THE POLITICS OF HOUSING DISPUTE RESOLUTION: AN ACADEMIC PERSPECTIVE

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Editor's Note:

This Article details the mechanics of a university course on the Politics of Urban Justice. Although it is not our general policy to publish this type of syllabus, we hope that the information provided herein will be helpful to those wishing to gain a better understanding of the political context in which housing dispute resolution takes place.

I. *THE PROBLEM*

Housing conflicts constitute a fundamental concern of the American legal system. Disputes over housing comprise a large segment of urban court caseloads.[1] Community housing concerns deepen as urban housing stocks decline. Policy-makers, responding to these concerns, enact new

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1. In the Forceable Entry and Detainer Court of the First Municipal District of the Cook County Circuit Court (the City of Chicago) 64,748 eviction suits were filed in 1977, 97% of which sought evictions from residential premises. S.J. MANSFIELD, JUDGMENT LANDLORD: A STUDY OF EVICTION COURT IN CHICAGO 1 (1978) [hereinafter cited as MANSFIELD]. This represents about 26% of all civil suits filed in the First Municipal District. There were 23,606 cases pending in the Housing Court of the Cook County Circuit Court at the end of 1977. This represents about 7% of all civil and criminal cases pending in the entire circuit. ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS, 1977 ANNUAL STATISTICAL REPORT FOR THE CIRCUIT COURT OF COOK COUNTY (1978).

laws which show little regard for the practical problems confronting courts struggling to translate these legislative goals into policy outcomes. In the meantime, the housing crisis worsens and public confidence in the legal system declines.[2]

The problems of housing dispute resolution are ripe for serious study by those who wish to learn about the legal process. The legal and political context in which the urban justice system operates must be studied to achieve any meaningful understanding of the system. Chicago is selected as a case study. At the outset, one must examine the structure of the local court system, emphasizing the functions of its various courts. The Circuit Court of Cook County's division into separate units specializing in certain kinds of cases is typical of bureaucratic urban court organization. The complexities of the urban justice system and the broad range of important issues which the local judiciary decides can only be appreciated if this organization is considered.

In addition, an understanding of the environmental influences on local judicial policy-making is necessary. These influences are of two types: forces arising within the local political environment, and external factors working against local pressures. It is assumed that the policy outcomes of urban justice systems result from particular local dynamics and from the broader constraints of the legal system.[3] Consequently, a gap may occur between policy goals embodied in statutory and case law, and policy outcomes embodied in court decisions and their impact. This gap may best be explained in terms of the dominant local environmental pressures on the justice system.

Dominant factors might include examples of the manner in which local enforcement authorities fix judicial agendas in criminal and some civil matters; the effect of home-rule provisions on the legal framework applicable to certain kinds of controversies, especially those asking judges to monitor local elites and rules of the political games; the effect on judicial values of local control of judicial selection; and the importance of locally accepted norms about the meaning of justice.

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2. *See* R. HARRIS, JUSTICE: THE CRISIS OF LAW, ORDER AND FREEDOM IN AMERICA 13 (1970); W.G. GRIGSBY & L. ROSENBURG, URBAN HOUSING POLICY 2 (1975). At least one public interest law group in Chicago is publicly contemplating a suit against Housing Court in Cook County for its alleged failure to function according to Illinois law. Sussman, *One May Sue Housing Court,* Uptown News, Jan. 16, 1979, at 3. For the view that there may not be a real crisis, see E. BANFIELD, THE UNHEAVENLY CITY: THE NATURE AND FUTURE OF OUR URBAN CRISIS (1968).

3. *See* H. JACOB, URBAN JUSTICE: LAW AND ORDER IN AMERICAN CITIES 6 (1973); J.R. KLONOSKI & R.I. MENDELSOHN, THE POLITICS OF LOCAL JUSTICE (1970).

Examples of external factors restraining local dominance include substantive law, appellate processes, and national political culture.[4]

The third and core area to be examined in any study of the urban justice system treats selected aspects of criminal and civil justice. By looking at certain criminal justice policies such as police accountability, internal and external, prosecution and defense of indigents, sentencing, and community corrections, one may realize the nature and full extent of the problems involved. To facilitate this, there must be a three-fold analysis: describing specific policy outcomes, explaining the bureaucratic and political forces producing policy, and evaluating policy in light of various standards of justice.

