

# Spatial injustice and the informal housing market in the U.S.: how predatory practices impact upon geographies

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**Abstract:** *Ingiustizia spaziale e mercato immobiliare informale negli Stati Uniti: l'impatto delle pratiche predatorie sulle geografie* – A large share of the black population in the U.S. lives in poor areas characterized by high unemployment, low housing quality, and unhealthy living conditions, thus making low socioeconomic status a critical risk factor. Consequently, the higher Covid-19 death toll paid by black Americans has been linked to the Redlining policies introduced by the Home Owners Loan Corporation in the 1930s. These policies are believed to have contributed to the development of segregated neighborhoods and ghettoization. Nowadays, we assist to a new form of Redlining, which comes in the different shape of the formal/informal market divide in housing. In fact, two pathways to homeownership have always existed in this legal framework. On the one hand, there is a well-established legal regime that provides families with a secure and marketable title to their homes. On the other hand, an informal regime is applied where the most vulnerable citizens (such as Blacks, Latinos, immigrants, and the poor) buy “on contract”. This is similar to an installment land contract whereby the seller can easily repossess the house since they are entitled to evict the would-be owner even when a single monthly payment is missed. Indeed, such contracts grew in number particularly in the aftermath of the 2007 subprime mortgage crisis, when the lack of equal access to credit for homeownership led many people to buy houses “on contract”.

The article aims to show how these predatory lending practices, by fostering ghettoization, favored inequalities and jeopardized the spatial allocation of justice in the U.S..

**Keywords:** Comparative Law, Legal Geography, U.S. Legal System; Spatial Justice; Race and Contract Law.

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## 1. Introduction

In the United States, many would-be owners are currently entering into contracts which combine the burdens of homeownership with all the responsibilities of renting without offering the benefits of either. Especially in the aftermath of the subprime mortgage crisis (2007-2008), the crunch experienced in access to credit rendered extremely difficult, if not impossible, for many people to buy homes through regular mortgages. Hence, they were forced to turn to predatory practices called in different ways: Land Installment Contracts, Contract Selling, and Contract for

Deeds<sup>1</sup>. Hereinbelow, I shall refer to them as Contract for Deeds, which is the classic nomenclature used in Illinois, and particularly in Chicago<sup>2</sup>.

In the U.S. legal system, there have always been two pathways to homeownership. On the one hand, a well-regulated market which entitles buyers to guaranteed rights and freely marketable titles<sup>3</sup>. On the other hand, there is an informal mechanism whereby the most vulnerable segments in society (such as race discriminated groups and the poor) buy “on contract”. This is similar to an installment land contract whereby the seller can easily repossess the house since they are entitled to evict the would-be owner even when a single monthly payment is missed. Furthermore, sellers are not forced to start an eviction procedure under the supervision of the judicial authority.

Civilians might be uncomfortable with this state of the art which envisions both a formal and an informal market: indeed, European legal regimes related to homeownership are characterized by a high degree of formalism. In fact, a public deed issued by a notary is required for the transferal of the title; the deed must be registered in a dedicated public registrar, etc.

Notwithstanding this, the contrast between these formal and informal schemes has deep roots in the United States and contributes to shaping urban geographies of metropolitan areas. Such an idiosyncrasy is apt to perpetuate the racial territorial divisions which have afflicted, and still affect, the weakest part of U.S. population. The history of urban and housing segregation, in fact, began during the New Deal with the housing policies designed by the Roosevelt Administration. These practices took the name of Redlining<sup>4</sup>. Consequently, private law becomes a device that keeps alive the conflict between the living conditions in slum neighborhoods as opposed to the ones in golden ghettos: in the latter, we find wealth and richness, whereas in the former we experience only poverty, segregation, and lack of access to basic public services.

<sup>1</sup> Cfr. T. Coates, *The Case for Reparations*, in *The Atlantic*, 2014, available at <http://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>; S. Purcell, *The Current Predatory Nature of Land Contracts and How to Implement Reforms*, in 93 *Notre Dame Law Review* 1771 (2018) and C. Custard, *Installment Land Contracts & Low-Income Homebuyers in Chicago: A Call for Legislative Reform*, 67 *DePaul Law Rev.* 527 (2018).

<sup>2</sup> L. Danielson, *Installment Land Contracts: The Illinois Experience and the Difficulties of Incremental Judicial Reform – Note*, in 1986 *U. Ill. Law Rev.* 91 (1986); G.S. Nelson, *The Contract for Deed as a Mortgage: The Case for the Restatement Approach*, in 1998 *Brigham Young Univ. L. Rev.* 1111 (1998); M. Neil, *Predatory Land Contracts Take Advantage of Low-Income Homebuyers, NY Times Says*, in *ABA Journal*, available at [http://www.abajournal.com/news/article/after\\_the\\_mortgage\\_meltdown](http://www.abajournal.com/news/article/after_the_mortgage_meltdown); M.S. Wright, *Installment Housing Contracts: Presumptively Unconscionable*, in 18 *Berkeley J. Afr. Am. Law & Pol'y* 97 (2016).

