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EVICTION FREE ZONES: THE ECONOMICS OF LEGAL BRICOLAGE IN THE FIGHT AGAINST DISPLACEMENT

*Lawrence K. Kolodney**

> [I]n *The Savage Mind*, Levi-Strauss presents . . . what he calls bricolage . . . . The bricoleur, says Levi-Strauss, is someone who uses "the means at hand," that is, the instruments he finds at his disposition around him, those which are already there, which had not been especially conceived with an eye to the operation for which they are to be used and to which one tries by trial and error to adapt them, not hesitating to change them whenever it appears necessary.[1]

> Nearly two years ago, community groups declared a 52-block area along Washington Street [in Boston] an "eviction-free zone." The area is bounded by Egleston Square, Franklin Park, Green Street and the new Orange Line [subway], and includes 2,000 apartments and 8,000 residents, 70 percent of whom live in households with annual incomes of less than $15,000.
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> Since then, community groups spearheaded by City Life have led a grass-roots effort to prevent displacement by educating residents in the zone about tenants' rights and providing legal assistance to people facing eviction. "Although there have been losses we've also had our fair share of victories," said Kieffer, a tenant, as he sat in front of a large map of the "eviction-free zone."
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> "Residents are worried about whether they're going to be able to afford to stay," said Jennifer Roby, a community organizer for the Egleston Square Neighborhood Association. "The 'eviction-free zone' is critical. Some of the people moved here from the South End after they were forced out because of gentrification. They don't want to see the same thing happen to them again."
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1. Derrida, *Structure, Sign & Play in the Discourse of the Human Sciences*, in WRITING AND DIFFERENCE 285 (1978).

> "In Jamaica Plain, things are so bad that we have to go house-by-house and unit-by-unit and save as much as we can," said Ken Tangvik, chairman of the Housing and Development Committee of the Jamaica Plain Neighborhood Council. "If we can win with one building, then maybe we can inspire other tenants that they can do it, too. If you stick together and work hard you can win."[2]

Introduction

Gentrification,[3] the influx of high-income dwellers[4] into low-income neighborhoods, has in the past decade become a serious cause of concern to low-income tenants in older American cities. Although gentrification has had some positive effects, one important negative effect has been the displacement of existing neighborhood residents. Various schemes have been suggested to combat displacement caused by gentrification. One strategy entails seeking legislative relief in the form of rent control and condominium-conversion laws to directly curb the influx of high-income residents; another makes use of rent vouchers and public housing to ameliorate the effects of displacement.[5]

This Article analyzes an alternative strategy: the use of Eviction Free Zones (EFZs) to prevent the displacement of low-income tenants in gentrifying neighborhoods. In contrast to strategies that rely on legislative intervention, the EFZ strategy can be applied directly in the neighborhood, by local community groups and legal services lawyers, through enforcement of the implied warranty of habitability (IWH) and other legal remedies already available to tenants. To create an EFZ, local community groups and legal services lawyers target a neighborhood on the verge of gentrification, and work with tenants to prevent or delay evictions. Their goal is to make eviction a difficult and expensive process for landlords, slow gentrification, and ulti-

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2. *Tenants Hit the Roof; Now Might Own It*, Boston Globe, May 10, 1989, at 19, col. 3.

3. *See generally* N. SMITH & P. WILLIAMS, GENTRIFICATION OF THE CITY (1986). According to Neil Smith, the term for this phenomenon in Australia is, aptly, "trendification." *See* Smith, *Gentrification and Uneven Development*, 58 ECON. GEOGRAPHY 139, n.1 (1982) [hereinafter Smith].

4. The term gentrification is a misnomer. It is not the "gentry" who inhabit gentrified neighborhoods, but rather people who might appropriately be referred to as "yuppies" or, according to one report, "hipeoisie." *See* Smith, *supra* note 3. The relevant characteristics of this group are their youth, high incomes, superior education and professional careers. For the sake of precision, this Article will generally refer to them as "gentrifiers" or "potential gentrifiers."

5. *See* C. HARTMAN, D. KEATING & R. LEGATES, DISPLACEMENT: HOW TO FIGHT IT (1982).

mately block displacement. In the long run, the EFZ strategy may benefit poor tenants by maintaining both the quantity and affordability of existing low-income housing.