Greater stress should be placed on civil justice rather than criminal justice issues, however, because most people are less familiar with the impact of civil law on the quality of life. Housing policy is an area of basic importance in civil law.[5]

Finally, analysis should be focused upon trends toward non-adjudicative alternatives for allocating urban justice. While the "alternative" movement is not theoretically or practically limited to urban areas, stress on urban justice systems has prompted most of the experimentation occurring in the United States.[6] The concept of the "neighborhood justice center," for example, illustrates this trend.[7] Its role is more fully described below.[8]

There is a lack of up-to-date materials on the range of policy issues that might be treated when studying urban justice. The experiences of the City of Chicago, however, provide a rich and accessible source of data for developing relevant materials. The electronic medium of video-tape provides a means of gathering and organizing that data for presentation.

Participants in local legal processes can be interviewed, their comments recorded, and the interviews edited into coherent programs that may be integrated into distinct topical areas. Comments can be illustrated and reinforced with pictorial and graphic material, inserted

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4. *See* JACOB, *supra* note 3, at 10.

5. *Id.* at 6-24.

6. *See* D.E. AARONSON, B. HOFF, P. JASZI, N.N. KITTRIE & D. SAARI, THE NEW JUSTICE: ALTERNATIVES TO CONVENTIONAL CRIMINAL ADJUDICATION (1977); E. JOHNSON, V. KANTOR & E. SCHWARTZ, OUTSIDE THE COURTS A SURVEY OF DIVERSION ALTERNATIVES IN CIVIL CASES (1977); American Bar Association, Report on the National Conference on Minor Disputes Resolution (1977).

7. *See* D. MCGILLIS & J. MULLEN, NEIGHBORHOOD JUSTICE CENTERS: AN ANALYSIS OF POTENTIAL MODELS 117-35 (1977).

8. *Id.* at 25-31.

after the interview and before play-back, to create an impact that most guest speakers cannot achieve. Furthermore, this avoids the problems accompanying attempts to schedule busy professionals.

Interviews were held and video-taped with more than twenty participants in the Chicago urban justice process in 1977–78. Interviewees included attorneys, judges, litigants and administrators. Each interview covered a broad range of relevant topics. Material pertaining to specific subjects from the different interviews was then edited into a series of individual programs.[9]

In this way, several programs were developed. Each program exposes the viewer to unique material with an impact only the electronic media are capable of generating. Additionally, study guides were developed to accompany and reinforce each program. Use of the guides requires that viewers do more than passively watch.

Most of the tapes focus on housing problems and the way urban courts influence housing policy. Additionally, one tape examines non-judicial dispute resolution processes as an alternative approach to various aspects of housing justice.

II. *HOUSING DISPUTE RESOLUTION*

A. *The Political and Economic Context*

Housing dispute resolution is only one aspect of housing policy. Understanding the policy outcomes of dispute resolution processes requires attention to both political and economic factors.

A logical starting point is to conceptualize the "housing problem" in terms of a gap between housing ideals and realities. The ideal of "decent" housing for all Americans, as embodied in federal policy, is a readily acceptable notion.[10] Some sense of the gap emerges by reviewing recent findings about housing "adequacy." The measures of adequacy used in these studies indicated the failure to achieve the national goal of "decent" housing.[11]

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9. The video project was funded through a grant to Loyola University from the Andrew W. Mellon Foundation. The entire series of videotapes are available from the Media Services Department of Loyola University of Chicago.

10. *See* U.S. PRESIDENT'S COMM. ON URBAN HOUSING, A DECENT HOME (1968). Congress stated the basic goal of national housing policy to be "the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family. . . ." Housing Act of 1949, § 12, 42 U.S.C. § 1441 (1978).

11. *See* J. HERON, HOUSING PROBLEMS IN ILLINOIS (1978); BUREAU OF CENSUS, U.S. DEP'T OF COMMERCE 1 (1970); CENSUS OF HOUSING: UNITED STATES SUMMARY (1972).

Another index of the gap is to contrast the perceptions of community organizers and residents who live and work in declining city neighborhoods with views expressed by governmental officials having responsibilities in the area. Officials suggest that things are getting better, at least within the limits of what is feasible. Feasibility is defined by the suggestion that the "poor will always be with us." Official optimism contrasts sharply with the grassroots perceptions that the urban housing stock, at least in some neighborhoods, is getting worse instead of better.[12]

The significance of the problem becomes more concrete by tracing the consequences of housing decline. These consequences include not only miserable living conditions, but also destructive secondary effects on the quality of urban life.[13]

As housing declines, long-time residents who care about their neighborhood and neighbors become frightened and flee. Newcomers in search of cheap housing take their places. The neighborhood, once a place of familiarity and security, becomes a space for anonymity and fear. Such conditions are a ripe breeding ground for crime.

