

## Evicted: The Socio-Legal Case for the Right to Housing

A Book Review of MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (Crown Publishers, New York, 2016)

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### INTRODUCTION

Matthew Desmond's *Evicted: Poverty and Profit in the American City* is a triumphant work that provides the missing socio-legal data needed to prove why America should recognize housing as a human right. Desmond's masterful study of the effect of evictions on Milwaukee's urban poor in the wake of the 2008 U.S. housing crisis humanizes the evicted, and their landlords, through rich and detailed ethnographies.<sup>1</sup> His intimate portrayals teach *Evicted's* readers about the agonizingly difficult choices that low-income, unsubsidized tenants<sup>2</sup> must make in the private rental market. *Evicted* also reveals the contradictions between "law on the books" and "law-in-action."<sup>3</sup> Its most significant contribu-

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1. See MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016).
  2. Unsubsidized renters make up about sixty-seven percent of renting families in America and they receive no government assistance for housing. *Id.* at 302-03.
  3. Riaz Tejani, "Fielding" *Legal Realism: Law Students as Participant-Observers?*, in 1 *THE NEW LEGAL REALISM: TRANSLATING LAW-AND-SOCIETY FOR TODAY'S LEGAL PRACTICE* 95 (Elizabeth Mertz, Stewart Macaulay & Thomas W. Mitchell eds., 2016) ("Legal ethnography offers an empirical method by which students can leave "law in books" to observe and document "law in action" in the complicated social environments in which they reside.").

tion to American housing and poverty scholarship is the socio-legal data it provides to demonstrate the high economic and social costs America pays for its failure to consider housing a basic human right.<sup>4</sup> Indeed, Desmond ultimately calls for an American right to housing and presents law and policy solutions in *Evicted* to advance such a right.<sup>5</sup>

This Essay argues that Desmond's mostly federal legal prescriptions are insufficient to help all Americans realize the full promise of the human right to housing. American cities should also enact local ordinances that legitimate new housing arrangements in order to fully realize the human right to housing. Part I argues that *Evicted's* stories show that the law operates differently in poor housing markets than in traditional markets, and that poor residents are differently situated in low-income housing markets based upon their age, sex, gender, race, and ethnicity. In this context, traditional housing laws are often a cause of, rather than a solution to, housing inequality and insecurity. *Evicted* also reveals that poor tenants and their landlords make informal bargains that often undermine the goals of numerous housing-related laws and sacrifice poor residents' dignity. Part II builds on Desmond's legal and policy prescriptions by providing examples of how cities can codify the right to housing at the local level through resolutions and ordinances that legitimate more equitable housing arrangements. Part II further asserts that the right to housing is a legal tool that can help localities manage and effectively internalize the mounting economic and social costs of increasing inequality in American housing markets. If, in the face of retracting federal government support for housing the poor and working-class, localities enact laws that reflect the human right to housing, they may be able to encourage the private sector and civil society to work with them to create housing markets that reduce evictions and better respond to people's housing needs.

## 1. EVICTION AS A SOCIO-LEGAL RELATIONSHIP

*Evicted* reveals many counterintuitive insights about the relationship between urban poverty and American housing markets. This Part focuses on how *Evicted's* stories show that fair housing laws, landlord-tenant laws, nuisance laws, and domestic violence laws operate differently in low-income housing markets than in traditional housing markets. Cities and states may need to reformulate these laws, or craft new laws, to make U.S. low-income housing markets more efficient, humane, and equitable.

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4. DESMOND, *supra* note 1 at 296 ("But new data and methods have allowed us to measure the prevalence of eviction and document its effects.").

5. *See id.* at 300-11.

A. *The Fair Housing Act and Families with Children*

The federal Fair Housing Act (“FHA”) specifically prohibits discrimination against families with children under the age of 18 in the rental of a home.<sup>6</sup> The FHA also prohibits discrimination in the attainment of housing on the basis of race, color, sex, national origin, religion, and disability status.<sup>7</sup> However, *Evicted* shows the gap between what the law prohibits and how those prohibitions are either ignored, or inequitably applied and enforced, against very low-income blacks and whites in the inner city. Consider the following two people in *Evicted*: Arleen, a middle-aged black woman with two young boys,<sup>8</sup> and Pam, a white woman with a white boyfriend and five children (including two black daughters from a previous relationship).<sup>9</sup> Arleen is evicted after her thirteen-year-old son, Jori, throws a snowball at a passing car while playing with his cousin and the car owner breaks down Arleen’s door in revenge.<sup>10</sup> Arleen struggles to find new, habitable housing; even the city deems one of her homes unfit for human habitation.<sup>11</sup> Arleen winds up in a “bottom duplex unit,” with “a fist-sized hole in a living-room window,” an ugly wooden plank that has to be dropped into metal brackets to close the door, and a filthy carpet, for \$550 a month, not including utilities.<sup>12</sup> The rental expense constitutes “88 percent of Arleen’s \$628-a-month welfare check.”<sup>13</sup>

Pam, meanwhile, is evicted after she and her boyfriend Ned miss their lot rental payments, having squandered their money on drugs and lost their jobs.<sup>14</sup> At first, Pam and Ned can’t find new housing—one landlord flatly tells her over the phone, “We don’t want your kids, ma’am.”<sup>15</sup> But eventually, after searching for a few weeks, Pam and her boyfriend secure a “gorgeous” apartment with “polished wood floors, new windows, fresh paint, and spacious bedrooms” for \$630 a month.<sup>16</sup> The landlord does not require them to complete the credit ref-

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6. 42 U.S.C. § 3604(a) (2012) (forbidding discrimination based on “familial status”); *see also id.* § 3602(k) (defining “familial status” to include families with children under the age of 18).