Part I of this Article discusses gentrification and the social problems associated with it. Part II describes the mechanics of the EFZ strategy: the legal tools for preventing evictions, how they are used, and by whom. Part III analyzes, through the use of an economic model, the potential long-run economic impact of the EFZ strategy and discusses, in terms of this model, when and how an EFZ should be put into effect. The Article concludes that Eviction Free Zones can, under certain circumstances, be an effective strategy for community activists and legal services lawyers to combat the destructive effects of gentrification.

I. The Problematic Nature of Gentrification

A. The "Good Old Days": Urban Expansion and Residential Filtering

During the first half of this century, when urban areas were steadily expanding, the demographic trend was away from the city center. The wealthy were concentrated on the outskirts of the city while the poor occupied the innermost urban neighborhoods. One explanation for this pattern of settlement is that housing stock "filtered" down from wealthy home owners to the poor; as new, high-quality housing was created, each family "filtered up" and their former housing "filtered down" to a lower income family. In practice, "filtering up" meant moving to a larger house with more open space, further from the city center.[6] Thus, the filtering model explains a pattern of residential settlement in which long-term, wealthy residents came to occupy country estates on the urban periphery, newly arrived immigrants occupied rundown tenements in the central city, and the intermediate classes filled the remaining space.[7] Some theorists have suggested that this process was an efficient method for providing the best possible housing for all economic classes, although this view has

6. *See generally* HOUSING IN AMERICA: PROBLEMS AND PERSPECTIVES 161 (R. Montgomery & D. Mandelker 2d ed. 1979) [hereinafter Montgomery & Mandelker] (providing a brief overview of the filtering model).

An excellent study of the filtering phenomenon in Boston is presented in S. WARNER, STREETCAR SUBURBS (2d ed. 1978) [hereinafter STREETCAR SUBURBS]. Warner describes the ways in which housing patterns in Boston tended to follow the newly extended streetcar lines, which made it feasible to live further and further from the central business district.

7. *See* STREETCAR SUBURBS, *supra* note 6, at 154-66.

been challenged by more recent commentators.[8]

Because of demographic changes,[9] the steady outward growth predicted by the filtering model has abated in many American cities. In these areas, a new pattern, a kind of reverse filtering or "gentrification," has come to characterize residential settlement.

B. Gentrification: Reverse Filtering in the Inner City

Gentrification is the process whereby low-income neighborhoods are made attractive to high-income residents.[10] Notwithstanding its

8. The traditional analysis views filtering as a positive phenomenon that provides a steady flow of better quality housing for all families, as those on the top rung expand into the newest highest-quality units. *See* Smith, *Filtering and Neighborhood Change*, in Montgomery & Mandelker, *supra* note 6, at 162. *But see* Edel, *Filtering in a Private Housing Market*, in Montgomery & Mandelker, *supra* note 6, at 172 (claiming that filtering can actually have negative effects on neighborhoods, requiring residents to buy more expensive housing on the "next rung" just to maintain their existing quality of life).

9. *See* Alonso, *The Population Factor and Urban Structure*, in PROSPECTIVE CITY 32 (A. Solomon ed. 1980) [hereinafter Alonso]; P. Levine & L. Ontjes, Gentrification and Abandonment: The Effect of Deindustrialization, Service Sector Growth, and Market Failure on the Housing Stock (1988) (unpublished manuscript) (on file with Prof. Duncan Kennedy, Harvard Law School) [hereinafter Levine and Ontjes]; Mankiw & Weil, *The Baby Boom, the Baby Bust and the Housing Market*, 19 REGIONAL SCI. AND URB. ECON. 235, 235-38 (1989) [hereinafter *Baby Bust*].

10. A number of demographic factors have contributed to the phenomenon of gentrification. One such factor is the growth of the post-industrial economy. *See* Reich, *The Real Economy*, THE ATLANTIC, Feb. 1991, at 35 (describing the overshadowing of manufacturing by information-oriented businesses in the world economy). In many cities, high-paying job opportunities in the finance, insurance and real estate fields (the "FIRE" sector) have developed. This change in employment demographics has created an economic barrier to further outward expansion into the suburbs, thus facilitating gentrification. Levine & Ontjes, *supra* note 9, at 9-10. Finally, a significant demographic change in the family characteristics of new home buyers has contributed to the process of gentrification. The traditional new home buyer, a young family with children, has been rivaled by the tremendous increase in single person households and childless couples. *See Baby Bust*, *supra* note 9 (analyzing the relationship between baby booms and housing demand); Alonso, *supra* note 9 (arguing that gentrification is the product of the baby-boomer lifestyle, that is, postponing marriage and childraising in favor of city-based professional fulfillment and resulting in smaller urban family size and a demand for more high quality urban housing units). This "yuppie" phenomenon has expanded as young, educated professionals defer family life in lieu of careers.

