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Only Caucasian: A Study of Race Covenants

By JOHN P. DEAN*

THE restrictive covenant is under attack as the leading device by which race ghettos are legally maintained in America. Yet few reliable data have been offered to document its prevalence. The oft-quoted statement of an unsigned article in *Crisis* that "in Chicago it has been estimated that 80 percent of the city is covered by such agreements" has received wide currency and has begun to acquire the ring of validity. But it has been "estimated," too, by a reliable executive of a New York title company, that a study of race covenants in the New York area would disclose "not more than a handful." Both could be right. Both could be wrong. To fill this gap, the study here reported was undertaken.

The restrictive covenant becomes a vehicle for racism when property owners in a neighborhood agree not to rent or sell their property to Negroes or other ethnic minorities. Widespread use of the restrictive covenant limits the housing available to Negroes and condemns them to the overcrowded dwellings of "black belts." There the evils of residential segregation multiply into the evils of separate stores, separate restaurants, separate schools, and separate public services—not equal and seriously too few. Since the inadequacy of these institutions becomes identified with the inadequacy of the people themselves, expansion of the restricted group to new areas of residence is seen as a threat to neighborhood character and property values. If white residents begin to abandon the old neighborhood in numbers, the threat may become reality. As a result, black belts usually expand by

sudden and expulsive accretions to their borders when the bonds that restrain them can no longer hold back the rising pressures of overcrowding. Each subsequent inundation confirms anew the prejudices that caused it.

Thus any restraint forbidding Negroes from moving into new non-segregated areas needs careful scrutiny to judge its prevalence and ultimate repercussions on property values, race tension, and social injustice. Recent statements say that the increasing segregation of Negroes in Northern communities has developed with the spread of race covenants. But since informal discrimination and depressed economic status achieve segregation too, there has been doubt about the specific role of race covenants—especially since no one has known how extensive they are.

The present study investigated the prevalence of race covenants in over 300 recent suburban developments in 3 counties of the New York area: Queens County, Nassau County, and Southern Westchester County—the leading outlets east of the Hudson for Manhattan's crowded population. A large title company in the New York area, estimated to handle roughly a quarter of the title business in Queens, Nassau, and Westchester, agreed to let the author examine the title reports summarizing the encumbrances disclosed by searching the title, including any covenants and restrictions on the property at the time of the search. All subdivisions of 20 parcels or more (and, for comparison, an additional 132 developments of less than 20 parcels) were checked for the period since the war and for the period of extensive pre-war building of the late 1930's and early

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1940's.¹ In most instances a copy of the covenants and restrictions, if any, was attached to the title report. If not attached, the official volume and page where the covenants were on record in the County Register's Office was noted and checked for restrictions on race. Several title reports were checked for each development. In almost every instance—309 out of 315—all properties in the development were either uniformly free of race restrictions or uniformly covered by them. A few race covenants may have been missed (1) where the parcels sampled were free of them but those not selected were restricted, or (2) where the race covenant agreements were imposed *after* the dating of the title report. Insofar as this was the case, the figures given here understate somewhat the extent of race restrictive covenants.

How prevalent are race restrictive covenants? In the 315 recent developments in Queens, Nassau, and Southern Westchester surveyed in the study, race covenants applied to few small developments; but they were frequent on the large-scale building operations. Only 8 per cent of the developments with less than 20 homes were restricted against Negroes, compared with nearly one-half (48%) of the subdivisions of 20 homes or more. And among large developments of 75 properties or more five-sixths were race restricted (Table I). No less than 56 per cent of all homes checked were forbidden to Negroes. The proportion rises to 63 per cent for properties in developments of 20 or more houses and to 85 per cent for homes in subdivisions of 75 or more. These figures suggest that in the larger subdivisions where new properties are numerous enough to create

their own new neighborhood, race restrictions are considered necessary to guarantee the uniform racial character of families moving in and to maintain uniform occupancy thereafter. But where just a handful of houses are constructed in an already-built-up neighborhood, interlocking friendships, mutual loyalties, and existing social pressures can be depended upon as an adequate barrier against Negroes.

TABLE I—RACE RESTRICTIVE COVENANTS IN SUBDIVISIONS DEVELOPED DURING THE LAST DECADE IN QUEENS, NASSAU, & WESTCHESTER COUNTIES, BY SIZE OF SUBDIVISION

	Size of Subdivision						Total	
	Less than 20 Parcels		20 to 74 Parcels		75 or More Parcels			
	No.	%	No.	%	No.	%	No.	%
Subdivisions with race restrictions	11	8%	52	37%	35	83%	98	31%
Subdivisions without race restrictions	121a	92%	89b	63%	7c	17%	217	69%
Total	132	100	141	100	42	100	315	100
Approximate No. of Parcels (d).	1300		4800		5200		11,300	

(a) One subdivision of 6 parcels had a race restriction on one parcel.
 (b) Four of these subdivisions had racial restrictions on some but not all of the parcels.
 (c) One of these subdivisions had race restrictions on only a few parcels.
 (d) For 17 subdivisions for which accurate information on the number of parcels was unavailable conservative estimates were made. These subdivisions are not included in Table II.