<sup>3</sup> H.K. Way, *Informal Homeownership in the United States and the Law*, in 29 *St. Louis Univ. Pub. Law Rev.* 113 (2009) e N.J. Durst, J. Wegmann, *Informal Housing in the United States*, in 41 *Int. J. Urb. & Reg. Res.* 282 (2017).

<sup>4</sup> B. Satter, *Family Properties – Race, Real Estate, and the Exploitation of Black Urban America*, New York: Metropolitan Books, 2009, passim e R. Rothstein, *The Color of Law – A Forgotten History of How Our Government Segregated America*, New York, 2017.

In this regard, UN HABITAT, the agency that deals with human settlements, affirmed that filling the gap between these two dimensions represents one of the major goals of our century.<sup>5</sup> Ensuring an equal distribution of justice in spatial (hence, in geographical) terms is also functional to foster sustainable development objectives. It cannot be overlooked how deeply housing policies inspired by such principles do produce spillovers as regards how urban geographies are shaped and therefore upon the pursuit of an authentic spatial justice.

Notwithstanding that, this paper shows how the existence of a housing informal market in the United States fosters spatial injustices and jeopardizes sustainable development as a whole. I will plunge into the reasons why private law rules (i.e., contracts) stand against such objectives. To this end, I will highlight how such phenomenon can be traced back to the New Deal period and to the purported deregulation taken by public powers in the following years.

For the sake of clarity, it must be acknowledged that forms of predatory lending practices, such as CDOs (Collateralized Debt Obligations) and the CDSs (Credit Default Swaps) of AIG, were at the heart of the subprime mortgage crisis. However, in this paper I will focus on the inequalities that surfaced after, and because of, the crisis. I am not questioning the fact that the real fault of it rests upon exoteric forms of finance and synthetic financial instruments. I am not putting into question that the idea of having a law that can codify the capital in terms of land is antique and surpassed by new financial innovations that rests within the world of bankers and the power of Wall Street until the world of digital currencies and digital finance either.

Nevertheless, I deem the comparative private law perspective, which stresses the contractual aspects of the consequences of the financial crisis, a methodology apt to describe the flourishing of predatory practices known as Contract for Deeds that rendered possible the resurgence – in a different shape – of Redlining.

I will proceed as follows: first, I will outline the concept of spatial justice. My intention is just to highlight some features of this concept with a focus on Edward Soja's theses (section 2). Next, I will provide some background specific to the intertwining between private law and modern forms of Redlining and how this shapes United Statesean urban geographies (section 3). A brief historical analysis of the origins of Redlining during the New Deal follows (section 4). Then I will examine the ways by which the political choices taken during that period significantly contributed to the emergence and spread of an informal market in housing. I will focus on the events occurred in Chicago starting from 1960s and on the diffusion of the so-called Contract for Deeds among the local African American populations (section 5). I will then consider how these agreements have contributed to the perpetuation of systemic racism by a spatial point of view. Next, the paper will provide some information on the decline and resurgence in recent times of Contract for Deeds in the U.S. housing market, being it the symptom of new forms of Redlining (section 6). Lastly, I will assess whether

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<sup>5</sup> See UN HABITAT, *Sustainable Housing for Sustainable Cities – A Policy Framework for Developing Countries*, Nairobi, 2012.

Covid-19 pandemic has produced an asymmetric effect on black people. It stimulated a debate around the correlation between old and new Redlining practices, on the one hand, and the greater impact of the disease among African Americans, on the other (sect. 7). The debate has led the Federal Administration to considering introducing a regulation of this phenomenon in order to ensure a higher degree of spatial justice (Conclusion).

## 2. The concept of Spatial Justice

To do so, the analysis adopts a law-and-geography perspective and examines the several ways in which the legal sphere is capable of shaping, changing, and interfering with – more in general – space<sup>6</sup>. Legal geography critique, although instructive, is limited to unveiling the violence of ideological spaces and situated legal practices. Yet this assessment is purely political. Legal geography must be complemented by law, in general, and comparative law, in particular. Such interdisciplinary approach would also contribute to avoiding the risk of “bracketing”, meaning the consideration of law as an unfettered phenomenon insulated from the contexts where it is applied. Bracketing favors formalism and ideology. To this end, comparative law is crucial to the extent it allows us to challenge the formalistic approach and the introvert attitude of legal studies. Comparative law, in the end, is the best-suited branch for highlighting the mutual interference between law, in its several fashions and expressions, and space<sup>7</sup>.