7. *See* § 3604(a).

8. *See* DESMOND, *supra* note 1, at 1-3.

9. *See id.* at 47-48.

10. *See id.* at 1.

11. *See id.* at 2.

12. *Id.* at 3.

13. *Id.*

14. *See id.* at 50-51.

15. *Id.* at 236.

16. *Id.* at 237.

erences portion of the application, and he allows them to leave off their bank information.<sup>17</sup> After being evicted again for getting into a fight with a neighbor, Pam and Ned quickly secure—despite Pam’s and Ned’s drug habits and prior felony convictions and evictions—a clean two-bedroom apartment in a working-class, white neighborhood, with a pear tree out front, for \$645 a month.<sup>18</sup> In contrast, when Arleen—who had no known drug habits or felonies, only two children, and a few prior evictions—sought an apartment, she applied for eighty-two apartments and was accepted by none.<sup>19</sup>

As these stories demonstrate, despite the FHA’s prohibitions, families with children, families of color, and particularly black women, have an especially difficult time finding adequate, affordable, and habitable housing in a location that connects them and their children to opportunities. To be sure, the FHA is still vital in helping low-income minorities gain equal access to viable affordable housing in low-poverty, predominately white neighborhoods. Moreover, it is the only available federal tool to help mitigate racial and familial status discrimination. Yet, Desmond’s work shows that, despite the FHA, multiple and shifting forms of discrimination continue unabated.<sup>20</sup>

#### *B. Landlord-Tenant Laws and the Implied Warranty of Habitability*

Eviction laws and the implied warranty of habitability also operate differently in many poor neighborhoods. Arleen’s landlords, Sherrena and Quentin Tarver,<sup>21</sup> see economic opportunities where others see crime, deterioration, and disinvestment. As Sherrena explains to Desmond, “The ‘hood is good. There’s a lot of money there.”<sup>22</sup> The money, as it turns out, comes from exploiting the supply-and-demand problem in low-income housing and tenants’ lack of negotiating power in enforcing their habitability rights. Poor families typically accept substandard housing in the aftermath of an eviction.<sup>23</sup> As Desmond explains, “Milwaukee renters whose previous move was involuntary were almost 25 percent more likely to experience long-term housing problems than other

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17. *See id.* at 237-38.

18. *See id.* at 238-39. Ned secures the apartment after leaving “Pam and her two black daughters off the lease.” *Id.* at 239.

19. *See id.* at 231.

20. Lee Anne Fennell, *Searching for Fair Housing* (Nov. 10, 2016) (unpublished manuscript) (on file with the Boston University Law Review) (explaining that, despite the FHA’s enactment, residential segregation remains high in many American cities).

21. *See* DESMOND, *supra* note 1, at 12-13.

22. *Id.* at 152.

23. *See id.* at 69.

low-income renters.”<sup>24</sup> Such was the case for one of the Tarvers’ tenants, who moved into one of their properties after eviction only to find there was no working bathtub or sink and only a barely working toilet.<sup>25</sup> The tenant wanted to call the building inspector, but knew that doing so would get her evicted. Instead, she tried to withhold money from her monthly rent payment, only to find herself evicted for enforcing her habitability rights.<sup>26</sup>

Contrary to popular belief, the demand is high for rental apartments that fall below the minimum standards of habitability in low-income, predominately minority, inner-city neighborhoods. Landlords can often capitalize on their tenants’ poverty, lack of choices, and desperation by charging very low-income renters high rates for substandard housing.<sup>27</sup> Although all properties have an implied warranty of habitability, poor tenants, in contrast to market-rate tenants, are often unable to avail themselves of these rights. As Desmond explains:

Tenants able to pay their rent in full each month could take advantage of legal protections designed to keep their housing safe and decent. Not only could they summon a building inspector without fear of eviction, but they also had the right to withhold rent until certain repairs were made. But when tenants fell behind, these protections dissolved . . . . It was not that low-income renters didn’t know their rights. They just knew those rights would cost them.<sup>28</sup>

In short, unsubsidized low-income tenants have virtually no leverage to complain about substandard conditions.<sup>29</sup> This “bottom-of-the-market” business model means that landlords like Sherrena and Quentin Tarver can ultimately become black inner-city brokers, or to borrow Northwestern sociologist

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24. *Id.*

25. *See id.* at 74.

26. *See id.*

27. *See id.* at 75 (“Landlords at the bottom of the market generally did not lower rents to meet demand and avoid the costs of all those missed payments and evictions . . . . For many landlords, it was cheaper to deal with the expense of eviction than to maintain their properties; it was possible to skimp on maintenance if tenants were perpetually behind; and many poor tenants would be perpetually behind because their rent was too high.”).