Is the use of race covenants increasing or decreasing? Unfortunately, we cannot tell from the data of this study. As shown in Table II, a higher proportion of the properties in prewar than in postwar subdivisions are race restricted. But many of the postwar developments have not been completed,² and restrictive covenants are frequently imposed *after*

² Most of the postwar developments in Queens and Nassau were still making up title reports for individual properties and on many subdivisions no title closings had been made. At least 10 subdivisions averaging 45-50 parcels had indicated their completed size would average about 200 homes.

¹ Discussions with executives of the company disclosed no reason to believe that the developments covered in the title searches of this company were in any way unrepresentative of the properties developed during the period covered by the study.

TABLE II—PROPERTIES RESTRICTED AS TO RACIAL OCCUPANCY AS A PER CENT OF TOTAL PROPERTIES, BY SIZE OF SUBDIVISION AND WHETHER SUBDIVISION WAS DEVELOPED IN THE PREWAR OR POSTWAR PERIOD

	Prewar (a)	Postwar (b)	Total
Total Parcels on which data available.	6,827	3,726	10,553
Parcels restricted as to race.	4,432	1,481	5,913
—as % of total parcels.	65.0%	39.7%	56.1%
Parcels in subdivisions of 20 or more parcels, restricted as to race.	4,343	1,449	5,792
—as % of all parcels in subdivisions of 20 parcels or more.	71.6%	45.2%	62.5%
Parcels in subdivisions of 75 or more parcels restricted as to race.	2,921	1,082	4,003
—as % of all parcels in subdivisions of 75 parcels or more.	86.7%	81.1%	85.1%

(a) Subdivisions developed 1938 to 1942 in Queens and Nassau counties, 1935 to 1942 in Westchester County.
 (b) 1945 to 1947 subdivisions, many of which are still in process of development.

completion, either by including them in the deed when the purchaser takes over or by filing in the Register's Office a declaration of covenants and restrictions that affects all subsequent transfers. Thus the race restrictions found on postwar subdivisions represented for the most part instances where the land was laid out or partially developed before the war and the restrictions imposed at that time. Some few of the larger operative builders had already made postwar declarations of restrictive covenants, but others, we can safely assume, will impose covenants and restrictions at the time of closing title. For this reason, too, the figures here reported understate the extent of race covenants. Their prevalence is best judged by the 71.6 per cent of homes in prewar developments of 20 homes or more which carry race covenants.

The rapid spread of race covenants within the last decade is attested by

other data which drew increasing attention as the study proceeded:

(1) Subdivisions with covenants imposed prior to the 1930's rarely were restricted as to racial occupancy, even though otherwise protected with restrictions on residential character similar to those contained in covenants today.

(2) The influence of the Federal Housing Administration on race restrictions began to stand out with embarrassing clarity. Covenants with those special building and occupancy restrictions associated with the FHA house almost invariably included a race clause. Wording parallel to the recommendation of the 1938 FHA *Underwriting Manual* that restrictive covenants include a "prohibition of the occupancy of properties except by the race for which they are intended",³ was found in a number of race clauses:

"Said [premises] shall be maintained for the use and occupancy of persons of the Caucasian race, and no race or nationality other than those for whom the premises are intended shall use or occupy any building or lot."

"It is intended that the said premises are restricted to the use and occupancy of the Caucasian race only . . ."

In some cases the FHA was identified in the preamble to covenants as one of the reasons for the restrictions imposed:

"Whereas the Federal Housing Administration requires that the existing mortgages on the said premises be subject and subordinated to the said restrictions . . ."

or again, in another:

"Whereas the parties hereto desire to modify, add to and amplify the said restrictions in

³ Sec. 980 (3). Under pressure, the FHA has deleted from its recently-issued postwar revision of the *Underwriting Manual* direct references to "incompatible racial and social groups," "inharmonious racial groups," etc., (it speaks instead of "user groups"). And the manual no longer recommends the use of race covenants. Despite this change in official wording, local FHA offices will undoubtedly continue to approve race restrictive covenants wherever their use is firmly established.

conformity with the requirements of the Federal Housing Administration . . .”