My objective in this paper is twofold. On the one hand, I aim to fill the existing gap in legal geography literature by showing how not only public law, but also private law is capable of both shaping urban spaces and playing a role in the pursuit of an equal distribution of justice. Therefore, I challenge the classic view according to which racialized spaces are produced exclusively by public powers that act with policies aimed at producing segregation<sup>8</sup>. As Ford puts it, “racially identified space results from public policy and legal sanctions – in short, from state action – rather being the unfortunate but irremediable consequence of purely private or individual choices”<sup>9</sup>. To the contrary, I take the argument that also the State inaction in tandem with predatory private practices are apt to interfere with space and to foster spatial injustices.

Second, I intend to show how private law fulfils political aims and to bring to the surface the ideological underpinnings of apparent neutral contractual practices.

The research suggests the need of an integrated approach to regulate predatory practices. On this point, I take the argument that the reform

<sup>6</sup> J. Holder, C. Harrison, *Law and Geography*, Oxford, 2012, *passim*; M. Nicolini, *Borders: A Cross-Disciplinary Journey through Non-Legal Lexicon*, in *STALS*, 2021, 3 ss.; Id., *Legal Geography. Comparative Law and the Production of Space*, Cham, 2022, *passim*; C. Poncibò, *Geografia del diritto: Un'introduzione*, Torino, 2022, *passim*.

<sup>7</sup> M. Nicolini, *Legal Geography*, cit., Cap. V.

<sup>8</sup> D.T. Goldberg, *Racist Culture – Philosophy and the Politics of Meaning*, Oxford and Cambridge-Mass., 185-8; D. Delaney, *The Boundaries of Responsibility Interpretations of Geography in School Desegregation Cases*, in 15 *Urban Geography* 470 (1994).

<sup>9</sup> R.T. Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, in 107 *Harv. L. Rev.* 1841, 1845 (1994).

undertaken in the field of private law, although valuable, is not sufficient to face such practices. Quite the opposite: a public-law intervention aimed at the spatial redistribution of justice is also required. As it will be reported, it appears that this is the path that the Biden Administration is going down along.

As said, private law impacts upon space and is capable of compromising spatial justice. The concept under scrutiny deserves our attention. For this purpose, the pioneering research of Edward Soja is well equipped: according to him, space is a construction, a social product – hence, a dialectic does exist between it and justice, insofar as unfair policies produce a tantamount unfair distribution of justice in space – and vice versa<sup>10</sup>. Soja argues that not only ensuring spatial justice means observing the exogenous factors that design territories, but it also requires investigating the endogenous and bottom-up processes that contribute to shaping space and allocating justice in a specific portion of land. Soja maintains that spatial justice is a strongly localized and contingent value, dependent on the particular characteristics of a certain portion of the world. Accordingly, joining the terms justice and space can open up to a range of new possibilities. His suggestions are collected in these pages since we are responsible for verifying specifically how private law can negatively affect spatial justice<sup>11</sup>.

Soja reports that we would assist to a lack of interest and awareness towards this thing called spatial justice and it is confirmed by the scarce number of legal claims expressly directed to obtain this kind of justice. The author strongly believes that the common understanding of justice ignores the issue of its spatial distribution. In some way, he tells us that the focus on, say, racial, climate, social justice overshadows the allocation of justice in the space.

We must concede that such instances have been neglected for a long time, eclipsed by other needs put at the top of Governments' agendas and private actors. However, with the complicity of the Covid-19 pandemic, the intimate relationship between human beings and space has strongly emerged to the surface. In addition to that, our "pandemic times" have stimulated the debate and represented an occasion to recraft, at least apparently in the United States, housing policies.

### 3. Private law and the New Redlining: Spatial injustice in the U.S.

The notion of spatial justice is well equipped to delve into the state of the art of U.S. housing policies. Even though the aforementioned UN program considers developing countries only, the analysis is also valid to scan the current, and past, United States conditions to the extent that spatial injustices and inequalities are not exclusively found in developing countries.

<sup>10</sup> E. Soja, *Seeking Spatial Justice*, Minneapolis, 2010, *passim*; P. Marcuse, *Spatial Justice: Derivative but Causal of Social Injustice*, in *Justice Spatiale*, 2009, 1; S. Moroni, *The Just City. Three Background Issues: Institutional Justice and Spatial Justice, Social Justice and Distributive Justice, Concept of Justice and Conceptions of Justice*, in *19 Planning Theory* 251 (2020).

<sup>11</sup> E. Soja, *Seeking Spatial Justice*, cit., 47 and 49.

