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## Book Note

### SAVING THE NEIGHBORHOOD: RACIALLY RESTRICTIVE COVENANTS, LAW, AND SOCIAL NORMS, by Richard RW Brooks and Carol M Rose<sup>1</sup>

HAYLEY GAUCHER

WHY SHOULD WE CONTINUE studying racially restrictive covenants when no one seems to take them seriously anymore? In exploring the “historical arc” of racially restrictive covenants in the United States, Brooks and Rose ultimately argue that the significance of racial covenants is not their enforceability, but rather, their function in signaling neighbourhood intent.<sup>2</sup> Racially restrictive covenants were meant to keep undesirable individuals out of neighbourhoods by blocking them from purchasing or occupying a home. In a broader sense, *Saving the Neighbourhood* provides unique insight into the ways that legal norms influence social norms and vice versa. After the 1948 case of *Shelley v Kraemer*,<sup>3</sup> which declared racial covenants legally unenforceable in the United States, these covenants occupied a unique space in the legal world. On one hand, the covenants were legally unenforceable; on the other, they were not yet illegal.

The book is divided into ten chapters, which effectively lead the reader through the authors’ detailed chronological approach. In chapter one, Brooks and Rose introduce the main players and use game theory to demonstrate the various ways these players might strategically interact with one another. Chapter two explains the social, demographic, and legal changes that preceded racial covenants. With more people turning to an urban lifestyle, social hierarchy “grew hazy” compared to life in the southern countryside, and “physical separation

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1. (Cambridge: Harvard University Press, 2013) 294 pages.
  2. *Ibid* at 3.
  3. 334 US 1 (1948) [*Shelley*].

could take on much greater significance.”<sup>4</sup> Private agreements among owners, or what became racial covenants, seemed like a viable legal route for creating such a separation.

In chapter three, Brooks and Rose outline the legal challenges that were faced leading up to *Shelley*, such as constitutional debates and restraints on alienation principles. In chapter four, the authors explore the development of covenants and the unseen influences that affected how racial restrictions were written and enforced. Chapters five and six introduce readers to the concepts of norm entrepreneurs and norm breakers. Norm entrepreneurs were individuals like housing developers and brokers who contributed strongly to the self-fulfilling prophecy that property values would decline with the introduction of minority residents to neighbourhoods. In contrast, a notable and controversial norm breaker was the “blockbuster.” These individuals would target all-white neighbourhoods to “fan the flames of racial fears and then pounce on the bargains, ultimately reselling the properties to willing minority buyers.”<sup>5</sup>

In chapter seven, Brooks and Rose consider *Shelley* in detail. The legal strategy in this case focused on the Fourteenth Amendment, which created much debate about whether enforcing racially restrictive covenants (which are private agreements) could be considered state action. The authors argue that deploying the Thirteenth Amendment may have been more meaningful. The prohibition on slavery applied more broadly to all actions, private and public, and this strategy would have infused racial covenants with deeper meaning—the ability to own property as a “powerful talisman of freedom.”<sup>6</sup> Chapter eight discusses reactions to *Shelley*. While the case put an end to legal enforceability, it could not put a complete end to the influence of racial covenants.

In chapter nine, the authors return to game theory to demonstrate how, post-*Shelley*, and following the lack of legal enforcement to support racial covenants, interactions hinged mostly on the exchange of normative signals following the lack of legal enforcement to support racial covenants. The 1968 federal *Fair Housing Act*<sup>7</sup> largely took aim at outlawing signaling behaviour, implicitly recognizing the significant role it played. In chapter ten, the authors look at proposed solutions to the lasting influence of racial covenants. The continued presence of racial restrictions in buried land records is important to consider. While new deeds may not incorporate racial restrictions, Brooks and

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4. *Supra* note 1 at 25.

5. *Ibid* at 135.

6. *Ibid* at 148.

7. *Fair Housing Act*, 42 USC § 3601 (1968).

Rose highlight that the past carries significance because property rights and real estate depend heavily on the past.

The historical and chronological account of racially restrictive covenants in *Saving the Neighborhood* is an important and thought-provoking read. This book will appeal to readers interested in the specific topic of racial covenants and the broader study of the relationship between legal and social norms. Brooks and Rose end the book with a compelling conclusion and direction for the future: “Repudiating racial covenants is a way of remembering the past but refusing to accept its constraints, sending a different signal to those to come.”<sup>8</sup>

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8. *Supra* note 1 at 230.