See generally Beauregard, *The Chaos and Complexity of Gentrification*, in N. SMITH & P. WILLIAMS, *supra* note 3, at 35 [hereinafter Beauregard]; Feagin, *Urban Real Estate Speculation in the United States: Implications for Social Science and Urban Planning*, in CRITICAL PERSPECTIVES ON HOUSING 99 (R. Bratt, C. Hartman & A. Meyerson eds. 1986) (describing the economic conditions which lead to gentrification); Durham & Sheldon, *Mitigating the Effects of Private Revitalization on Housing for the Poor*, 70 MARQ. L. REV. 1 (1986) (describing the social costs of gentrification-caused displacement and suggesting limited rent control, tax relief and payments to displaced tenants as mitigating responses) [hereinafter Durham & Sheldon]; Marcuse, *To Control Gentrification: Anti-Displacement Zoning and Planning for Stable Residential Districts*, 13 N.Y.U. REV. L. & SOC. CHANGE 931 (1985) [hereinafter *Anti-Displacement Zoning*] (describing the effects

positive effects,[11] one negative result of gentrification is that the original, low-income tenants of the neighborhood are displaced.[12] Indeed, the displacement of low-income tenants is a *necessary* step in the gentrification process. In a gentrified neighborhood, existing low-income housing "filters up" to incoming wealthy tenants.

Gentrification sets in motion several forces which lead to displacement. At the outset, there is an incentive for landlords in a gentrifying neighborhood to turn a profit by converting (low amenity, high density) rental units into (high amenity, low density) condominiums or luxury rental units. When the time is ripe for conversion, landlords may refuse to renew existing leases or offer new leases at unaffordable rents. In jurisdictions where tenants may not be evicted at will,[13] landlords may employ more informal techniques of eviction, such as physically threatening tenants, discontinuing utilities, or "warehousing"[14] adjacent units. A landlord may also cease to maintain a building with the expectation that it will eventually be converted into high-income housing. Thus, tenants may be displaced directly by eviction, or indirectly by "voluntary" abandonment of their homes because of increasing rents, deteriorating conditions, or intimidation.[15]

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of gentrification in New York City, its ability to exist side-by-side with abandonment, and proposing comprehensive "anti-displacement zoning" measures as a response); Marcuse, *Gentrification, Abandonment, and Displacement: Connections, Causes, and Policy Responses in New York City*, 28 WASH. U.J. URB. & CONTEMP. L. 195 (1985) [hereinafter *Connections*] (a more theoretical treatment of the same subject).

11. *See* Durham & Sheldon, *supra* note 10. This article cites numerous positive portrayals of gentrification in the popular press. *See also* Kamer, *Conversion of Rental Housing to Unit Ownership — A Noncrisis*, 10 REAL EST. L.J. 187, 203 (1982) (arguing that the damage caused by condominium conversion to the stock of rental housing has been "limited" and "not as extensive as the popular press would lead readers to believe").

12. *See* Durham & Sheldon, *supra* note 10, at 13.

13. Low-income tenancies are typically "at-will." A tenant-at-will does not rent for a fixed period. Instead, the tenancy continues every month that rent is received, but may be terminated by either party on short notice. *See* RESTATEMENT (SECOND) OF PROPERTY, LANDLORD AND TENANT § 1.6 (1976).

In New Jersey, and in some cities with rent control, tenancies may only be terminated for "good cause." *See* N.J. STAT. ANN. § 2A:18-61.1 (West 1987 & Supp. 1991); Church v. City of Boston, 370 Mass. 598, 351 N.E.2d 212 (1976).

