Austin Restricted: Progressivism, Zoning, Private Racial Covenants, and the Making of a Segregated City

Summary of the Argument and Motivations

In many respects, the story of racial segregation in Austin, Texas, is not unique. It is the story of nearly every major city in the United States, especially those in the South, and all major cities in Texas (Massey and Denton 1993 pgs. 17-58; Wade 1971). In the latter portion of the 19th century, non-whites, especially African-Americans (but not Hispanics), could be found in most neighborhoods in Austin. However, by 1940, African-Americans and Hispanics were overwhelmingly spatially segregated in an isolated section of the city known as East Austin. As Sara Lucy observed in 1939, "The city’s Negro population is not large compared to many other populous Texas cities, nor is its Mexican population. Both races, through natural choice, are largely segregated in their sections of the city" (Lucy 1938). The segregation of non-whites was far from voluntary, as this report shows, and for more than 60 years, until about the 2000 census, the patterns of race and housing that had been locked in during the early period of the 20th century remained largely unchanged. Only recently have these geographies become undone by private urban revitalization efforts broadly classified as gentrification (Tretter 2012).

The purpose of this report is to explore how private land-use restrictions, the city’s zoning laws, and federal policy all worked together to shape the patterns of residential segregation found in Austin during most of the 20th century. In part, I wrote this report to offer a corrective to the existing research, both popular and academic, that examines the evolution of segregation in Austin. On the whole, this research has focused squarely on the role of the local government. Stressing how private means of discrimination helped produce a racially segregated city gives a much richer account of how market and public forces worked in tandem. The other reason that inspired me to write this report was the realization that if private practices had such an impact on the residential geography of cities, then policy efforts to foster more racially and economic diverse neighborhoods that focus only on public zoning may always have limited results. In Texas, in particular, private land-use controls have a significant and lasting effect on residential and commercial development, and any attempt to foster more inclusive residential patterns in Texas must make calls for reforms to the state’s public zoning regulations as well as barriers created by the system of private zoning.

Major Research Findings

1. The patterns of residential segregation in Austin were set by restrictive covenants, which existed before the city’s first local comprehensive plan was adopted in 1928 but were used with increasing regularity after its adoption. To a large extent, in fact, public zoning ordinances in the late 1920s helped to enshrine in a different legal arena the patterns of development — i.e., the features of housing segregation — that had been set in motion by limitations in deeds. Later, this
pattern of segregation was reaffirmed by the federal government through the Housing and Loan Corporations’ city survey conducted in 1934. The "residential security map" created for the HOLC redlined most of the areas in Austin that did not have racial or other types of restrictive covenants. Moreover, zoning rules identified areas of the city for commercial and later industrial development that relied on past geographical distribution of covenants, which had restricted noxious land-uses in some parts of the city, but their absence in other parts made those areas available for more non-residential development. These patterns would be reinforced in 1955, when another round of zoning rules was adopted under the Austin Plan, rezoning an even larger area of East Austin for commercial and industrial uses (Busch Forthcoming). Between 1935 and 1955, however, private restrictions on residential land-uses had become more refined, developed, and widespread, and while public zoning was important, if not essential, deed limitations proved to be a potent force in generating future patterns of housing segregation. By 1949, around the time the Supreme Court ruled that certain racially restrictive provisions in covenants were unenforceable, a large portion of Austin’s land was governed by a host of other private rules that regulated land-use, regulations that remain largely in force today.

2. Moreover, the research from this project shows an important trend that has never, to my knowledge, been discussed in the larger academic literature on the use of race as a means to promote spatial segregation, and that is what the changing language of race in racially exclusive covenants tells us about the changing textures of ‘whiteness.’ In Austin, there was a noticeable shift away from using the phrase no people of "African descent" could buy or occupy land (except, in many cases, as domestic servants) in particular neighborhoods to stating a subdivision or properly could only be inhabited by "Caucasian" or "white" persons (although again, often, with the an exception for blacks as domestic servants). The changing language included in the racial covenants, I suggest, reflects the development of new forms of exclusion for partially white groups during this time period. Perhaps the absence of such a trend in other cities is due to the fact that in places like Austin and Texas, the boundaries of whiteness remained unsettled because of the large number of Hispanics. During the 1930s, there was an elaborate discussion about the racial classification of so-called “Mexicans,” or people from Mexico or of Mexican descent, who were “white” by law but considered something else by custom. I contend that in residential land-use, the increasing use of the restrictive language “white” or "Caucasian" only, while perhaps legally unenforceable, was by custom used to forbid Hispanics from certain neighborhoods, and that is why the shift in deed language parallels the demographic growth trends of Hispanics in Austin.

