. Intuitively, the reason why the model is more informative has to do with the types of community areas in which covenants were common. These community areas were typically affluent and tended to exclude poor and working class ethnic groups—not just blacks. Covenants in these areas were employed to maintain their exclusivity and the higher values of their residences. However, some working class neighborhoods were also heavily covered by covenants. Recall from Table 4, that several covenanted areas (such as, Calumet Heights, Clearing and West Pullman) had relatively low median housing values and black populations of less than 1% in 1940. Though covenants were common in these white working class communities, residents in these areas largely relied on violence and threats to exclude blacks. For example, the covenanted community area of Englewood, where blacks accounted for only 2.2% of the population in 1940, was a common site for the city’s most contentious battles over racial residential expansion.⁹⁸ For these less affluent communities, covenants served a specific, though less obvious, function. The purpose of covenants in working class communities was to protect the value of wealthier community areas. Neighborhood associations from wealthier communities often ran campaigns to have covenants installed in working class white neighborhoods that abutted black communities. These working class neighborhoods served as buffer zones between the more affluent neighborhoods and the black neighborhoods. The unenforceability of covenants therefore impacted housing

⁹⁷The coefficients on *year1960*covenant* and *year1970*covenant*, while significant, are not statistically distinct from *year1950*covenant*.

⁹⁸“The area enduring the most attacks was that of Wentworth between 26th and 43rd streets; Englewood ranked second.” (Hirsch 1983, 52).

values differently in working class community areas and affluent areas. Thus, controlling for neighborhood class, the model is better able to reveal the association between covenants and housing values.

The coefficients on the neighborhood class variable are themselves interesting. Again, observing the second column of Figures in Table 6, the first two community area class measures are *education* (the median number of school years completed) and *male unemployment*, both are significant at the 0.01 level with the expected signs: areas with higher median education were associated with higher housing values and areas with more male unemployment were associated with lower housing values. The variables *professional males* (i.e., the percentage of professional male workers in the community areas) and *overcrowded* (a dummy variable using the average number of persons per room as a proxy for crowdedness) were not significant. The coefficient on *owner-occupied* (i.e., percent of owner-occupied units in the area) is negative and significant.⁹⁹ The coefficients on all of these variables are largely the same in the last column of figures in Table 6, which adds controls for the percentage of black residents and the proximity of the community areas to Bronzeville. A one percent increase in the black population is correlated with a 0.2% increase in median housing values. This figure appears small, but it is actually quite significant in both a statistical and a general sense. Recall that Chicago has long been among the most segregated cities in the country: most of the community areas at the time (and presently) were either completely white or completely black. Therefore, going from a white community area to a largely black community area generally meant a change of almost one hundred percentage points in the black population. Thus, controlling for neighborhood class and housing characteristics, the median price of housing in black community areas approached up to 20% higher values compared to white areas. Housing units in black neighborhoods were more valuable because they could earn higher rents.¹⁰⁰

⁹⁹The negative sign is somewhat unexpected: One might expect a higher percentage of owner-occupied dwellings to be correlated with higher median housing values. Further analyses revealed that *owner-occupied* was positive and significant for 1940 and negative in the later years.

¹⁰⁰As Hirsch (1983, 35) notes, that an apartment in the south side neighborhood of Oakland could be rented for \$25 per month to one white family or to three black families for \$100 per month. Blacks were

Finally, the coefficient on *proximity* indicates that community areas further away from Bronzeville tended to have roughly 10% higher median housing values. This estimate is should be interpret with caution, however, since distance is not precisely measured.

5 Conclusion

This work has sought to evaluate whether racial restrictive covenants had any meaningful impact on the patterns of black-white residential segregation in Chicago. After discussing a norms-based theory of residential segregation through covenant enforcement and other non-legal sanctions, the empirical analysis of the paper demonstrated that the enforceability of racial restrictive covenants had a non-trivial and statistically significant impact on housing prices. Covenants were valuable because they helped maintain the racial exclusivity of communities with “a taste for discrimination.” The analysis also indicates that the value of covenants did not fully diminish after the Supreme Court ruled their enforcement unconstitutional. The presence of extensive covenants in a community—even though they were unenforceable—served as a valuable signal to mortgage lenders, realtors and home-buyers of the traditional racial exclusivity of the community. As such, racial restrictive covenants played a key role in establishing and perpetuating black residential segregation in northern cities like Chicago.