28. *Id.* at 75.

29. While most housing choice voucher tenants face stigma and experience discrimination and unresponsive landlords in housing markets, some voucher tenants have a little more leverage to challenge the conditions of their units because the HUD-regulated fair market rents for metropolitan areas sometimes exceed the fair market value of a shoddy rental unit. Thus, some landlords may respond to a voucher holder’s request for repairs in order to maintain inflated rents and a stable income stream. *See id.* at 148-49.

Mary Pattillo's term, black "middlemen and middlewomen."<sup>30</sup> They act as both brokers of, and beneficiaries of, low-income, private, rental markets. As black inner-city brokers, Sherrena and Quentin's economic success legitimizes the existence of the market itself, its rules, and its internal logic. The public is less inclined to examine these markets, or to question how the law unwittingly operates to facilitate exploitation, when black middle-class individuals can profit as landlords from the system.<sup>31</sup>

C. *Bargaining in the Shadow of the Law, Informal Evictions, and Housing Court*

*Evicted* also shows that social norms sometimes govern the process of evictions in poor neighborhoods more than formal laws. For example, Tobin Charney in *Evicted* is the white landlord of a predominately white, low-income trailer park development in Milwaukee. Desmond describes how Tobin's willingness to rent to individuals who often cannot pay ensures a steady stream of renters, which in turn empowers Tobin to decide who gets evicted under the law and who doesn't.<sup>32</sup> Oftentimes, the landlord's eviction decisions are motivated by factors beyond rational, wealth-maximizing, transaction-cost concerns. Men can often avoid or stave off evictions through offers to work off their debts by "laying concrete, patching roofs, or painting rooms for landlords,"<sup>33</sup> while some women, taxed by the responsibilities of work welfare requirements, child care, or other work obligations, often cannot spare the time. Sometimes, when a woman tries negotiate with her landlord to avoid eviction, she finds herself "trading sex for rent."<sup>34</sup> Landlords may also overlook missed payments out of necessity or pity or because the tenant has something valuable to offer in exchange.

Some landlords will negotiate with poor tenants, and disregard missed payments and other infractions of their rental agreements, so that tenants won't complain about building code violations or substandard conditions. However, when the tenants, some of whom may be years behind in their rental payments, complain to authorities about conditions in the apartment, those

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30. MARY PATTILLO, *BLACK ON THE BLOCK: THE POLITICS OF RACE AND CLASS IN THE CITY* 3 (2007) (internal quotations omitted).

31. See, e.g., DESMOND, *supra* note 1, at 152 ("After paying the water bill, Sherrena—who owned three dozen inner-city units, all filled with tenants around or below the poverty line—figured she netted roughly \$10,000 a month, more than what . . . many of her . . . tenants took home in a year.").

32. See *id.* at 128.

33. *Id.* at 129.

34. *Id.*

tenuous informal agreements often collapse and a formal or informal eviction can follow. In these bargains, the letter of the law figures as a “penalty default rule” or an outcome to be avoided.<sup>35</sup> The parties mutually decide not to appeal to the law and rely on informal bargains conducted in the shadow of the law.<sup>36</sup> Oftentimes, these bargains sacrifice the humanity and dignity of tenants by requiring them to subsist in dilapidated housing or to trade their dignity for shelter; the result is one that encourages the long-term exploitation of tenants for temporary and immediate financial gains.

Evictions can also be informal. The current data regarding the number of evictions and displacements occurring each year undercounts the scope of the problem because so many evictions occur informally, outside of court systems.<sup>37</sup> Desmond notes that formal evictions are “less common, constituting 24 percent of forced moves.”<sup>38</sup> At least “1 in 8 Milwaukee renters experienced at least one forced move—formal or informal eviction, landlord foreclosure, or building condemnation—in the two years prior to being surveyed,” and “nearly half of those forced moves (48 percent) were informal evictions: off-the-books displacements not processed through the court, as when a landlord pays you to leave or hires a couple of heavies to throw you out.”<sup>39</sup> Many tenants accept informal evictions or leave their homes under economic duress, often to keep their records clear of the scarlet letter of a formal eviction.<sup>40</sup>

Unsurprisingly, when formal evictions do occur in housing court, “90 percent of landlords are represented by attorneys, and 90 percent of tenants are not.”<sup>41</sup> Since America does not recognize a right to counsel in civil cases such as housing court, low-income renters are frequently evicted due to default judgments and inadequate representation. Moreover, since the 1980s, federal legal services funding has declined, making it more difficult for poor people facing eviction to obtain legal services.<sup>42</sup> Research shows that “when tenants have lawyers, their chances of keeping their homes increase dramatically.”<sup>43</sup> Property

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35. See Ian Ayres & Robert Gertner, *Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules*, 99 YALE L.J. 87, 97 (1989) (“Penalty defaults, by definition, give at least one party to the contract an incentive to contract around the default.”).

36. See Robert Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Same Sex Divorce*, 88 YALE L.J. 950, 997 (1979) (“Individuals in a wide variety of contexts bargain in the shadow of the law.”).