And finally, race covenants are more frequent among the large operative builders who require financing assistance and use the FHA guarantee to secure building loans. Note for instance:

“Whereas . . . [names of owners] . . . in order to better secure their mortgage by the development of said tract into 1-family houses and to better promote the sale thereof, are willing to subordinate and make subject their lien of their said mortgage to the restrictions required by the Federal Housing Administration as hereinafter set forth . . .”

In these instances where the FHA was mentioned, race restrictions were included. Restrictive covenants, once crystallized as an aid to financing and mortgage stability, spread and become legion. Just as it became common practice around the turn of the century to impose restrictions against any slaughter house, brewery, or manufactory of gunpowder or glue, so the race clause is becoming customary among restrictive covenants today. This practice casts a long shadow on the trend toward large-scale building operations. One builder consistent in the

use of race covenants is identified by *Architectural Forum* as “for 25 years one of Long Island’s most prolific house-builders.” His past and present building program involves 11,300 dwelling units—the equivalent of a city of 40,000 to 45,000 people.

How much variation is there from one development to another in race restrictions? In the New York area, race covenants are aimed primarily at Negroes. Sometimes they are identified positively in the covenants as “negroes or any persons of the negro race of blood” (sic) or perhaps as “persons of African descent who are not of the Caucasian Race.” More often the restricted group extends beyond Negroes to include all “non-Caucasians” or “persons of any race other than the white or Caucasian race.” Or the covenant may designate only those permitted:

“No house shall be used or occupied except by white people.”

“Said premises are restricted to the use or occupancy of the Caucasian race only.”

In most developments, the race covenants apply only to the use or occupancy of dwellings. Our courts have generally upheld covenants against use, while those against the sale or alienation of property have often been ruled out. Nonetheless, many a restrictive covenant in the New York area aims to restrain both ownership *and* use:

“No plot or part of plot or building thereon shall be owned or occupied by any other than the Caucasian race.”

“No part of said premises shall ever be used or occupied by or sold, conveyed, leased, rented, or given to persons other than of the Caucasian race.”

In all cases except one (an oversight?) a loophole was left for servants:

“This covenant shall not prevent occupancy by domestic servants of a different race domiciled with an owner or tenant.”

TABLE III—SUBDIVISIONS OF TWENTY OR MORE PARCELS WITH RACE RESTRICTIVE COVENANTS, BY LOCATION IN QUEENS COUNTY, NASSAU COUNTY, AND WESTCHESTER COUNTY, N.Y.

	Subdivisions in Queens County, N. Y.		Subdivisions in Nassau County, N. Y.		Subdivisions in Westchester County, N.Y.		Total	
	No.	%	No.	%	No.	%	No.	%
Subdivisions with race restrictions	36	45	28	47	23	52	87	48
Subdivisions without race restrictions	44a	55	31b	53	21	48	96	52
Total	80	100	59	100	44	100	183	100

(a) Three of these subdivisions have race restrictions on part of the parcels.
 (b) Two of these subdivisions have race restrictions on part of the parcels.

“This covenant shall not prohibit the engagement or maintenance of colored servants or domestics in the family household.”

Where the covenant wished to plug all loopholes, an expanded version such as the following was used:

“No plot or part of any plot or building thereon shall be occupied by any person other than of the Caucasian race, nor shall be sold, leased, conveyed, or rented in any form or manner by any title legal or equitable to any person other than those of the Caucasian race, nor to any firm or corporation of which any person or persons other than those of the Caucasian race shall be a member, officer, or stockholder.” (Domestic servants are then excepted.)

Despite occasional individual variations such as this, most race clauses took on a rather standardized form which, with minor deviations in phrasing in each of the three counties surveyed, runs as follows:

“No race other than the Caucasian race shall use or occupy any building or lot, except that this restriction shall not prevent occupancy by domestic servants of a different race employed by an owner or tenant.”

Variations in wording such as these suggest that the restrictive covenant device, once understood and practiced—and sanctioned by the courts—will

spread from one group to another in a network of discriminations that call forth inter-group hostility. Already race covenants in different parts of the country have excluded Chinese, Japanese, Jews, Indians, Mexicans, Persians, Syrians, Armenians, and even a Seventh Day Adventist. The form of a 1946 covenant imposed on a development of 200 homes in Westchester County suggests that all these groups and others, too, will be excluded:

“No portion of said premises shall be conveyed or in any way transferred, and no land and improvement thereon shall be let to any person or persons by any owner thereof without the written consent of the company to such conveyance, transfer, letting or subletting.”

With devices such as this coming into use against minorities, we can expect conflict to intensify between Caucasian and other-than-Caucasian races. At a time when the darker skinned peoples all over the world are coming alive with population growth, nationalism, and technological skill, it is surprising that the one-third of the world's population represented by Caucasians do not anticipate their shrinking status as an ethnic minority.