The contrast between slums and golden ghettos does exist in the United States, too.

In 2014 Ta-Nehisi Coates released a long reportage (*The Case for Reparations*) on *The Atlantic*, in which the living conditions of the poor and ethnic minorities in the U.S. in the aftermath of the subprime mortgage crisis were extensively documented<sup>12</sup>. Coates reported that a growing number of would-be owners were entering into Contract for Deeds that were predatory in nature. A significant number of individuals, incapable of repaying their mortgages and of accessing to new ones, were forced to resort to buy homes “on contract”.

The 2007 crisis brought the U.S. legal system back to the past and the specter of predatory lending practices came back to hover. Hence, contract selling returned to prosper thrive especially in the Mid-West. As I have underscored in the introductory section, such contracts lean on the buyer all the duties of homeownership and the burdens of renting, without giving the benefits of either.

The scheme of this form of real estate purchase can be summarized as follows. Unlike mortgages, the property is transferred to the buyer only after the payment of the last installment. The transferal, therefore, is subject to the full fulfillment of the obligations that the buyer has assumed with the contract. If during the term of the contractual obligation, the buyer fails to pay even a single monthly amount, the seller is entitled to withdraw unilaterally from the agreement. The seller also has the right to retain the payments made up to that moment, since they are qualified as consideration for the enjoyment of the asset and not as an advance of the purchase.

These agreements substantially differ from regular mortgages in terms of both rights of the buyer and the remedies accorded to the seller. The rules on mortgages deliver a set of protection tools in favor of the former, whereas similar safeguards are totally absent in Contract for Deeds. First and foremost, ownership does not pass at the moment the contract is entered into, but only upon the condition of the completion of monthly payment from the buyer. Nonetheless, and at the same time, the buyer has the duty to pay taxes, to do the required maintenance, to buy insurance, and so on. As far as the seller is concerned, it must be noted that they are entitled to a vast array of remedies in case the buyer does not fulfil contractual obligations, the most powerful of which is the so called “forfeiture clause”, i.e., the right to repossess the house even if only a monthly payment is missed. When the forfeiture clause operates, payments made by the buyer can be retained by the seller as the consideration for the enjoyment of the good, in a typical renting contractual scheme. Therefore, each missed monthly payment gives the right to the seller to repossess the house without having the duty to start an eviction procedure under the scrutiny of a judge and to maintain the amount until then paid.

Moreover, Contract for Deeds are not subject to any registration requirements, insofar as it is not possible to trace their spread in the United States.

Their predatory nature lies in the fact that, as they are in many cases the only path to housing for the most vulnerable individuals, these are forced

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<sup>12</sup> T. Coates, *The Case for Reparations*, cit.



to accept terms and conditions that a reasonable man or woman would not be willing to accept. On their part, the seller is shielded from any possible economic loss because of the particular structure of the agreement.

As I have already stated, two pathways have always existed in the United States to homeownership, a formal and an informal one. The latter sprang out at the beginning of 20<sup>th</sup> century, for then declining during the 70s, but coming back in recent times.

The metropolitan areas interested by the resurgence of contract selling are mainly located in the states of New York and Illinois. Chicago especially experienced, both now and then, a vast diffusion of Contract for Deeds. And it is not surprising since it is well known that Chicago has traditionally been the symbol of how housing predatory practices fostered ghettoization of African Americans in the framework of systemic racism. It is proper to note that the resurgence of contract selling, and its renovated diffusion, poses serious threats to the already fragile social stability: it is no mystery that homeownership represents an important device for poor families to accumulate wealth, to emancipate and to ameliorate their living conditions.

#### 4. The 30s and Redlining

To better understand how contract law contributes to segregation and racism, we must go back to the 1930s when the shape of U.S. legal geographies was modeled by the so called Redlining policies.

The Home Owners Loan Corporation was created in June 1933 in the aftermath of the Great Depression and within the New Deal framework. It was a key part of the package designed by the Roosevelt Administration<sup>13</sup>.

The major goal of the agency was to refinance mortgages in default to prevent foreclosures as a response to the banking sector turmoil and the drastic fall in home loans and ownership<sup>14</sup>. In 1934 the National Housing Act established the Federal Housing Administration to reinforce previous measures and to boost the market for single-family homes<sup>15</sup>.

In 1935, the HOLC created the Residential Security Maps of 239 cities. These maps divided cities in four zoning categories: Type A, color green, labelled “Best”; Type B, colored blue, deemed “Still Desirable Areas”; Type C, colored yellow, ranked as “Definitely Declining”; and Type D, which came out in red, and used to highlight the “Hazardous” areas. Since the color used for the worst-assessed areas was red, the process came to be known as Redlining.