Physical and sociological changes trigger economic devastation. At the same time, economic devastation fosters physical and sociological changes. Capital no longer is in the neighborhood. Physical repairs become too risky. Disinvestment by banks, business and insurance companies (redlining) hastens the decline.

The political complexity of the housing problem becomes evident by surveying various interpretations of its causes. Three overlapping conceptual frameworks of causal explanation emerge: socio-cultural, economic and class conflict.

The socio-cultural explanation stresses the consequences of ethnic and economic neighborhood integration. Some commentators view the intrusion of alien races and cultures into the community as the cause of neighborhood decline. "Intruders" frighten established residents into leaving and trigger the slide toward slums. Intruders also may be depicted as destructive of the physical and social environment because of unsanitary living habits or unconventional behavior.

The economic explanation has three variations. One version stresses the problem of inadequate capital to sustain decent housing. Capital is scarce because of tenants' inability to pay rents sufficient to finance

12. Videotaped pictures of deteriorating conditions underscore these perceptions. J. Klein, Housing Ideals v. Realities in Chicago: The Case of Uptown (1978) (videotape).

13. R.F. MUTH, CITIES AND HOUSING (1969).

adequate maintenance and generate return on investments. The presence of many marginal landlords, who either cannot afford or lack the know-how to properly manage property, reinforces the problem.

A second version of the economic interpretation blames avaricious landlords for neighborhood decline. Slumlords "milk" buildings by draining capital from rental property in order to reap huge short-term profits.

These two versions of the economic interpretation suggest a third perspective. Neighborhoods in decline are caught in the midst of a dilemma stemming from a struggle between the poor and the middle-class concerning the future of the city or important parts of it. This class conflict results in a stalemate and governmental inability to develop effective policies to promote decent housing for all.

There are five ways to identify public policy failures. First, middle-class interests point to policies which attract "bad" people to neighborhoods struggling for stability. De-tox centers, methadone clinics, halfway houses, shelters for various kinds of "down and outers," and low-income housing are examples of policy labeled as destructive.

From the perspective of lower-income persons' interests, the major fault of public policy is failure to provide an economic base for decent neighborhoods. Unemployment, inadequate housing subsidies, and the failure to enforce anti-redlining laws put decent housing beyond the reach of many persons.

A third area of class conflict over public policy concerns land use and planning policy. While middle-class interests promote projects which attract business or institutional development, at the same time they destroy blighted areas. Displaced lower-income groups bitterly resent such development. Concurrently, zoning ordinances permitting the establishment of rowdy bars, hangouts, adult bookstores or other establishments which offend middle-class sensibilities, appeal to the under- or unemployed, and encourage class feuds.

Both middle-class and lower-income interests service delivery policies as a cause of neighborhood decline. All citizens view inadequate police, fire and sanitation services as destructive.

Finally, a policy area where class interests both converge and diverge concerns the processing of housing disputes by the legal system. There seems to be a widespread consensus that the legal system fails to resolve disputes in ways which effectively promote "decent" housing. There is disagreement over the precise nature of this failure, but loss of confidence in the legal process is widespread.

B. *Urban Legal Systems and Housing Disputes*

Building Code Enforcement

Formerly, cases applying municipal ordinances governing the construction and maintenance of residential buildings were matters of public law involving the application of police power to protect public health and welfare. However, as a practical matter, in many cases code enforcement is merely one component in a conflict between property owners and other private citizens affected by the condition of the property.

The theoretical policy objective of a building code is decent housing.[14] The definition of housing decency varies according to the standards enacted in the local code. The Chicago housing stock is the beneficiary of two statutory frameworks. The building code enacted by the City of Chicago is one of the most stringent in the nation.[15] Home rule permits the city to provide a variety of sanctions for code enforcement. Moreover, Illinois has enacted additional provisions making it a crime to manage housing in an unsafe condition.[16]

While a few critics of the housing dispute resolution process in Chicago blame its failings on certain statutory loopholes, the majority condemn the system because of perceived inefficiencies in the enforcement process. To many, the process amounts to little more than a bureaucratic game, ultimately leading to the destruction rather than the preservation of decent housing.[17]

Many conventional critics understate the dilemma which housing economics impose on code enforcers. Truly stringent code enforcement, in the context of present economic realities, may actually increase rates of abandonment and stimulate new slums. Furthermore, bureaucratic and judicial reluctance to enforce the code can be exploited by slumlords thereby leading to the same net result: slums.