37. See DESMOND, *supra* note 1, at 330–31.

38. *Id.* at 330.

39. *Id.*

40. See *id.* at 103.

41. *Id.* at 303.

42. See *id.*

43. *Id.*

law casebooks present evictions and the implied warranty of habitability as relatively straightforward legal rules and processes that differ by jurisdiction, but do not apply differently to tenants based on their race, gender, income, or social status.<sup>44</sup> Yet, *Evicted* shows that social status influences the operation of law and that social norms govern evictions as much, if not more than, laws.

*D. Nuisance Laws, Domestic Violence, and Evictions*

Nuisance laws and domestic violence incidents often intersect in a manner that exacerbates the evictions of poor people and threatens poor domestic violence victims' safety. Desmond shows that cities increasingly delegate law and order maintenance responsibilities to actors outside the formal police system, including landlords.<sup>45</sup> Landlords pass on the costs of these regulations to tenants in the form of higher rents, evictions, or screening procedures that deny low-income tenants access to stable housing. For example, Milwaukee, and many other cities, enacted "nuisance property ordinance[s]" to "penalize landlords for the behaviors of their tenants,"<sup>46</sup> including loud arguments, refusal to leave a residence, and domestic violence. Under these ordinances, police departments can designate a property a nuisance if an excessive number of 911 calls are made by residents in the building over a certain time period.<sup>47</sup>

The domestic violence incidents most frequently characterized as nuisances "involve physical abuse or a weapon."<sup>48</sup> If women experiencing domestic abuse make a 911 call or report their abuse, landlords can be cited with a nuisance property ordinance violation. Desmond reports that "[i]n the vast majority of cases (eighty-three percent), landlords who received a nuisance citation for domestic violence responded by either evicting the tenants or by threatening to evict them for future police calls."<sup>49</sup> His research also uncovers racial and ethnic disparities in the enforcement of these ordinances.<sup>50</sup>

In some cases, local law enforcement officials pressure landlords to evict their "nuisance" tenants in order to avoid being slapped with special charges.

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44. See generally JESSIE DUKEMINIER ET AL., PROPERTY 515-528 (8th ed. 2014) (providing examples of common law decisions from various jurisdictions that interpret the implied warranty of habitability).

45. See *id.* at 190.

46. *Id.*

47. See *id.* at 190-91.

48. *Id.* at 191.

49. *Id.*

50. See *id.* (noting that in white neighborhoods, only one in forty-one properties receives a nuisance citation when eligible for one, compared to one in sixteen properties in black neighborhoods).



Desmond tells the story of how, when one of Sherrena Tarver's tenants called 911 to report a woman in the complex being physically assaulted by her boyfriend, the police responded by sending Sherrena a letter informing her that that "she would be subject to a special charge for any future enforcement costs . . . that occurred at her property."<sup>51</sup> The police department required that Sherrena "respond in writing with a plan to abate the nuisance activities."<sup>52</sup> When Sherrena notified police that she would *ask* the tenant to vacate the premises if the problems continued, the police department rejected her plan, citing the word "ask" as the problem.<sup>53</sup> Only when Sherrena stapled an actual eviction notice to her response did the police department "accept[]" her "written course of action."<sup>54</sup> This story illustrates the negative social costs the poor must bear in a law-and-order state with shrinking law enforcement resources. When law-and-order maintenance regulations combine with traditional landlord-tenant laws, poor women are victimized twice: once by their abusers and again by the local legal system.<sup>55</sup>

## II. THE SOCIO-LEGAL CASE FOR THE RIGHT TO HOUSING

*Evicted* shows the need for an American right to housing. This right requires that all people have access to affordable, accessible, safe, quality housing that exceeds the minimum standards for habitability, and that advances human flourishing. Desmond proposes several reforms to implicitly advance this right, but his boldest idea is expanding the U.S.'s national Housing Choice Voucher Program ("the Program") to ensure that every family below a certain income level can obtain a housing voucher and spend only thirty percent of their income on housing costs.<sup>56</sup> Desmond shows that America can afford this idea if it rethinks its national housing priorities: the total estimated cost of expanding housing vouchers "to all renting families below the 30th percentile in median income for their area would require an additional \$22.5 billion [annually], in-

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51. *Id.* at 188-91.

52. *Id.* at 188.

53. *Id.*

54. *Id.*

55. See John Diedrich, *Domestic Victims in Milwaukee Faced Eviction for Calling Police, Study Finds*, MILWAUKEE-WISCONSIN J. SENTINEL (Aug. 18, 2013), <http://archive.jsonline.com/news/milwaukee/domestic-violence-victims-in-milwaukee-faced-eviction-for-calling-police-study-finds-b9976751z1-220111761.html> [<http://perma.cc/T8BP-DH26>] (explaining that, as a result of data from 2008-2009 that Desmond collected and analyzed, Wisconsin law and the City of Milwaukee's ordinance were changed so that domestic violence calls, along with stalking and sexual assault, could no longer be considered nuisances).