The recordings were detailed, and included information on type, size, construction materials, population growth, class, and so on. A classic Type D definition was “A 100 per cent negro development. (...) A blighted section”<sup>16</sup>.

<sup>13</sup> R. Rothstein, *The Color of Law*, cit., 63.

<sup>14</sup> D.M.P. Freund, *Colored Property: State Policy and White Racial Politics in Suburban America*, Chicago, 2017, 115.

<sup>15</sup> R. Rothstein, *The Color of Law*, cit., 63.

<sup>16</sup> G. Bertocchi, A. Dimico, *COVID-19, Race and Redlining*, in *IZA – Institute of Labor Economics – Discussion Paper Series*, 2020, 1 ff., spec. 1-2.

Maps were collected together and constituted the raw materials upon which the FHA based its Underwriting Manuals, which described in detail in which areas mortgages should be released. Only one per cent of the application for mortgage refinancing came from African Americans. The direct and intended purpose of redlining was to channel money to the more affluent areas, leaving the poorer ones to struggle with slum buildings, poorer conditions and renting practices<sup>17</sup>.

It is documented that the housing policies of Roosevelt Administration produced an aggrievance of African American conditions. It is factual, indeed, that the New Dealers ignored the racial, ethnic and gender issues underlying their policies and reforms<sup>18</sup>. Rather, it is a fact that the apparent neutrality concealed a strong political content aimed at the exclusion from public life primarily of African Americans. There is evidence that the perpetuation of racial segregation needed implementation through a vast array of measures directed to the deprivation, or in any case to the limitation, of access to homeownership. To this end, homeownership was a powerful viaticum to access to accumulation of wealth, hence, to have a voice in politics.

The pretended color-blind approach in New Deal reforms can easily be found also in the specific context of racial discrimination in homeownership. The same FHA made it possible for an informal housing market to surge with all the consequences it brought in terms of oppression and abuses at the expense of discriminated groups and the poor. To take cognizance of such consequences, it suffices to consider that in the Underwriting Manuals, the Agency suggested to refinance mortgages exclusively in those areas where a racial restrictive covenant was in force<sup>19</sup>. This kind of agreement bound the parties not to sell real estate units to non-white people<sup>20</sup>. In other terms, the FHA ensured the effectiveness of racial restrictive covenant that would not have been otherwise implemented by Courts<sup>21</sup>.

The FHA grounded its policies upon two assumptions: i) an African American neighborhood was unrecoverable; ii) the only presence of “colored people” in white neighborhoods would have depressed the value of real estate. It is noteworthy that these assumptions were not based on statistical evidence but on folkloristic ones. In this regard, in 1939 the Head of FHA Economic Department, Homer Hoyt, affirmed that segregation was a natural fact and that it had global diffusion. In order to substantiate his claim, he mentioned the example of China, where – at that time – U.S. missionaries and officials lived segregated from the rest of the population. From this Hoyt argued that the mixture of races could only have a depressive effect on real estate markets<sup>22</sup>.

<sup>17</sup> R. Rothstein, *The Color of Law*, cit., 83.

<sup>18</sup> K.K. Patel, *New Deal – A Global History*, Princeton, 2016, 18.

<sup>19</sup> Ivi, 20.

<sup>20</sup> M. Jones Correa, *The Origins and Diffusion of Racial Restrictive Covenants*, in 115 *Pol. Sc. Q.* 541 (2000-2001).

<sup>21</sup> R. Rothstein, *The Color of Law*, cit., 79.

<sup>22</sup> H. Hoyt, *The Structure and Growth of Residential Neighborhoods in American Cities*, Washington, 1939, iii. See also J. Kimble, *Insuring Inequality: The Role of the Federal*



## 5. Heterogenesis of ends (?): the surge of the informal housing market and of Contract for Deeds

Political choices taken during the New Deal period, and in particular those of the FHA, significantly contributed to the emergence and growth of an informal market in housing along with the diffusion of contracts that implemented injustices. Together the African Americans' desire of becoming owners and impossibility to access to regular mortgages fueled the imagination of financial speculators, who began to sell on contract run-down building in slum neighborhoods at high prices.

The premise of African American integration was the acquisition of the status of owners in the U.S. capitalistic society. Therefore, black people accepted very unreasonable terms and conditions in order to keep alive the hope of such integration.

Contract for Deeds were widespread in Chicago, Washington D.C., Cincinnati, and Baltimore, i.e. all areas with a strong presence of black people<sup>23</sup>. The plague of the informal market ran rampant to the point that even the legislative actions taken during the 1960s, and downstream the civil rights movement, were unable to contrast it in order to render more just the U.S. legal geographies.<sup>24</sup> Indeed, such policies lacked positive actions aimed at rebalancing the situation in a favorable manner for African Americans.

