

HOUSING AND THE LAW: LESSON 5: HANDOUT 4: SCAFFOLDED ACTIVITY

SHELLEY V. KRAEMER ET UX. MCGHEE ET UX. V. SIPES ET AL.¹ (1948)

Primary Source Quote 1

“But here there was more. These are cases in which the purposes of the agreements were secured only by **judicial enforcement** by state courts of the restrictive terms of the agreements. The **respondents** urge that judicial enforcement of private agreements does not amount to state action...”



Speaker: Justice Vinson, delivering the opinion of the Supreme Court

Secondary Description

The Court declares that the restrictive covenants were enforced by state courts using governmental power. This would fall under the state action doctrine. The respondents, or those who are trying to use the covenants (Kraemers and Sipes), claim that this is still private action, which would not violate the fourteenth amendment. They believe the enforcement of restrictive covenants is legal, even though the Court thinks otherwise.

Discussion:

Who benefits from a restrictive covenant?	Who is harmed by a restrictive covenant?
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¹ *et ux.* means “and wife” while *et al.* means “and others”

Primary Source Quote 2

“We have no doubt that there has been state action in these cases in the full and complete sense of the phrase. The undisputed facts disclose that petitioners were willing purchasers of properties upon which they desired to establish homes. The owners of the properties were willing sellers, and contracts of sale were accordingly consummated. It is clear that, but for the active intervention of the state courts, supported by the full panoply of state power, petitioners would have been free to occupy the properties in question without restraint.”

Secondary Description

The Court is confident that the state courts' actions could be considered **state action**, which meant these actions had violated the fourteenth amendment because a governmental body was enforcing a discriminatory private agreement. The houses/properties had already been sold and the Shelleys and McGhees would have been able to live where they wanted had the state courts not intervened.

Discussion:

The Court claims that the sellers willingly sold their homes. But according to the facts of the case, we know that the Shelleys purchased their home through the help of their pastor, who put the house in a white woman's name.

- Do you think the sellers would have been willing to sell if they knew they were selling their property to the Shelleys? Does this matter? Why or why not?
- Based on what we have learned so far, what are some other problems the families might have faced even if the courts had not gotten involved and they had been allowed to move in?

Primary Source Quote 3

“These are not cases, as has been suggested, in which the States have merely abstained from action, leaving private individuals free to impose such discriminations as they see fit. Rather, these are cases in which the States have made available to such individuals the full coercive power of government to deny to petitioners, on the grounds of race or color, the enjoyment of property rights in premises which petitioners are willing and financially able to acquire and which the grantors are willing to sell. The difference between judicial enforcement and nonenforcement of the restrictive covenants is the difference to petitioners between being denied rights of property available to other members of the community and being accorded full enjoyment of those rights on an equal footing.”

Secondary Description

The state courts could have chosen not to enforce these covenants. Private individuals could discriminate based on race if they wanted. There would not be a legal issue if this was the case.

However, by enforcing the covenant, the state courts used governmental power to deny the Shelleys and McGhees from being able to own property based on their race. The Shelleys and McGhees had been able to afford the house and the house was willingly sold. Enforcing this covenant rather than not enforcing it meant that these families would be denied the property rights that other members of the community enjoyed. Furthermore, they would not be able to enjoy their property rights on an equal level as their white neighbors.

Discussion:

It was only when the state courts became involved and enforced these agreements that they violated the equal protection clause of the fourteenth amendment. The Court claimed that it was the enforcement of the covenants that prevented the Shelleys and McGhees from fully enjoying equal property rights.

- But what if the covenants stood on their own without enforcement? Even if Black families were able to move in, do you think they would have enjoyed full and equal benefits of property ownership?