56. See DESMOND, *supra* note 1, at 308.

creasing total spending on housing assistance to around \$60 billion.”<sup>57</sup> \$60 billion seems costly, but we currently spend over \$171 billion on the homeowner income tax<sup>58</sup> deduction to encourage homeownership. The United States ought to consider readjusting subsidies to better balance the promotion of homeownership with the need to provide affordable rental housing to non-owners.

The universal voucher program that Desmond recommends might address the demand side of the housing equation by providing every eligible household with a housing subsidy to bridge the gap between housing costs and individual poverty. Yet, it will not address the supply side problem (i.e., whether enough scrupulous landlords are willing to accept voucher holders), or the socio- and geo-political questions of where low-income housing is located, whether sufficient housing is produced for the lowest-income and most socially-marginalized households, whether housing for low-income individuals is habitable, and whether low-income housing is connected to opportunities.

Desmond argues, “[w]e can’t build our way out,”<sup>59</sup> but I argue we can’t voucher our way out either. The myth of free choice that undergirds vouchers as a solution to housing unavailability fails to account for how social and political fissures constrain the actual meaningful choices available to the poor.<sup>60</sup> Even if the United States institutes a universal voucher program instead of subsidizing new construction, localities and civil society will still need to build housing that connects the most vulnerable American residents to opportunity and that affords all Americans human dignity. Absent sufficient incentives or a balance between social and profit-making objectives, the market alone simply does not produce and distribute enough housing to house the poor well.

While the right to housing is not a panacea, and housing insecurity and inequality exist even in countries that recognize the right, pursuing the right to housing can provide American localities with a normative framework to plan for housing needs, engage scrupulous private landlords and builders, and more effectively balance private property rights and housing needs. New housing market data suggests that it is in American localities’ long-term interests to adopt the right to housing as a balancing standard to help them determine if a given law, plan, or policy will help mitigate growing local housing inequality. A

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57. *Id.* at 311-12, n.56; see also *Housing America’s Future: New Directions for National Policy*, BIPARTISAN POL’Y CTR., 105 (Feb. 2013), [http://cdn.bipartisanpolicy.org/wp-content/uploads/sites/default/files/BPC\\_Housing%20Report\\_web\\_o.pdf](http://cdn.bipartisanpolicy.org/wp-content/uploads/sites/default/files/BPC_Housing%20Report_web_o.pdf) [<http://perma.cc/AGR3-QW54>].

58. See DESMOND, *supra* note 1, at 312.

59. *Id.* at 309.

60. See Lisa T. Alexander, *Hip-Hop and Housing: Revisiting Culture, Urban Space, Power and Law*, 63 HASTINGS L.J. 803, 812 (2012) (“Landlords in higher opportunity neighborhoods with tight rental markets often refuse, or are reluctant, to rent to voucher holders because of the negative stigma attached to recipients of public assistance.”).

recent study of the eleven largest metropolitan areas in the United States found that, between 2006 and 2014, “[t]he number and share of renters increased in both the . . . 11 metro areas, and in metro areas nationwide . . . .”<sup>61</sup> The renter population in these areas, as well as in metro areas nationwide, also grew faster than the stock of available units, “putting pressure on the affordability of rental housing.”<sup>62</sup> In 2014, “the overwhelming majority of low-income renters were severely rent burdened.”<sup>63</sup> This data suggests that municipalities will have to find new ways to house their increasingly low-income and vulnerable populations, as competition for the small stock of rentals intensifies and the homeownership rate continues to decline.<sup>64</sup>

This Part analyzes the low-income housing supply problem and looks to the “tiny-homes” for the homeless movement as an example of city-supported local housing initiatives that, when paired with a universal voucher system, might move us closer to achieving a right to housing in practice, if not in law.

#### A. Fair Housing, Discrimination, and Low-Income Housing Supply

Desmond proposes that his universal voucher program, when paired with other protections, would prohibit participating landlords from engaging in source-of-income discrimination. Cities like New York, San Francisco, Washington D.C., Chicago, Milwaukee, and others have created Human Rights Laws and local Fair Housing Ordinances that expand the federal prohibitions against housing discrimination to include more protected classes, such as source of income and gender identity.<sup>65</sup> But these protections are weak if cities lack the resources to sufficiently enforce the federal, state, or local fair housing acts, and if the federal government under-enforces fair housing rights.<sup>66</sup> One

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61. Ingrid Gould Ellen & Brian Karfunkel, *Renting in America's Largest Metropolitan Areas*, NYU FURMAN CTR. 4 (2016), [http://furmancenter.org/files/NYU\\_Furman\\_Center\\_Capital\\_One\\_National\\_Affordable\\_Rental\\_Housing\\_Landscape\\_2016\\_9JUNE2016.pdf](http://furmancenter.org/files/NYU_Furman_Center_Capital_One_National_Affordable_Rental_Housing_Landscape_2016_9JUNE2016.pdf) [<http://perma.cc/6LTP-8X9V>].

62. *Id.*

63. *Id.* at 5.

64. See Jeffrey Sparshott, *U.S. Homeownership Rate Falls to Five-Decade Low*, WALL ST. J. (July 28, 2016, 11:49 AM), <http://blogs.wsj.com/economics/2016/07/28/u-s-homeownership-rate-falls-to-five-decade-low/> [<http://perma.cc/JJH9-DPGS>].