14. Warehousing is a technique used by landlords of affordable housing who wish to convert their property to another use. When a tenant moves out, the landlord will keep the unit off the market. As more and more tenants leave, the building becomes emptier and less appealing to the remaining residents, encouraging them to leave as well. Warehousing causes the landlord to lose some rental income, but may be worth the effort if it allows for quick conversion when legal, economic, or physical conditions are favorable. This tactic is preferred in "just cause" eviction jurisdictions, where short notice eviction of tenants might not otherwise be possible. Apfelberg v. East 56th Plaza, 106 Misc. 2d 295, 297-98 n.*, 431 N.Y.S.2d 622, 623-24 n.1 (1980).

15. Displacement may have long term consequences for its victims. Losing one's

Landlords who do not intend to convert have some incentive to increase rents. First, incoming wealthy tenants may be willing to pay higher rents for apartments with relatively few amenities, merely for the convenience of proximity to the urban center. Second, as a neighborhood gentrifies, real estate speculation[16] may increase the value of all units, thereby driving up property taxes, a cost likely to be passed on to existing tenants.

Even tenants who are not displaced may suffer from the increased cost of living in their now high-income neighborhood. For example, the cost of food and other sundries often increases as neighborhood businesses begin to cater to a more affluent clientele. This is not to mention the intangible cost to tenants of losing their familiar neighborhood milieu.[17]

Thus, gentrification leads to "involuntary reverse filtering": as housing prices and costs of living increase, low-income units "filter up" to high-income tenants. Those tenants who survive the threat of displacement still face a higher cost of living in exchange for a small or unwanted increase in perceived quality of life. Low-income city dwellers, at one time the victims of mere neglect, must now also contend with the prospect of losing home and neighborhood to a gentrifying class. Today's urban poor cannot limit their task to improving the conditions around them; they must develop strategies for defending themselves against the destructive effects of gentrification.[18]

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home and neighborhood may result in the destruction of emotional support networks. *See* A. MCCOLLUM, THE TRAUMA OF MOVING: PSYCHOLOGICAL ISSUES FOR WOMEN (1990). This psychological effect may be compounded by economic concerns. In a tight housing market, replacement housing is likely to cost more. Finally, gentrification may eliminate stable poor neighborhoods entirely, depriving the poor of a vital support structure.

See also Michelson, *Residential Mobility and Urban Policy: Some Sociological Considerations*, in RESIDENTIAL MOBILITY AND PUBLIC POLICY 79, 83-85 (W. Clark & E. Moore eds. 1980).

16. Investors or landlords, suspecting that a building in a gentrifying neighborhood will eventually be able to attract a higher rent, will pay more for the building. This type of speculation, however, may become a financial burden for the investor who has paid a premium, but who must wait for existing tenants to vacate before converting.

17. One commentator has noted that, while gentrification is often considered to be synonymous with "revitalization," the gentrification process can actually result in a kind of de-vitalization. "Open doors, street games, and stoop-sitting are replaced with iron bars, guard dogs, high wooden fences, and a scorn for the streets." Smith, *supra* note 4.

18. *See Connections*, *supra* note 10, at 212-17 (estimating 10,000 to 40,000 affordable households lost every year in New York City to gentrification).

II. Eviction Free Zones: Legal Bricolage in an Era of Limited Political Expectations

Although there are a number of ways to control the impact of gentrification on low-income renters, such as rent control[19] and condominium conversion laws[20] (which make it illegal for landlords to transform affordable housing into gentrified stock),[21] this Article assumes that in most areas of the country such measures are not politically feasible. It also assumes that low-income tenants will continue to live in privately owned, non-rent-controlled housing, and pay market rents. Finally, it assumes that many existing tenant rights against the landlord, such as the IWH, are not widely enforced.[22] Under such

19. *See* Note, *Reassessing Rent Control: Its Economic Impact in a Gentrifying Housing Market*, 101 HARV. L. REV. 1835 (1988).

20. Condominium conversion control is an essential feature of an anti-gentrification rent control ordinance. *See id.* at 1842. Without condominium conversion controls, landlords can circumvent rent control by selling condominiums to owner occupants, thus removing them from the rental housing market. *See* Flynn v. City of Cambridge, 383 Mass. 152, 158, 418 N.E.2d 335, 338-39 (1981).