The lack of adequate measures aimed to ensure good living conditions and an equal access to credit for homeownership let the informal market flourishing undisturbed. The posture assumed by public powers can be qualified as “informality-as-deregulation”, meaning a “calculated informality ... where the seeming withdrawal of regulatory power creates a logic of resource allocation, accumulation and authority”<sup>25</sup>.

All along the 20<sup>th</sup> century, Contract for Deeds represented the main pathway to homeownership to African Americans. There is no official data of their diffusion, since – as we have already said – there was no obligation to register them. Despite this, several analyses tried to understand empirically how spread such agreements were. Beryl Satter reports, for example, that the lawyers defending African Americans in Contract for Deeds controversies estimated that 85% of Black Chicagoans was buying on contract during the 50s<sup>26</sup>. Others have argued that the one African American out of two resorted to such agreements<sup>27</sup>, which is an extremely high percentage, nonetheless<sup>28</sup>.

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*Housing Administration in the Urban Ghettoization of African Americans*, in 32 *Law & Soc. Inq.* 399, 404 (2006-2007).

<sup>23</sup> R. Rothstein, *The Color of Law*, cit., 93-4.

<sup>24</sup> The Civil Rights Act of 1968, 88-352 (78 Stat. 241).

<sup>25</sup> A. Roy, *Why India cannot plan its cities: informality, insurgence, and the idiom of urbanization*, in 8 *Planning Theory* 76, 83 (2009).

<sup>26</sup> See B. Satter, *Family Properties*, cit.

<sup>27</sup> J.A. McPherson, *In My Father's House There Are Many Mansions, And I'm Going to Get Me Some of Them Too: The Story of the Contract Buyers' League*, in *The Atlantic*, 1972, available at <https://cdn.theatlantic.com/assets/media/pdf/2014/05/mcpherson-contract-buyers.pdf>.

<sup>28</sup> D. Immergluck, *Old Wine in Private Equity Bottles? – The Resurgence of Contract-for-Deed Home Sales in US Urban Neighborhoods*, in 42 *Int. J. Urb. & Reg. Res.* 651 (2018).

The trend started to change when the Contract Buyers League (CBL) stepped in in support of Black Chicagoans and put strong efforts to shed light on the injustices produced by the U.S. informal market. The CBL launched two judicial proceedings in Federal Courts against Contract for Deeds sellers and their financial supporters<sup>29</sup>. In particular, the Federal Court of Illinois stated that not every real estate contract with African Americans which envisioned a higher price than one with a white individual had to be declared racially unconscionable<sup>30</sup>. Hence, these agreements were to be considered to be protected by freedom of contract<sup>31</sup>.

## 6. Decline and resurgence of Contract for Deeds

Notwithstanding these failures, the hype generated by the activists brought definitely the predatory practices to the awareness of the public at large. The League laid the foundation for the anti-Redlining movement, whose battles would have impacted soon after on legislative actions. In fact, the movement obtained, in the 1980s, legislative measures that facilitated the access of African Americans to the regulated market of mortgages: the Home Mortgage Disclosure Act,<sup>32</sup> the Community Reinvestment Act<sup>33</sup> and the amendments to the Fair Housing Act.<sup>34</sup>

Even though these measures introduced incentives to integrate African Americans within the formal market, they did not however outlaw Contract for Deeds. In other terms, no action was taken to prevent this phenomenon from resurfacing in the foreseeable future. In fact, contract selling was protected by freedom of contract<sup>35</sup>. Consequently, the broadening of credit channels could be sufficient in time of economic expansion but would have been impracticable in times of economic crisis. And this was the scenario that occurred in 2007, when the subprime mortgage crisis exploded: as formal market shrank, the re-expansion of the informal one in general, and of Contract for Deeds in particular, soon ensued.

Unlike the past, nowadays it is simpler to gather information on their spread thanks to new technologies and even though no official data is available. Of course, such information must be handled carefully: they represent mere empirical data and cannot be considered statistical in nature. Disclaimer apart, ESRI demographics collected information on the spread of

<sup>29</sup> Ivi, at 654.

<sup>30</sup> J.M. Fitzgerald, *The Contract Buyers League and the Courts: A Case Study of Poverty Litigation*, in 9 *Law & Soc. Rev.* 165 (1975).

<sup>31</sup> H. Shepherd, *An Introduction to Freedom of Contract. Cases and Materials*, Brooklyn, 1960, *passim*; A. Somma, *Stato del benessere o benessere dello Stato? Giustizia sociale, politiche demografiche e ordine economico nell'esperienza statunitense*, in *Quad. Fior.*, 2017, 417 ff.; P. Valerio, *Tra soggettività e giustizia sociale nel diritto privato statunitense: il ruolo della Corte Suprema*, in *Pol. Dir.*, 2021, 43 ff.