65. See, e.g., CHI. MUN. CODE tit. 5, § 5-8-010 (2017) (gender identity and income source); D.C. MUN. REGS. tit. 4, § 1001 (2017) (income source); MILWAUKEE, WIS. CODE § 109-1 (2017) (gender identity and income source); N.Y.C., N.Y., ADMIN. CODE § 8-107 (2017) (income source); S.F., CAL., POLICE CODE art. 33, § 3304 (2017) (gender identity and income source)

66. See Zoe Greenberg, *Advocates of Fair Housing Brace for a Tough Four Years*, N.Y. TIMES (Jan. 27, 2017), <http://www.nytimes.com/2017/01/27/realestate/advocates-of-fair-housing-brace-for-a-tough-four-years.html> [<http://perma.cc/HG46-DLAN>] (explaining that advocates

potential solution which Desmond embraces is to grant renters a right to counsel in civil cases or to otherwise guarantee adequate legal representation, such that protected classes might avail themselves of these federal, state, or local fair housing protections.<sup>67</sup>

However, these defensive actions alone will not address the lack of housing supply. Desmond's stories show that formal discrimination prohibitions alone do not stop discrimination in the private rental market.<sup>68</sup> Thus, it is insufficient to rely solely on housing discrimination provisions to ensure that private landlords will house the most marginalized individuals. Cities must also take action to create, or to subsidize and facilitate the creation of, housing for marginalized populations; otherwise cities will incur increasing shelter and emergency costs if homelessness rises because vulnerable populations cannot find adequate housing. Cities will need to work with the private sector, civil society, and the fourth sector<sup>69</sup> to create non-market housing alternatives whose developers and landlords are motivated by social as well as profit-making goals. Voucher holders who are turned away by private landlords must have viable alternatives. Luckily, some local governments have already begun exploring potential options for alternative non-market housing.

### B. Human Rights Cities, the Right to Housing, and Tiny Homes

Cities such as Washington, D.C., Pittsburg, Carrboro, Chapel Hill, and Eugene, among others, have become human rights cities.<sup>70</sup> These cities explicitly incorporate international human rights principles or laws into their local ordinances, policies, or planning practices.<sup>71</sup> Enacting these ordinances does not mean these cities have to provide all individuals within their borders with a

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justifiably fear a rollback of fair housing rights and enforcement under the Trump administration).

67. See DESMOND, *supra* note 1, at 303; see also Risa E. Kaufman, Martha F. Davis & Heidi M. Wegleitner, *The Interdependence of Rights: Protecting the Human Right to Housing By Promoting the Right to Counsel*, 45 COLUM. HUM. RTS. L. REV. 722 (2014).

68. See *e.g.*, DESMOND, *supra* note 1, at 230-40; see also Fennell, *supra* note 20, at 29-30.

69. See Thomas Kelley, *Law and Choice of Entity on the Social Enterprise Frontier*, 84 TUL. L. REV. 337, 340 (2009) (“[W]e are in the process of moving beyond the traditional conception of society as divided neatly into three sectors—business, nonprofit, and government—and are witnessing the emergence of a new *fourth sector* that encompasses elements of both the business and nonprofit sectors.” (emphasis added)).

70. See Human Rights Inst., *Bringing Human Rights Home: How State and Local Governments Can Use Human Rights to Advance Local Policy*, COLUMBIA L. SCH. 11-15 (2012), <http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Bringing%20Human%20Rights%20Home.pdf> [<http://perma.cc/8ZZ8-UPDZ>].

71. See *id.*

home.<sup>72</sup> Rather, the human right to housing only requires states and cities to undertake “measures that indicate policy and legislative recognition of each of the constituent aspects of the right to housing, thus creating the necessary conditions so that all residents may enjoy the full entitlements of the right to housing within the shortest possible timeframe.”<sup>73</sup> Thus, the right to housing often operates chiefly as “a mechanism for programmatic rights that compel states to engage in some broader, more abstract form of action . . . .”<sup>74</sup>

Eugene, Oregon and Madison, Wisconsin, for example, implemented the right to housing as a way to combat unmet homeless needs. In 2011, Eugene created a Task Force on Homelessness in response to activism by Occupy Eugene, Oregon.<sup>75</sup> The Task Force researched options for reducing homelessness, ultimately prompting the city to create safe spaces for the homeless, revise zoning laws that criminalized homelessness, and increase homeless people’s access to basic health care, among other initiatives.<sup>76</sup>

One homeless initiative of note was the construction of a micro-housing project, or tiny home village, for formerly homeless residents.<sup>77</sup> The city identified a city-owned lot in an industrial area and worked with a non-profit 501(c)(3) organization and other members of the community.<sup>78</sup> The city provided and financed the land for the site and leased the site to the non-profit for a nominal lease fee.<sup>79</sup> Otherwise, volunteer collaborations between the housed and the unhoused, and private in-kind and cash donations created and financed the village.<sup>80</sup> The housing structures cost \$1,000 to \$2,000 each to construct, allowing some individual and corporate donors to sponsor individual units.<sup>81</sup> The village also includes “micro-housing, a gathering yurt, common kitchen, front office, tool shed, and bathhouse with flush toilets, a shower and laundry

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72. See NAT’L CTR. ON HOMELESSNESS & POVERTY, *HOUSING RIGHTS FOR ALL: PROMOTING AND DEFENDING HOUSING RIGHTS IN THE UNITED STATES* 27-28 (5th ed. 2011), [http://www.nlchp.org/documents/Human\\_Right\\_to\\_Housing\\_Manual](http://www.nlchp.org/documents/Human_Right_to_Housing_Manual) [<http://perma.cc/Z5QG-3FCA>].