21. An even more comprehensive solution would involve changes in public policy favoring the creation of a significant "social housing sector." The existence of such a sector, consisting of high-quality public housing and limited equity co-operatives built by government or non-profit agencies, would render low-income tenants immune from market forces that drive the gentrification process. *See* J. GILDERBLOOM & R. APPELBAUM, RETHINKING RENTAL HOUSING 150-74 (1988) [hereinafter RETHINKING RENTAL HOUSING].

Contrary to the popular conception, not all public housing is dysfunctional. *See id.* at 17-28. Because rents in public housing developments are indexed to tenant income, tenants who live in public housing enjoy a high degree of certainty about future housing costs. They lack, however, the advantages of control that come with ownership.

In a limited equity co-operative, the building is owned co-operatively by the tenants. Each tenant buys a share upon taking up residence. Unlike traditional co-operatives, tenants in limited equity co-operatives are bound by a covenant requiring them to resell their share to the co-operative upon vacating their unit, with the resale price limited by a yearly interest formula. In this way, tenants receive the advantages of ownership and the units are protected from future speculative pressures, thus maintaining the supply of affordable housing.

22. This assumption appears justified both by studies of housing conditions, *see infra* note 25, and by studies of legal actions taken by tenants to enforce the IWH. For example, in Note, *The Great Green Hope: The Implied Warranty of Habitability in Practice*, 28 STAN. L. REV. 729 (1976) [hereinafter *Great Green Hope*], the authors conducted a survey of the impact of California's IWH on litigation in the San Francisco municipal court. They found that the IWH is not extensively used as a defense against unlawful detainer actions, primarily because of the lack of legal representation for tenants. Even where it was used as a defense, it rarely led to improvement of the premises. Significantly, though the authors conclude that "if the implied warranty of habitability is intended to shift some bargaining power from landlords to tenants in litigation, the rule has had some success." *Id.* at 776. Thus, as of the time of this study, the primary effect of the IWH probably has not been to improve housing quality, but rather to give tenants more favorable results in landlord-tenant litigation. *See also* Hirsch, Hirsch, & Margolis, *Regression Analysis of the Effects of Habitability Laws Upon Rent: An Empirical Observation*

circumstances, an EFZ strategy might be the best alternative available to community activists seeking to prevent displacement.

An Eviction Free Zone begins with the public declaration by a community group or legal services provider of an all-out effort to resist evictions within a particular neighborhood. The neighborhood chosen is one in which the early seeds of gentrification have begun to take root. Resistance appears in a variety of forms, including picketing, negative publicity for landlords and the formation of tenant unions. The essence of the EFZ strategy, however, is vigorous legal defense against evictions.

The primary tool of the EFZ is selective enforcement of the nonwaivable implied warranty of habitability (IWH). The IWH requires that landlords maintain residential housing units in "habitable"[23] con-

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on the Ackerman-Komesar Debate, 66 CAL. L. REV. 1098 (1975) (arguing from nationwide survey data that tenants generally do not utilize their warranty remedies because they fear an ensuing rent increase) [hereinafter Hirsch]. *Compare* Heskin, *The Warranty of Habitability Debate: A California Case Study*, 63 CAL. L. REV. 37 (1978) (contradicting *Great Green Hope* claims in a study of a Los Angeles neighborhood which found that where tenants had access to legal services lawyers, they were willing to enforce the warranty.

23. Standards of habitability vary from area to area. The Uniform Residential Landlord and Tenant Act describes the landlord's duties as follows:

(a) A landlord shall

(1) comply with the requirements of applicable building and housing codes materially affecting health and safety;

(2) make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(3) keep all common areas of the premises in a clean and safe condition;

(4) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;

(5) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and

(6) supply running water and reasonable amount of hot water at all times and reasonable heat [between [October 1] and [May 1]] except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

(b) If the duty imposed by paragraph (1) of subsection (a) is greater than any duty imposed by any other paragraph of that subsection, the landlord's duty shall be determined by reference to paragraph (1) of subsection (a).

(c) The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in paragraphs (5) and (6) of subsection (a) and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(d) The landlord and tenant of any dwelling unit other than a single family

dition; breach of the IWH gives rise to a legal defense or counterclaim against eviction.[24] Because many landlords in low-income areas do not maintain their buildings according to every technical requirement of local housing codes,[25] tenants in these buildings often have an incipient legal defense against eviction. When used strategically as part of an EFZ, this defense can significantly raise the expense and effort involved in evicting tenants.