3. Although racially restrictive covenants have continued to have a lingering effect on the racial patterns of residential Austin into the 21st century, the impact of other kinds of restrictions may actually limit access to certain areas of the city because they remain in force. Today, in fact, these other covenants may be more significant in shaping the patterns of segregation found in the city. In this respect, while racial covenants stood at the center of the development of private land-use controls, other seemingly non-racially inflected limitations may have played a greater role in
influencing residential geographies because of their longevity. While it is not completely possible to separate and isolate the long-term effects of different deed restrictions, it is evident that these other covenants have provided significant barriers of entry, especially financially, to the residential mobility of non-white minorities. The maps from this report show how the area of city that is most restricted by covenants, nearly all of Austin’s northwestern side, remains overwhelming white.

Policy Implications and Recommendations

1. Fair-housing advocates could point out that the power of covenants (other than racial ones) prevents more integrated residential housing patterns in the city and argue, as the research in this paper has suggested, that such private restrictions on land-use do act in place of racially explicit covenants to segregate a city.

2. Failure to reform private land-use controls in Texas could significantly hinder other efforts to promote more inclusive residential patterns.

3. Since the power of enforcement comes from state statutes, there could be an effort made by fair-housing advocates to challenge or change the laws that permit the enforceability of some exclusionary private-zoning restrictions.

4. The introduction of market-based home-equity insurance (assurance) might be one way to gradually weaken the power of restrictive covenants, particularly in certain neighborhoods, and, at least in Texas, such a proposal may prove to be a more politically fruitful way to promote more inclusive development.

Summaries of Five Sections

Southern Progressivism: Urban Reforms, Planning, and Jim Crow

Providing the historical, geographical, and social contexts in which the initial phases of land-use controls arose in Texas, in this section I discuss Southern Progressivism and how its features, particularly the role played by local business communities in advancing progressivism ideas, impacted urban planning and political reform. Moreover, I talk about how progressive reforms operated in a system of white supremacy, racism, and nativism and impacted African-Americans and Mexican/Mexican-Americans differently than so-called whites. In particular, I focus on how political reforms such as the development of the city-manager system of government and innovations in city planning created and reinforced the racial hierarchy of whites over non-whites. Finally, I discuss how New Deal-era efforts by the federal government to remake cities during the 1930s, such as the Housing and Loan Corporation (HOLC), interacted with Progressive Era planning to reinforce uneven racial and class geographies in cities throughout the south.
Progressivism in Austin: City Manager Government, the Comprehensive Plan, and the Redlining of East Austin

In this section, I discuss how the urban and political reforms outlined in section 1 were implemented in Austin. Focusing on the ways that Austin's local government was reorganized and the implementation of comprehensive planning and zoning, I describe how Austin’s political elites embraced Progressive Era reforms such as helping to secure the passage of both a local referendum that created the city-manager system of government and a large bond package that would help the government implement many of the recommendations proposed in its new comprehensive plan. Among other things, the plan included the first efforts to zone the city, and it also provided a rationale and framework to keep the city racially segregated. Last, I discuss the HOLC residential security map and report about Austin and show how it interacted with earlier planning efforts to reshape racial and class geographies in the city.

Private Zoning: Restrictive Covenants and Land Use in Texas

The legal history and use of private land covenants and municipal zoning in the United States, specifically in Texas, are addressed in this section. During the 20th century, both deed restrictions and zoning became important means of regulating land-use throughout the United States. In both cases, the federal government’s policy was as important as the efforts of private developers and local business coalitions who believed there was a strong economic incentive to imposing restrictions in communities. On the one hand, private zoning has consistently been upheld as a constitutionally valid form of private contract that developed out of common law traditions, and the specific limits on and scope of their enforcement have been left primarily to state courts and legislatures. On the other hand, zoning has a parallel history nationally and in the state of Texas but is legally very different. Because zoning is an exercise of the police powers of the state, its use and enforcement required several legal innovations such as the passage of state-enabling legislation and the legal vesting of municipal corporations with the right to pass zoning ordinances.