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14. It is a concrete expression of the ideals expressed by Congress. Housing Act of 1954, 42 U.S.C. § 1451 (1978); Housing Act of 1964, 42 U.S.C. § 1401(c) (1978). Federal pressure on state and local government to use police power to achieve this goal resulted in the policy objectives underlying housing codes. *See* Note, *Enforcement of Municipal Housing Codes,* 78 HARV L. REV 801, 803 (1965).

15. Chicago, Ill., Building Code; *e.g.*, chapter 39-3 provides that each day a violation occurs constitutes a separate and distinct offense for which a fine of up to $200 may be imposed.

16. ILL ANN. STAT. ch. 38, § 12-5.1 (Smith-Hurd Supp. 1978).

17. *See* J. Klein, The Building Code and Slums in Chicago: Effective Law Enforcement or Bureaucratic Games? (1978) (videotape).

Conventional critics condemn failures in the enforcement process at all three levels: detection, prosecution and adjudication. Indeed, questions about the allocation of resources to these functions, the administration of available resources, and the use of discretion by officials can be legitimately raised.

The manner in which the Chicago Department of Buildings exercises its responsibility to detect code violations raises many issues. While the Building Department requires regular inspections, they do not always occur. When they do, the inspections are not always adequate. Many inspectors are not competent and utilize their authority in an arbitrary and dishonest manner. When tenants or abutting residents report violations, the department takes unreasonably long to respond.[18] Internal department procedures such as adminstrative hearings before a "compliance board," designed to encourage compliance add unnecessarily to this delay.

Even stronger criticism is reserved for the prosecutorial function in the enforcement ladder. In fact, the gap between community perceptions and official views about the effectiveness of the city's corporation counsel is so wide that the corporate counsel office prohibits on-camera staff-attorney interviews. Repeated and severe confrontations have occurred between community organizers and the corporation counsel; and the counsel's office has become increasingly defensive. Consequently, many criticisms go unanswered.

The assignment of only a few staff attorneys to the extremely heavy caseload is unrealistic, and an inadequate recognition of the seriousness of the urban housing crisis. There is also excessive lag-time between referral to the corporation counsel and the initiation of prosecution. The city's attorneys typically come to court unprepared to press for enforcement, question the basis for landlords' repeated motions for continuances, consolidate cases against repeat offenders, effectively present evidence of non-compliance, seek stiff penalties against obvious slumlords, cooperate with neighborhood organizations, or to seek the creation of receiverships for salvageable buildings.

In contrast, the Cook County State's Attorney, who initiates prosecutions under the state's Criminal Housing Management Act,[19] has successfully deflected much criticism to other points in the system. The Act has limited reach; it applies only to code violations creating clear,

18. The city's own inspectors report violations, yet there is usually a three- to six-month delay between detection and referral to the city's corporation counsel.

19. ILL. ANN. STAT. ch. 38, § 12-5.1 (Smith-Hurd Supp. 1978).

imminent and life-threatening dangers. Most cases come to the state's attorney only after a series of protracted proceedings and delays while the case was in the hands of the corporation counsel. Furthermore, it is generally perceived that the judicial failure to impose criminal sanctions in these cases does not stem from lack of vigorous prosecution by the state's attorney. Finally, only a fraction of all code enforcement cases fall within the state's attorney's jurisdiction largely because of the way in which the statute has been drafted and interpreted. Consequently, critics must look elsewhere for primary scapegoats. Many turn to the courts.

The Housing Court in Chicago consists of six courtrooms that are part of the Cook County Circuit Court. Each court has specialized functions according to geographic areas and types of code violations. One handles all demolition cases brought by the city which usually have already extended for years because of prior proceedings. These cases have resulted only in the continuing demise and eventual abandonment of buildings.

Housing Court possesses all the legal and equitable powers of courts of general jurisdiction in the Illinois unified system. The community voices strong concern over the apparent reluctance of the court to use its power against code violators. Some concerns focus on the problem of delay once proceedings have begun,[20] and the apparent unwillingness of housing court judges to use the full panoply of coercive powers at their disposal to induce compliance.[21]

Perceived shortcomings in detecting, prosecuting and adjudicating code violations provoke an array of suggested reforms,[22] yet the effectiveness of enforcing housing codes to promote decent housing is not clear. Legislative changes in the state's Criminal Housing Management Act also would be necessary to close certain loopholes and widen the range of the state's attorney's jurisdiction. However, given the reluc-

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20. Delays may be inherent in the legal process, resulting from service of process problems, difficulties in acquiring proper jurisdiction over defendant landlords, and even in identifying the proper defendant. Factors within the court's control such as its continuance policy also contribute to unnecessary delays. The court is too willing to grant continuances on insufficient evidence that landlords are making good faith efforts to bring their buildings into compliance.