Prior to 1970, tenants had little legal clout in opposing their landlord's power.[26] A residential lease, treated as an ordinary tenancy-for-years, was interpreted under traditional common law property

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residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if

(1) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(2) the work is not necessary to cure noncompliance with subsection (a)(1) of this section; and

(3) the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

(e) The landlord may not treat performance of the separate agreement described in subsection (d) as a condition to any obligation or performance of any rental agreement.

UNIF. RESID. LANDLORD AND TENANT ACT § 2.104, 7B U.L.A. 460 (1991).

24. The specific rights of tenants vary from state to state. In Massachusetts, for example, breach of the IWH (or any other legal obligation) can be raised as a defense or counterclaim to an eviction action that is for non-payment of rent or any reason which is not the fault of the tenant. MASS. GEN. L. ch. 239, § 8A (1986). *See, e.g.*, Berman and Sons v. Jefferson, 379 Mass. 196, 396 N.E.2d 981 (1979) (tenant's obligation to pay full rent abates as soon as the landlord has notice that premises fail to comply with the requirements of the warranty of habitability).

25. The most recent nationwide housing survey found that 31% of central city rental housing was in "fair" or "poor" condition. Among residents in the three lowest income categories, the number was 36%. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, ANNUAL HOUSING SURVEY 1983: CURRENT HOUSING REPORTS, SERIES H-150-83 INDICATORS OF HOUSING AND NEIGHBORHOOD QUALITY BY FINANCIAL CHARACTERISTICS FOR THE UNITED STATES AND REGIONS, B-121 - B-131 (1985) [hereinafter CENSUS REPORT].

In a survey in Boston in 1981, 27% of all rental units were reported to have structural deficiencies in the building. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, ANNUAL HOUSING SURVEY 1981: CURRENT HOUSING REPORTS, SERIES H-170-81-3 HOUSING CHARACTERISTICS FOR SELECTED METROPOLITAN AREAS, F-87 - F-89 (1984).

In a gentrifying neighborhood, this situation may be exacerbated as landlords neglect building repairs, in anticipation of the major building renovations that may accompany gentrification.

26. Some tenant protections existed in theory prior to the late 1960's. *See generally*, Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517, 551-53 (1984) [hereinafter Rabin]; Glendon, *The Transformation of American Landlord-Tenant Law*, 23 B.C.L. REV. 503, 524-25 (1982) [hereinafter Glendon]. These protections, however, were anomalies that had little impact on landlord-tenant relations.

doctrines[27] and, accordingly, the landlord's duty to a tenant consisted only of providing possession of the premises in exchange for rent. Even if the landlord assumed a contractual duty to make needed repairs, the tenant's duty to pay rent was, nonetheless, an independent obligation. A tenant had no right to withhold rent for any reason, and the tenant's sole recourse against a landlord was a suit for damages.[28]

This traditional relationship between residential renters and apartment owners underwent three critical evolutionary stages beginning in the mid-1950's. First, the Housing Act of 1954[29] made federal development aid contingent on the passage of local housing codes.[30] The power to enforce those codes, however, vested not in tenants, but in city inspectors, who were unable to effect widespread enforcement.

A second milestone occurred when Congress passed the Economic Opportunity Act of 1964,[31] creating the predecessor to the Federal Legal Services Corporation. Through a new legal actor, the poverty lawyer, low-income Americans gained access to legal remedies previously available only in theory.

Finally, and most significantly, a series of state court decisions (instigated by poverty lawyers), beginning in 1970 with *Javins v. First National Realty Corp.*,[32] expanded the formal rights of residential tenants. In *Javins*, on appeal from a Washington, D.C. eviction action, Judge J. Skelly Wright found an implied, non-waivable, common law "warranty of habitability measured by the standards set out in the Housing Regulations for the District of Columbia,"[33] and held that the landlord's breach of this warranty was a defense against an eviction action for non-payment of rent. This holding marked a significant departure from the previous regime in which tenants were unconditionally obligated to pay rent irrespective of the condition of the premises.[34]

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27. Glendon, *supra* note 26, at 504, 520.

28. *Id.* at 520.