73. *Id.* at 28 (emphasis omitted).

74. Thomas Byrne & Dennis P. Culhane, *The Right to Housing: An Effective Means for Addressing Homelessness*, 14 U. PA. J.L. & SOC. CHANGE 379, 382 (2011).

75. See Human Rights Inst., *supra* note 70, at 15.

76. See *id.*

77. See ANDREW HEBEN, *TENT CITY URBANISM: FROM SELF-ORGANIZED CAMPS TO TINY HOUSE VILLAGES* (2014).

78. See *id.* at 160; *Opportunity Village, Eugene*, SQUAREONE VILLAGES (2016), <http://www.squareonevillages.org/opportunity> [<http://perma.cc/PSP2-NSNY>] (Chris Pryor).

79. See HEBEN, *supra* note 77, at 160, 163.

80. See *id.* at 163.

81. See *id.*

room.”<sup>82</sup> Subtracting in-kind donations, the total cost of constructing the village was approximately \$100,000, with a very small part of the total financed by the city.<sup>83</sup>

The transitional village is now a model of shared micro- or tiny- housing for the formerly homeless. The homes are 60 to 80 square foot modular bungalow structures that are easy to assemble and disassemble to facilitate quick construction and transitional living.<sup>84</sup> Residents are required to pay a \$30 dollar per month utility fee, volunteer for ten hours per week, and attend weekly village meetings.<sup>85</sup> The village is self-governed by the residents with rules that include no violence and no alcohol, illegal drugs, or drug paraphernalia.<sup>86</sup> Breaching the rules of the community agreement can result in an eviction.<sup>87</sup> In its first nine months, the community housed approximately fifty-seven people for varying lengths of time with ten expulsions.<sup>88</sup> Presently, Opportunity Village Eugene, as the community is called, consists of thirty “micro-homes.”<sup>89</sup>

Similarly, in 2011, Dane County and the City of Madison, both in Wisconsin, enacted a non-binding right to housing resolution.<sup>90</sup> The Dane County resolution calls for a housing plan to resolve countywide housing challenges.<sup>91</sup> The Madison resolution calls for continuing assessments and monitoring of housing needs and for public funds to increase affordable housing.<sup>92</sup> These resolutions do not create a private right of action for individuals or organizations to sue the city or county for failure to implement these rights, but rather provide a framework for incorporating principles of the right to housing into local plans and initiatives.

Around the same time as these resolutions, members of the Occupy Madison movement established a non-profit—OM Build—and created a tiny home

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82. *Id.*

83. *See id.* at 164.

84. *See id.* at 163; *Frequently Asked Questions*, SQUAREONE VILLAGES (2016), <http://www.squareonevillages.org/opportunity-faq> [<http://perma.cc/QG7X-KVJQ>].

85. *See Frequently Asked Questions*, *supra* note 84.

86. *See HEBEN*, *supra* note 77, at 215.

87. *See id.* at 196.

88. *See id.* at 164.

89. *See Frequently Asked Questions*, *supra* note 85.

90. *See* Human Rights Inst., *supra* note 70, at 15.

91. Dane County Recognizes Housing as a Human Right, Res. 292, 11-12 (July 12, 2012), <http://www.forwardlookout.com/wp-content/uploads/2013/04/res292.clean-2.pdf> [<http://perma.cc/D2EZ-L5P4>].

92. *See, e.g.*, Human Rights Inst., *supra* note 70, at 15; *Madison, Wisconsin Resolution*, AM. CIV. LIBERTIES UNION (2017), <https://www.aclu.org/other/madison-wisconsin-resolution> [<https://perma.cc/9CBM-673Z>].

village for the chronically homeless in Madison.<sup>93</sup> Through crowdfunding and private donations, OM Build raised enough to purchase a former gas station and repurposed it as a site for the tiny home village.<sup>94</sup> The plan for the village was to create a community of nine tiny homes that would each include a bathroom and a tiny shower; a workshop to construct woodworks; a retail store to sell art, woodworking items, and other wares; and a greenhouse with urban beehives.<sup>95</sup> As of 2016, OM Build, with the help of volunteers, has completed nine homes and plans to build a full-scale kitchen and more bathrooms moving forward.<sup>96</sup> As with Opportunity Village, the residents of OM Village have developed community rules and contracts that all residents must sign and by which all residents must abide. The residents do not pay any site fees, but instead pay for their right to steward and remain in the property through sweat equity.<sup>97</sup> Several other cities have established or are establishing tiny-homes-for-the-homeless villages or projects—including Portland, Oregon; Austin, Texas; Detroit, Michigan; and San Jose, California.<sup>98</sup>

Through collaboration with local governments, the private groups described above have realized the right to housing on a small scale through unique housing developments that holistically address their residents' multiple needs. These projects also embody many of the core principles of the right to housing.<sup>99</sup> The housing is habitable to those who would otherwise live on the

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93. *See It Takes a Village To Complete the Village*, OCCUPY MADISON (June 10, 2016) <http://occupymadisoninc.com/> [<http://perma.cc/Y56T-TWN4>].