21. *E.g.*, fines are seldom imposed, even though they are routinely sought against landlords who drag their cases on endlessly. Judges rarely issue contempt citations even where landlords show their obvious disregard for the court's orders to repair. Yet, query whether the use of stiff sanctions will bring about greater compliance.

22. *See generally* Dick & Pfarr, *Detroit Housing Code Enforcement and Community Renewal: A Study in Futility*, 3 PROSPECTUS 61 (1969).

tance of judges to impose only token sentences such changes may not be worth fighting for, especially since the political influence of real estate interests in the legislature would be very difficult to overcome.

Alternative methods to achieve housing goals include grassroots action aimed at putting more community pressure on legal officials for more aggressive detection activities, or more vigorous prosecution, or less tolerant judicial behavior. Given the case by case nature of the legal process and the slim organizational resources of most community organizations, the success of such activities is improbable. Before code enforcement can be made more effective, the economic dilemmas inherent in such enforcement must be addressed. For example, strict enforcement produces abandonment and lax enforcement permits the inevitable slide toward demolition. To resolve this dilemma officials must decide whether code standards should be lowered to more "practical" levels, or be bifurcated; high standards for good neighborhoods and low standards for marginal areas.[23] While code enforcement thereby becomes enforceable in economic terms, it may result in decent housing for only the middle class. On the other hand, uniformly high codes may be made "practical" through government subsidies to the housing market, supplemented with regulatory controls assuring that landlords use subsidies to maintain their buildings in compliance.[24] But, subsidies may not be politically feasible given general taxpayer resistance to increasing tax burdens, and growing middle-class resistance to subsidy programs that bring "undesirables" into their neighborhoods.[25]

The difficulty with housing code enforcement as a solution to the housing problem may lie not in the perceived bureaucratic inefficiencies and petty corruptions in the legal process. Rather, the major obstacle to solutions may be class divisions about housing policy which undercut any comprehensive approach. These divisions become even more apparent in another aspect of housing dispute resolution: eviction court.

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23. For a complete discussion of various housing code approaches, see Landman, *Flexible Housing Code—The Mystique of the Single Standard: A Critical Analysis and Comparison of Model and Selected Housing Codes Leading to the Development of a Proposed Model Flexible Code,* 18 How. L. J. 251 (1974).

24. *Cf.* Note, *Enforcement of Municipal Housing Codes,* 78 HARV. L. REV. 801, 849-59 (1965) (discussing possible methods of alleviating market impediments to rehabilitation, coupled with strict code enforcement to maintain compliance).

25. *See* I. WELFELD, R. MUTH, H. WEHNER, & J. WEICHER, PERSPECTIVES ON HOUSING AND URBAN RENEWAL 11 (1974).

C. *Tenant Remedies in Evictions*

Landlord and tenant interests clash in the Forceable Entry and Detainer Court of the Cook County Circuit Court. Historically, the remedial objectives of eviction court proceedings have given landlords control over their property in the event of a tenant's failure to pay rent. In recent years, however, doctrinal changes in the law have introduced other goals.

The development of the warranty of habitability[26] and other tenant defenses to an eviction can be rationalized, in part, as judicial recognition of the social importance of decent housing.[27] By giving tenants the warranty defense, courts theoretically provide an incentive to landlords to maintain rented premises up to some standard of habitability, or, alternatively, an incentive to tenants to divert rent into maintenance of the premises.[28] Actual policy outcomes, however, at least in Cook County, have fallen far short of the objective of giving tenants greater leverage in the struggle for decent housing. The chief reason for this failure is the way in which the Forceable Entry and Detainer Court proceedings have virtually ignored the habitability doctrine and other tenant remedies. Critics go so far as to claim that a presumption in favor of landlords dominates the proceedings in eviction court, thereby negating whatever policy in favor of decent housing has evolved in legal doctrine.[29]