29. 42 U.S.C. § 1451(c) (1970); Abbott, *Housing Policy, Housing Codes and Tenant Remedies: An Integration*, 56 B.U.L. REV. 1, 43 (1976) [hereinafter Abbott].

30. *See* Rabin, *supra* note 26, at 551.

31. 42 U.S.C. § 2809(a)(3) (1970).

32. 428 F.2d 1071 (D.C. Cir.), *cert. denied*, 400 U.S. 925 (1970).

33. *Id.* at 1072. As one commentator noted, the *Javins* opinion discarded several common law rules at once: the landlord's lack of responsibility to the tenant for the physical conditions of premises; the independence of the tenant's obligation to pay rent from the landlord's obligations with respect to the premises; and the constructive eviction requirement that a tenant must vacate the leased premises before asserting defenses based on the condition of the premises. Glendon, *supra* note 26, at 521.

34. In a letter to Professor Rabin, Judge Wright wrote: "[M]ost of the tenants in Washington, D.C. slums were poor and black and most of the landlords were rich and

A host of similar rulings[35] in state courts,[36] soon followed *Javins*, and legislatures responded by enacting laws formalizing the procedure for enforcing the warranty.[37] The warranty has since become an established doctrine of modern landlord-tenant law.[38] Today, some version of the IWH exists in most states and in the District of Columbia. *Javins* and its progeny gave tenants a powerful tool with which to enforce housing code standards: the right to condition payment of rent upon the fulfillment of the landlord's maintenance obligations.

Because of the IWH, many, if not most, low-income tenants can raise some legal defense[39] or counterclaim for damages[40] to a landlord's action for possession of the premises.[41] There may also be other valuable non-warranty defenses, such as improper service of the evic-

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white. There is no doubt in my mind that these conditions played a subconscious role in influencing my landlord and tenant decisions." Letter from Judge J. Skelly Wright to Edward H. Rabin (October 14, 1982), reprinted in Rabin, *supra* note 26, at 549.

Judge Wright concluded, "I didn't like what I saw, and I did what I could to ameliorate, if not eliminate, the injustice involved in the way many of the poor were required to live in the nation's capital." *Id.* Judge Wright admitted ignoring legal precedent but offered "no apology for not following more closely the legal precedents which had cooperated in creating the conditions that I found unjust." *Id.*

35. *See* Lemle v. Breeden, 51 Haw. 426, 462 P.2d 470 (1969); Jack Spring, Inc. v. Little, 50 Ill. 2d 351, 280 N.E.2d 208 (1972); Mease v. Fox, 200 N.W.2d 791 (Iowa 1972); Steele v. Latimer, 214 Kan. 329, 521 P.2d 304 (1974); Boston Housing Auth. v. Hemmingway, 363 Mass. 184, 293 N.E.2d 831 (1973); Fritz v. Warthen, 298 Minn. 54, 213 N.W.2d 339 (1973); King v. Moorehead, 495 S.W.2d 65 (Mo. Ct. App. 1973); Kline v. Burns, 111 N.H. 87, 276 A.2d 248 (1971); Foisy v. Wyman, 83 Wash. 2d 22, 515 P.2d 160 (1973); Schaefer v. Murphey, 131 Ariz. 295, 640 P.2d 857 (1982); Breezewood Management Co. v. Maltbie, 411 N.E.2d 670 (Ind. Ct. App. 1980); Detling v. Edelbrock, 671 S.W.2d 265 (Mo. 1984) (en banc); Berzito v. Gambino, 63 N.J. 460, 308 A.2d 17 (1973).

36. At the time, the D.C. Circuit Court of Appeals served as the highest appellate court for local cases arising in the District of Columbia.

37. *See* UNIF. RESID. LANDLORD AND TENANT ACT § 2.104, 7B U.L.A. 460 (1991); RESTATEMENT (SECOND) OF PROPERTY, LANDLORD AND TENANT § 5 statutory note to ch. 5, 150-68 (1976).

38. R. POWELL & P. ROHAN, THE LAW OF REAL PROPERTY § 233(3) (1968); RESTATEMENT (SECOND) OF PROPERTY, LANDLORD AND TENANT §§ 5.1-5.6 (1976); UNIF. RESID. LANDLORD AND TENANT ACT § 2.104, 7B U.L.A. 460 (1991); UNIF. RESID. LANDLORD AND TENANT ACT § 4.105, 7B U.L.A. 485 (1991).