94. *See* Lisa T. Alexander, *Occupying the Constitutional Right to Housing*, 94 NEB. L. REV. 245, 288 (2015).

95. Dylan Brogan, *Full Occupancy: New Donation Will Help Occupy Madison Complete Its Tiny House Village*, ISTHMUS (Nov. 18, 2016), <http://isthmus.com/news/news/full-occupancy/#sthash.8VZJLoVb.gbp1> [<http://perma.cc/LG64-4BK7>].

96. *See id.*

97. *See id.*

98. *See* Gillian Flaccus, *Oregon Tries Tiny House Program for Homeless*, PRESS HERALD (Mar. 18, 2017) <http://www.pressherald.com/2017/03/18/oregon-tries-tiny-house-program-for-homeless/> [<https://perma.cc/E8N8-DTZZ>]; Ramona Giwargis, *San Jose: New Law Would Make City First To Allow "Tiny Homes" for Homeless*, MERCURY NEWS (Oct. 7, 2016, 5:54pm) <http://www.mercurynews.com/2016/10/07/san-jose-new-law-would-make-city-first-to-allow-tiny-homes-for-homeless/> [<https://perma.cc/BHN7-ZHTV>]; Dana Varinsky, *Detroit Is Getting a Neighborhood of Tiny Homes that Homeless People Rent To Own*, BUS. INSIDER (Oct. 18, 2016, 12:01PM) <http://www.businessinsider.com/detroit-tiny-home-neighborhood-rent-to-own-2016-10> [<http://perma.cc/HU29-CVQ4>]; Cindy Widner, *Tiny Houses in Austin Are Helping the Homeless, but It Still Takes a Village*, CURBED AUSTIN (May 17, 2016, 9:01AM), <http://austin.curbed.com/2016/5/17/11686368/tiny-houses-austin-end-homelessness> [<https://perma.cc/ZS36-GS3W>].

99. The seven core principles of the right to housing are: (1) security of tenure; (2) availability of services, materials, facilities, and infrastructure; (3) affordability; (4) habitability; (5) ac-

streets, affordable to the very-low-income, accessible (not to all, but to those formerly without shelter), and located in a place that has services, facilities, and minimal infrastructure and that connects poor and marginalized, chronically homeless individuals to work and opportunity. The landlords of these projects are non-profit third-sector organizations for whom profit is not the primary motivation. The housing tenure relationship in these villages is not the standard landlord-tenant relationship where non-payment of rent is a primary reason for eviction. Instead, some residents construct and steward their units or pay with sweat equity, and eviction is frequently the result of violating agreed-upon rules.

These local innovations helped to ameliorate a local housing problem. These cities, by re-zoning, amending the zoning code, reallocating land, and developing resolutions and ordinances, legitimated these local housing innovations and also furthered the right to housing at the local level. The challenge is to scale up these positive examples to meet the demand for them. Desmond is correct that such efforts alone are not big enough to help the massive unsubsidized renter population. Yet, without these efforts, a national universal voucher program alone will also be insufficient. In cities across the country, homeless rights advocates, non-profits, and legal, planning, and architecture professionals are collaborating to develop other efforts to house the unhoused or those on the cusp of eviction and homelessness. Like tiny homes, these efforts are less costly than existing programs and can supplement local, state, and national urban development efforts. These local housing innovations and collaborations also ensure that some of the most vulnerable residents are housed in a way that respects their dignity and advances their human flourishing.

## CONCLUSION

The right to housing is a normative framework that can help cities evaluate the efficacy of their local laws, policies, plans, programs, and housing markets. *Evicted* shows that failing to adequately house residents within their borders can have very high social and economic costs for cities. It is unlikely that the present U.S. federal administration will embrace a universal right to housing or a right to counsel in housing cases, given Americans' persistent unwillingness to be taxed significantly to pay for housing the poor. Yet, cities that fail to attend to the negative distributional consequences of their housing markets will not only neglect critical constituencies, but will also pay the long-term costs of

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cessibility; (6) location; and (7) cultural adequacy. See UNITED NATIONS OFF. OF THE HIGH COMM'R FOR HUMAN RIGHTS, THE RIGHT TO ADEQUATE HOUSING, 3-4 (2009), [http://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf) [http://perma.cc/2U68-3YE4].



increased crime, skyrocketing homeless and emergency services, missed opportunities, and other costly social ills. America should implement housing as a national human right, but until it does, cities will have to lead the way by using their local government authority to realize the right to housing at the local level and to create housing markets that better meet American's housing needs.

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