A group of attorneys and law students have assumed the task of demonstrating this presumption. Following two years of systematic court watching, they assembled empirical data illustrating that landlords win in eviction court more than eighty percent of the time. Winning bears no statistical relationship to the tenant's appearance or failure to appear, the assertion or waiver of defenses, or the nature of the defenses asserted. Tenants attempting to claim the warranty of habitability defense have the same high probability of losing as tenants claiming that

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26. The Illinois Supreme Court first recognized the defense in Jack Spring, Inc. v. Little, 50 Ill. 2d 351, 280 N.E.2d 208 (1972). Subsequent cases have expanded the doctrine. *See, e.g.*, Fisher v. Holt, 52 Ill. App. 3d 164, 367 N.E.2d 370 (1977); South Austin Realty Assoc. v. Sombright, 47 Ill. App. 3d 89, 361 N.E.2d 795 (1977); Richardson v. Wilson, 46 Ill. App. 3d 622, 361 N.E.2d 110 (1977); Peoria Housing Auth. v. Sanders, 54 Ill. 2d 478, 298 N.E.2d 173 (1973).

27. *See generally* Blumberg & Robbins, *Beyond URLTR: A Program of Achieving Real Tenant Goals*, 11 HARV. C.R.-C.L. L. REV. 1, 7-9 (1976).

28. S. BURGHARDT, TENANTS AND THE URBAN HOUSING CRISIS (1972).

29. *See, e.g.*, MANSFIELD, *supra* note 1.

their rent was paid or asserting some technical defense based on inadequate notice or service. Even the presence of counsel on tenants' behalf had little bearing on their chance of winning.[30]

These empirical findings raise serious questions about the possibility of a systematic bias in favor of landlords, resulting in the avoidance of legally recognized tenant remedies. Alternative explanations for so pronounced a pattern are hard to identify.

Difficulties with the court increase in light of the court watchers' report of irregularities which occurred in their presence. The court regularly denied jury trials even though guaranteed by statute; and indeed, the court granted jury trials only when a defendant obtained mandamus to that effect from the Illinois Supreme Court. The court disposed of large numbers of cases en masse on the landlord's unquestioned assurance that tenants were not present; admitted hearsay evidence obtained over the telephone from absent landlords by their attorneys in the midst of the proceedings; and greeted tenants asserting habitability defenses with the admonition that if the apartment was really that bad, why would the tenant want to continue living there?[31]

No one has publicly voiced a persuasive defense of the situation in eviction court. While arguments can be made that landlords bear the entire brunt of legal liability in housing court (even if they are not always causally responsible for havoc brought by destructive tenants), and that in some cases the thirty-day process for evicting destructive tenants seems too long, neither contention justifies the wholesale disregard of tenant legal defenses. Moreover, the claim that most tenants sued in eviction court have not paid their rent also misses the mark; the habitability doctrine is meant as a defense to non-payment. In a more generous light, perhaps this contention is acutally a claim that most tenants are in eviction court because they cannot or will not pay the rent. The protection of tenants living beyond their ability or willingness to pay is obviously not the intent of tenant defenses; it thus appears that the economic realities of the housing marketplace once again present a practical barrier to meaningful application of legal principle to fact. If the warranty of habitability doctrine is taken seriously only in the context of middle-class housing disputes this implies a class-based standard of justice. Even if most tenants in eviction court are unable or unwilling to pay the rent, the function of the justice system is to exercise due process to reasonably discriminate between them and those entitled to the

30. *Id.*

31. *See* J. Klein, Eviction Court in Chicago: Judgment Landlord (1978) (videotape).

defense.

Critics of the eviction court emphasize the need for structural reforms to solve the court's problems.[32] The chief failing they identify is that only two judges, sitting on a part-time basis, are responsible for hearing more than 64,000 eviction cases a year in the City of Chicago. This represents one-fourth of the city's civil caseload to which less than five percent of the available judicial resources are assigned.[33] Under such pressures, a presumption working in favor of landlords is practically inevitable. Hence, the structural critics call for, among other things, more judges, more courtrooms, and longer calls.[34]

Other critics see more fundamental obstacles impeding meaningful changes necessary to achieve decent housing and equitable resolution of landlord-tenant disputes. First, they perceive a severe imbalance of power between landlords and tenants that permits landlords to frustrate mere structural reforms in eviction court. They claim, for example, that the legal process inevitably handicaps poor tenants when it comes to proof of such things as payment of rent. The difficulties accompanying the lack of rent receipts in poor neighborhoods and landlord unwillingness to formally acknowledge tenants' use of rent money to repair the premises[35] exacerbate the problem.