Fixing Space: Race, Covenants, and Land Values in the United States

After providing an overview of the law on covenants in the previous section, I discuss racial and non-racial covenants more explicitly, their dissemination, their use in the private housing market, and the impact of explicitly non-racial restrictions on residential racial segregation. Racial covenants were a type of deed restriction that began to be used with increasing frequency in the early portion of 20th century. Nearly always bundled with a host of other private restrictions on land-use, racial restrictions were unique in that they were intended to exclude certain classes of persons deemed to be less valuable and non-conforming to a neighborhood’s standards. As the 20th century unfolded, and as other means became limited, these types of covenants became a primary means to enforce the
color line and create relatively permanent residential geographies for whites and non-whites.

Restricting Austin: Private Covenants, Partially White People, and Segregation

Deed restrictions shaped racial segregation in Austin and in this section I offer an interpretation of both their short- and long-term impacts. While I note how census maps suggest that restrictive covenants did have a substantial and lingering effect on the city’s racial geographies, I do not dwell on this problem but instead look at the changing language of race in racial covenants because I believe the rise of 'white-' and 'Caucasian-only' restrictions in covenants were used to enforce a system of tri-racial exclusion before 1950. The broader yet more exclusive language of racial covenants in Austin (the shift from 'no people of African descent' to 'Caucasian only’), I argue, was a response to shifting demographic conditions, particularly the entrance of large numbers of people from Mexico or of 'Mexican descent.' In this respect, the changing language in the covenants tells us as much about the borders of 'blackness' as it does about the changing nature of 'whiteness.' The boundaries of 'whiteness,' it appears, were becoming increasingly policed as the implementation of a broader language, designed to enforce purer forms of racial exclusion, particularly against Hispanics, was used. Moreover, what this research points to is the role private market forces, particularly developers, perhaps in response to homeowner concern, played in helping to create and reinforce the tri-racial system of spatial apartheid.

Pathways to More Inclusion: Policy Implications and Recommendations for Private Land-Use Controls

Finally, I offer some suggestions on the potential policy implications of this research and make some recommendations. First, I note the significance of racial restrictions on housing but suggest that other types of private land-use regulations may have had a more important impact because they are still enforceable. Austin's west side, which had the highest concentration of private deed restrictions, remains overwhelmingly white. Perhaps fair-housing advocates could point out the power of these covenants to prevent more integrated residential housing patterns in the city and argue, as the research in this paper has suggested, that such private restrictions on land use do act in place of racially explicit covenants to segregate the city. Second, I delve into the increasing strength that the Texas legislature has granted private land-use restrictions in recent decades. While most fair-housing advocates have focused on public means to promote less segregated housing, such as overturning the statewide ban on inclusionary zoning, the failure to reform the statutes that empower such a broad use of covenants means such an effort might have a minimal impact. Finally, I propose that a market-based home-equity insurance (assurance) market, like those proposed to address exclusionary public zoning, might be a more politically fruitful way to promote more inclusive development.
Appendix on Research Methodology.

Written by Moulay Anwar Sounny-Slitine, this section provides a detailed explanation of the research methods used to locate housing deeds and plats and a description of GIS methods. Maps, charts, and other data are also included.

Summary of Archival Methods

The archival research for this report was performed in the Travis County Clerk Public Access Archive Office from February to August 2012. Real property records were retrieved for the dates January 28, 1890, to December 15, 1950. These property records were then interpreted and coded to establish if restrictive covenants (restrictions) were present or absent on individual subdivisions. The restrictions were sorted into the following five types: Racial, Improvement, Nuisance, Land-Use, and Alcohol-Outlets.

General steps for research: (1) Obtain plat map; (2) search plat map for restrictive covenants; (3) read engineer’s notes on plat map for references to deed records; (4) obtain deed records; (5) search deed records for restrictive covenants; (6) cross-reference Travis County Public Records Index Database for additional deed records not noted on plat map’s engineering notes; and (7) obtain cross-referenced deed records.

As a caveat, it should be noted that resubdivisions of plats were treated as individual subdivisions in which the original restrictions and the resubdivision restrictions both applied to the land. Archival work was not exhaustive and the possibility for more restrictive covenants does exist. The archival work followed the typical deed-restriction-research protocol practiced by the Travis County Clerk’s office when pulling restrictive covenants. Records can go missing or may not be included in the reference database system developed by Travis County. In this case the record may still exist but the reference to where the record can be found may not exist.

Annotated Bibliography


Lucy, Sara. 1938. Typescript draft for the Federal Writer’s Project Guide to Austin. In Sectional Guides and Histories, Travis County: Doplh Briscoe Center for American History, University of Texas at Austin.