<sup>32</sup> The Home Mortgage Disclosure Act of 1975, 94-200 (89 Stat. 1124).

<sup>33</sup> The Community Reinvestment Act of 1975, 95-128 (91 Stat. 1111).

<sup>34</sup> The Fair Housing Amendments Act of 1988, 100-430 (102 Stat. 1619).

<sup>35</sup> *Discriminatory Housing Markets, Racial Unconscionability, and Section 1988: The Contract Buyers League Case*, in 80 *Yale L.J.* 516 (1971).

Contract for Deeds in the U.S.,<sup>36</sup> which disclosed that these agreements are present still today in mainly African-American neighborhoods. It is striking that the once redlined Cook County, in Chicago, is today experiencing a vast diffusion of contract selling. There exists a long line of continuity between Redlining, predatory practices in the 1960s, and the current scenarios of informal market in housing. It demonstrates, on the one hand, that legislative measures adopted over the years were not capable of ensuring a better distribution of spatial justice and unable to prevent the resurgence of Contract for Deeds. On the other hand, it shows that Contract for Deeds is a private law instrument that becomes the vehicle of discrimination and segregation, also contributing to new forms of Redlining. From a law and geography perspective and in terms of spatial justice, then, the U.S. legal system is unsatisfactory: those areas that were once redlined are nowadays being still redlined due to the diffusion of contract selling. These issues came up to the surface because of the surge of Covid-19 pandemic in 2020.

## 7. Redlining 2.0 and the asymmetric effect of Covid-19 on African Americans: a spurious correlation?

“The coronavirus is infecting and killing black people in the United States at disproportionately high rates, according to data released by several states and big cities, highlighting what public health researchers say are entrenched in inequalities in resources, health and access to care” reported a New York Times article published on April 7th, 2020<sup>37</sup>.

The then mayor of Chicago Lori Lightfoot urged actions to be taken to face the statistics of the outbreak in her city. More than half of those who tested positive at the time – and, what is worse, 72 percent of virus-related fatalities – regarded African Americans, even though they make up a little less than a third of the population.

Awareness has matured that the asymmetrical effect of the pandemic on this segment of the population was caused not only by the previous health conditions of the subjects involved and by a more pronounced co-morbidity rate, but also by socioeconomic and housing factors.

A pioneer in this sense was the study entitled *COVID-19, Race and Redlining* published by two econometrists, Bertocchi and Dimico, where the authors selected Chicago as their case-study. The two scholars based their research on geo-referenced data collected by the county legal doctor to locate the residences of individuals who had developed the most severe forms of the disease in space. They found that these subjects mostly lived in areas corresponding to the areas marked in yellow and red by the maps made by the HOLC<sup>38</sup>.

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See <https://esrimedia.maps.arcgis.com/apps/StoryMapBasic/index.html?appid=2c09be4d05754e45997c2d6aa1c34dfa&extent=-88.4649,41.4718,-87.1465,41.9153>.

<sup>37</sup> J. Eligon et al., *Black Americans Face Alarming Rates of Coronavirus Infection in Some States*, in *NYT*, April 7, 2020, available at <https://www.nytimes.com/2020/04/07/us/coronavirus-race.html>.

<sup>38</sup> G. Bertocchi, A. Dimico, *COVID-19, Race and Redlining*, cit., 13.

The most interesting aspect of the study in question relates the disproportion between the negative effects of the pandemic with socio-economic factors: according to them, these might have been the cause, and not the effect, of the worst general health conditions in African Americans<sup>39</sup>.

Referring to a study published in the Journal of American Medical Association titled *Covid-19 and African-Americans*<sup>40</sup>, Graziella Bertocchi and Arcangelo Dimico linked the higher mortality rate to African American living conditions. A significant portion of the black population lived historically, and still lives, in areas with a high unemployment rate, where houses are broken down, and unhealthy living conditions and a shortage of essential services are found. According to the perspective taken in *Covid-19, Race and Redlining*, these outcomes might be the legacy of the racial segregation of the 1930s that produced the asymmetric death shock for Covid-19 among African Americans. From a legal point of view, this reconstruction is not accurate: as we have seen, Redlining's practices had been declared illegal as early as the 1960s. In spite of that, "(r)acial segregation persists in the absence of explicit, legally enforceable racial restrictions"<sup>41</sup>. As we have noted, the perpetuation of racial segregation has been made possible through the use of private law instruments which have become the vehicle and device of discrimination. It is interesting to note that the greater impact of the pandemic on African Americans has been related to Redlining.