Critics also cite the landlords' power to evict outside the legal process as a second problem. Until recently, the Chicago police, if called to the scene, treated "illegal" or "strongarm" evictions, or "lockouts," as civil matters in which they had no legitimate jurisdiction. A tenant's only recourse was to the civil courts. In the meantime, tenants must locate new shelter; therefore, from a tenant's perspective, a civil suit to regain possession is a waste of time, useful only to reclaim personal property left behind. Under a new city ordinance, illegal evictions are a criminal offense.[36] Police regulations, however, do not authorize arrests. Rather, police refer evicted tenants to the misdemeanor court where they may swear out a complaint. In the meantime, tenants are still literally out in the cold. Structural reforms, in other words, do not deter landlords intent upon removing tenants from the premises.

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32. *Id.*

33. MANSFIELD, *supra* note 1.

34. *See, e.g.*, AMERICAN BAR ASSOCIATION SPECIAL COMM. ON HOUSING AND URBAN DEVELOPMENT LAW, URBAN HOUSING COURTS AND LANDLORD-TENANT JUSTICE: NATIONAL MODELS AND EXPERIENCE (1977).

35. *See* J. Klein, Eviction Court in Chicago: Judgment Landlord (1978) (videotape).

36. CHICAGO, ILL., ORDINANCES, Chap. 193-1.5 (1978).

Militant tenant groups call for self-help solution: rent strikes, building seizures, armed tenant patrols, resulting in inevitable clashes with the owners of property. Other community organizations search for more moderate solutions. One such approach aims at reducing potential conflict by fostering the mutual interests of landlords and tenants. Some neighborhood organizations search for "good" landlords and "good" tenants in order to bring them together. They may bolster these efforts through various counseling programs which provide building management advice for landlords and workshops to promote responsible tenant behavior. On occasion, they may involve the organization in efforts to mediate landlord-tenant disputes that arise. Systematic mediation programs, however, are only beginning to develop; until they do, the objective of providing decent housing in the context of dispute resolution may be substantially frustrated by structural weaknesses in the urban justice system and class antagonisms between landlords and tenants.

D. *Alternatives to Adjudication of Housing Disputes*

A fully efficient system of resolving housing disputes in the context of class and economic conflict may not be within easy reach. Formal systems of adjudication which depend upon the application of general legal principles, formulated without proper consideration of the economic and political environment, may be especially inefficient. Assuming that the legal system is responsive to dominant economic and political interests, it will not apply formal legal norms in a manner opposed to those interests. When the norms themselves threaten dominant interests, the legal system will "neutralize" the norms. The gap between legal formalism and real legal outcomes provides a measure of the system's "inefficiency."

The system's inefficiencies go even further, however, because it fails to resolve disputes; it merely processes them. The disputes may continue over long periods or may recur repeatedly. Escalation of the conflict may accompany the protracted and recurring nature of processed but unresolved disputes. Endless "processing" may be one way of neutralizing legal norms that run counter to dominant political or economic values. The building code bureaucracy in Chicago seems to follow this tactic. While the eviction court does not engage in protracted processing of a case, it probably performs only minimal dispute resolution functions. Because of this, large numbers of tenants never submit themselves to its jurisdiction. Furthermore, the same landlords may be repeatedly using the court to process the same kinds of disputes.

In recent years, these and a variety of other shortcomings in the ability of conventional legal processes to serve the needs of all citizens have led to the search for alternative ways of resolving disputes. The "alternatives movement" is exemplified in many ways. A common theme running throughout much of the discussion, however, is the diversion of disputes away from established adjudicatory proceedings.[37]

An example of the diversion approach which offers an especially promising alternative in the area of housing dispute resolution is the concept of neighborhood justice centers (NJC), which is a voluntary, neighborhood-based process for resolving minor disputes through mediation and arbitration.[38] Although established NJC programs do not incorporate each of the elements of this definition in precisely the same manner, the differences which exist seem to be more of degree than of kind.[39]

The NJCs are voluntary in two senses. Submission of the dispute to the NJC is at the discretion of both parties. Those NJCs with close ties to formal legal processes may de-emphasize this element to the extent that officials who divert cases to the NJC apply psychological and coercive pressure on parties to use the NJC. To the extent that NJCs emphasize compliance with resolution outcomes is also largely voluntary. Mediation agreements are not legally binding. If an arbitration award is entered, however, in conformity to operative arbitration rules, it has legal effect upon confirmation by a court.