In other ways, as well, the effects of these long-abandoned covenants continue to ripple through modern urban communities. Consider the recent pattern of new housing construction in central-city neighborhoods across the country. It has not gone unnoticed that much of the new housing is being developed and managed by local black churches. Such church-organized activities are the success stories behind the Bush Administration’s push to provide federal funding for faith-based initiatives. The black church’s current involvement in property and community development can be directly linked to racial re-willing to live in more cramped situations because of the overcrowdedness in the Black Belt.

restrictive covenants and other forms of residential discrimination.¹⁰¹ Though the black church has been involved in community development since Reconstruction, its more ambitious early endeavors came in the wake of the mass migration of blacks to the urban north. While most black migrants were denied access to housing and real estate development opportunities because of racial restrictive covenants, red-lining and violence, the black church found itself able to actively engage in property ownership and management. Red-lining and violence did not have the debilitating impact on the black church that they did blacks generally;¹⁰² and interestingly, nor did covenants. While a surprising number of white churches signed covenants not to sell their properties to blacks, the elite black churches were ultimately not constrained by these agreements. These churches were typically incorporated, and were therefore considered legal persons, as opposed to natural persons. In a number of case, courts ruled that covenants did not apply to legal persons because such persons cannot have a race.¹⁰³ Thus the inapplicability of racial restrictive covenants to incorporated black churches, gave them a relative advantage in acquiring and developing properties in urban communities. The present development activities of large urban churches stems, in part, from this early development history.¹⁰⁴

¹⁰¹The functional definition of the black church that is used here corresponds to the set of denominations which includes African Methodist Episcopal, African Methodist Episcopal Zion, Christian Methodist Episcopal, National Baptist Convention of America, National Baptist Convention, U.S.A., Progressive Baptist Convention and Cogic. This group captures over 80% of all U.S. black church-goers (Lincoln & Mamiya 1990).

¹⁰²The discriminatory practices of banks and other lending institutions did not prevent the black church from accumulating sufficient funds to purchase property. These churches—that is, the elite black churches—were frequently able to self-finance property acquisitions from congregant contributions. Churches were also often able to obtain loans. Reports of violence in response to church property expansion is limited, though “a Negro Baptist congregation [that bought a synagogue] was repeatedly bombed in 1925.” (Drake 1940, 79).

¹⁰³See, *Perkins v. Trustees of Monroe Avenue Church of Christ*, 79 Ohio App. 457 (1946) (ruling that an incorporated church with a black minister could not be prohibited from purchasing property by racial restrictive covenants, since incorporated churches have no race.) See also, *People’s Pleasure Park Co. v. Rohleder*, 109 Va. 439 (1908) (ruling that a sale of property to a company in which all stockholders and clients are black cannot be prohibited by a racial restrictive covenant.)

¹⁰⁴Understanding the connection between the history of racial restrictive covenant, residential segregation and the church’s present role in community development is essential for the success of the current Administration’s faith-based initiative program. Federal support for church-based development projects makes sense in many ways. Commentators and community development advocates widely agree that the black church, which occupies a singly prominent position in many urban communities, uniquely possesses the credibility, commitment, and incentive to revitalize abandoned and borderline city neighborhoods. Yet, no one is quite sure whether or how the church’s credibility, commitment and incentive will be trans-

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formed by an infusion of federal funds and a new accountability to government agents. Federal support could plausibly undercut rather than bolster development efforts by the church. To avoid, or at least limit, this iatrogenic response, policy-makers must be attentive to the institutional norms and cultural history that create the context for these church-based activities.

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Table 7: Black-White Segregation (Isolation Indices) in Chicago Compared to Other Cities, 1890-1930

Region	City ^a	1890	1900	1910	1920	1930
	Chicago	7	9	13	35	68
Midwest	Cleveland	4	6	6	20	47
	Detroit	7	11	17	11	25
	Indianapolis	9	6	10	14	16
	St. Louis	5	7	12	22	40
Northeast	Boston	7	5	10	13	23
	New Haven	14	6	6	5	26
	New York	2	3	5	18	39
	Philadelphia	8	8	11	14	18
South	Louisville	6	9	13	18	10
	Memphis	6	7	10	17	30
	Nashville	11	14	18	22	31
	New Orleans	3	4	3	4	7
Southeast	Atlanta	4	7	13	23	31
	Baltimore	9	11	15	20	28
	Charleston	3	5	5	5	7
	Richmond	17	25	11	5	5
West	Los Angeles	2	3	1	5	23
	San Francisco	3	5	1	5	11

^aSource, Cutler, Glaser & Vigdor.

		Prisoner 2	
		<i>Fink</i>	<i>Mum</i>
Prisoner 1	<i>Fink</i>	1 , 1	5 , 0
	<i>Mum</i>	0 , 5	4 , 4

Prisoner's Dilemma Game

Figure 1: *
Chicago Community Areas