The study in question, in fact, has substantially inaugurated a line of research that has dealt with verifying the existence of this correlation <sup>42</sup>.

Recently, for example, two other scholars, Li and Yuan, have addressed the same question with reference to New York City and have shown that the persistent social structure made up of racial segregation is still being perpetuated through modern Redlining "devices", namely the Contract for Deeds<sup>43</sup>.

It is still too early to be able to assess with certainty whether the outcomes of these studies are able to trace a real causal link between high mortality and the practices of racial segregation, or if the two are together for a mere spurious correlation. The data are too fragmented, and there are no comprehensive investigations on the phenomenon.

However, the question cannot be dismissed as a mere accident. Moreover, it is a fact that historically segregated and ghettoized neighborhoods do not have an adequate degree of access to basic services, which are even in worse conditions than those of whites and are often far

<sup>39</sup> Ivi, 1.

<sup>40</sup> C.W. Yancy et al., *Covid-19 and African Americans*, in 323 *J. Am. Med. Ass.* 1891, 1891-2 (2020).

<sup>41</sup> R.T. Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, in 107 *Harv. L. Rev.* 1841, 1844 (1994).

<sup>42</sup> C.T. Laurencin, A. McClinton, *The COVID-19 Pandemic: A Call To Action to Identify and Address Racial and Ethnic Disparities*, in 7 *J. Racial Ethn. Health* 398 (2020). More recently, Y. Qinggang, *The Lethal Spiral: Racial Segregation and Economic Disparity Jointly Exacerbate the COVID-19 Fatality in Large American Cities*, in *Ann. N.Y. Acad. Sc.*, 2021, 18 ff.

<sup>43</sup> M. Li, F. Yuan, *Historical Redlining and Resident Exposure to COVID-19: A Study of New York City*, in 14 *Race Soc. Prob.* 85 (2021).

from health facilities. As Matteo Nicolini puts it, “this is evident when we consider how Western states have reproduced the ‘racially marginalized hierarchies’ between the metropolis and its colonies within their urban areas. As a result, migrants are located into cordoned-off ‘periphractic spaces,’ which constrain immigrants’ participation in public life ‘in terms of location and their limitation in terms of access – to power, to (the realization of) rights, and to goods and services’”<sup>44</sup>. Not only that, but given the living conditions, it is more difficult to respect the rules of social distancing and prevention of the spread of the virus.

## 8. Conclusion

This research was aimed at searching for a link between the private-law instrument of the Contract for Deed and the spatial injustices afflicting the U.S. population, and its African American segment in particular. I have highlighted how a lack of attention to this issue has a negative impact on the achievement of the objectives of spatial justice.

As my essay upholds, the Covid-19 pandemic and its asymmetric effect on African American communities have rekindled the debate around the predatory practices of Contract for Deed.

The link between these conveyancing instrument and the persistence of segregation of U.S. cities is addressed in recent initiatives announced by the Biden administration. In fact, the resurgence of the informal market already led the Consumer Financial Protection Bureau to talk about the advisability of introducing federal regulation of the phenomenon. On 22 October 2021, indeed, a joint reform initiative was announced and launched by the Consumer Bureau, the Department of Justice, and the Office of the Comptroller of the Currency.<sup>45</sup>

In the long wave of the emergence of inequalities accentuated by the pandemic, the three aforementioned federal agencies have noted that Redlining’s practices have produced a lasting effect over time and harmful to communities and neighborhoods mainly composed of ethnic minorities.

To add fuel to the fire, the informal market of U.S. homeownership has been expressly indicated as a modern form of Redlining, and as such to regulate and limit in order to prevent the spread – better, the further propagation – of predatory practices.

If enacted, these legislative measures would impose an automatic conversion of the Contract for Deed into regular mortgages, thus bridging the gap between the informal and formal market, producing spillovers also in terms of spatial justice. Some states have already taken actions in this direction<sup>46</sup>.

<sup>44</sup> See M. Nicolini, *Legal Geography*, cit., Cap. V, quoting D.T. Goldberg, *Racist Culture*, cit., 187-8.

<sup>45</sup> See *Justice Department Announces New Initiative to Combat Redlining – DOJ, CFPB and OCC Announce Resolution of Lending Discrimination Claims against Trustmark National Bank*, 22 October 2021, <https://www.justice.gov/opa/pr/justice-department-announces-new-initiative-combat-redlining>.

<sup>46</sup> C. Custard, *Installment Land Contracts*, cit., 528.

There is no doubt that this would constitute a further step towards the pursuit of spatial justice to the extent that it would be apt to break the cycle between the informal housing market and African Americans red lined zones.

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