The NJCs are neighborhood-based. Many are physically located in the neighborhoods they serve and maintain hours convenient to area residents. More significantly, community people, both lay and professionals, serve as the mediators and arbitrators. In almost all NJCs, completion of a formal training program is a prerequisite. The emphasis, however, is on drawing people from the community to resolve disputes among their peers. Finally, some NJCs assign policy-making functions to the boards representing various segments of their neighborhood.

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37. *See* D. McGILLIS & J. MULLEN, NEIGHBORHOOD JUSTICE CENTERS: AN ANALYSIS OF POTENTIAL MODELS (1977).

38. See J. KLEIN, J. RATCLIFFE, J. GRISETA & C. RISK, NEIGHBORHOOD JUSTICE IN CHICAGO. A CITY OF NEIGHBORHOODS (Chicago Bar Association 1978); J. Klein, Eviction Court in Chicago: Judgment Landlord (1978) (videotape).

39. Mediation processes stress negotiation of differences that caused the dispute. Mediators act to facilitate negotiations between the parties. Arbitration imposes a binding settlement on the parties. Technically, the two processes are quite distinct but many programs used a combined "med-arb" model, using mediation and arbitration techniques simultaneously.

NJCs focus on "minor" citizen disputes, leaving more serious matters to conventional legal processes. Disputes among citizens, as well as those involving private corporations, comprise the bulk of the caseload. Some NJCs are experimenting with disputes involving governmental agencies, such as public housing authorities. The range of disputes is quite broad, including both civil and criminal matters. On the civil side, much of the activity involves housing issues: disputes over security deposits, rent, condition of the premises, tenant behavior, and squabbles between neighbors. Other civil matters handled at the NJCs include consumer and domestic problems. On the criminal side, NJCs resolve a variety of misdemeanors such as assaults, harassments and disorderliness. In addition, NJCs have successfully mediated certain types of felonies.[40]

NJCs may offer promising alternatives to present methods of processing housing diputes. First, they are immediately accessible to both landlords and tenants. Problems can be dealt with before escalating to a point where demolition or eviction are inevitable.[41]

Second, dispute resolution can occur with maximum flexibility to accommodate the parties' conflicting needs. In an atmosphere void of eviction and building code violation threats, the likelihood of negotiation of mutually agreeable outcomes increases. Third, NJCs earning credibility among both landlords and tenants may actually contribute to the alleviation of class tensions, thereby impeding the development of broader solutions to a neighborhood's housing problems.

Finally, NJCs could become a focal point for channeling housing resources where they are most needed. The resolution of many landlord-tenant disputes could be facilitated by the availability of management and/or tenant counseling and financial assistance. These resources are available but not accessible in the present context of judicial housing dispute resolution because of organizational barriers and jurisdictional limitations.

Efforts are currently underway in Chicago, and several other cities, to develop NJC programs as alternatives to judicial housing dispute resolution. It is too early, however, to gauge the longterm impact of these efforts.[42]

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40. *E.g.*, weapons assaults between persons who know each other and statutory rape cases.

41. Adjustments can be negotiated before a building deteriorates irreversibly or before a controversy between landlord and tenant becomes hopelessly deadlocked.

42. J. KLEIN, J. RATCLIFFE, J. GRISETA & C. RISK, NEIGHBORHOOD JUSTICE IN CHICAGO, A CITY OF NEIGHBORHOODS (Chicago Bar Association 1978); J. Klein, Neighborhood Justice

III. *CONCLUSION*

Analysis of Chicago's resolution of housing disputes provides an excellent case study of the inadequacies of substantive law and formal legal procedures as the sole basis for understanding policy outcomes. Wider citizen understanding of the importance of other variables may not only lessen cynicism about courts but also may provide a catalyst for finding a meaningful role for law in solutions to pressing socio-economic problems such as housing.

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in Chicago: An Alternative to the Court System (1978) (videotape). The impact can be examined by addressing the following questions:

First, what impact do alternatives have on the parties to disputes? Do both landlords and tenants perceive greater fairness or justice in the resolution of their disputes? Do the processes used in alternatives like the NJC conform with our sense of due process or fairness?

Second, what impact do alternatives have on the community? Do community residents perceive greater opportunities for stabilizing and improving neighborhood housing? Is there any measurable impact on the quality of housing? Are neighborhood tensions between landlords and tenants alleviated in some sense?

Third, what impact do alternatives have on the conventional urban justice system? Does a net reduction in caseload result in both the housing court and the eviction court or other courts adjudicated housing related disputes? Can improvements in the performance of the legal system be traced to such reductions?