39. Strictly speaking, the IWH is a defense only if the eviction is for non-payment of rent, or if it is taking place in a jurisdiction with a "just cause" eviction statute. *See, e.g.*, N.J. STAT. ANN. § 2A:18-61.1 (West 1987 & Supp. 1991). Most rent control statutes also have a "just cause" provision. *See, e.g.*, 1976 MASS. ACTS ch. 36, § 9.

40. *See* UNIF. RESID. LANDLORD AND TENANT ACT § 4.105, 78 U.L.A. 485 (1991). *But see* Lindsey v. Normet, 405 U.S. 56 (1972) (holding that states are not required to permit counterclaims in an action for possession of the premises).

41. It is a reasonable assumption that a large proportion of low-income tenants facing eviction will be able to raise significant warranty of habitability defenses. *See supra* note 21. Census reports of building deterioration may actually underestimate the violations in a gentrifying neighborhood, since landlords who are planning to convert may in fact spend less money on current maintenance in an attempt to drive existing tenants out.

tion notice.[42]

The goal of activists implementing an EFZ is to use these legal tools to resist as many evictions as possible and therefore create among landlords, investors and potential high-income newcomers to the neighborhood, the perception that many tenants will resist evictions, and will be costly to remove. It is important to note that in enforcing an EFZ, legal services attorneys do not apply classical legal analysis, and instead choose to defend cases based on their likelihood of success on the merits. The point of the strategy is to launch a form of legal guerilla warfare. Hence, it may be said that an EFZ uses "legal bricolage," in the sense that the lawyer uses any legal means at hand to bring about the desired result of increasing the time and expense needed to evict tenants. Rather than employing the IWH and other defenses in only those cases where the defense is likely to succeed, the strategy is to mount a legal defense in all cases with a colorable claim, even cases legally favorable to the landlord. The goal is to force landlords to back down before the eviction can be brought to a full trial, or, at least, make each eviction as costly as possible.

Most states have an expedited procedure for evicting tenants.[43] In Massachusetts, for example, landlords may have a hearing within one week of filing a complaint.[44] In a typical case where the tenant is

42. In Massachusetts, for example, the landlord must first terminate the tenancy by serving a "notice to quit" either fourteen (in the case of nonpayment of rent) or thirty days prior to initiating an action for possession. MASS. GEN. L. ch. 186, §§ 11-13 (1981 & Supp. 1990). These provisions are strictly construed. *See, e.g.*, Ryan v. Sylvester, 358 Mass. 18, 260 N.E.2d 148 (1970) (holding that improper service of notice to quit results in a summary judgement for the tenant). *See also* Lazerson, *In the Halls of Justice, the only Justice is in the Halls*, in THE POLITICS OF INFORMAL JUSTICE 1 (R. Abel ed. 1982), (describing how legal services lawyers in the Bronx were able to frustrate eviction attempts by pointing out technical defects in landlord's service of process) [hereinafter Lazerson].

A number of other laws and decisions have empowered the Massachusetts tenant. *See* Linthicum v. Archambault, 379 Mass. 381, 398 N.E.2d 482 (1979) (allowing the tripling of damages under the Massachusetts Consumer Protection Act if the landlord's breach of warranty was willful); MASS. GEN. L. ch. 186, § 15B (1981) (requiring landlords to segregate tenant security deposit and to provide interest and an annual accounting, and providing for three months' rent damages for any breach); MASS. GEN. L. ch. 111, § 197 (1981) (making the presence of lead paint in an apartment with children under the age of six a *per se* violation of the IWH, and allowing punitive damages for willful refusal to remove lead paint); Young v. Patukonis, 24 Mass. App. 907, 506 N.E.2d 1164 (1987) (allowing for damages for a tenant against a landlord who transfers responsibility for the payment of utilities to the tenant without a written agreement).

43. In some states this is referred to as a "summary process," *see* MASS. GEN. L. ch. 239, § 1-13 (1981 & Supp. 1990), or an "unlawful detainer" action. *See* CAL. CIV. PROC. CODE §§ 1161, 1179a (1982).

44. *See* MASS. ANN. LAWS, Unif. Summary Process R. 2(c) (Law. Co-op. 1990) (providing that trials be scheduled for the second Thursday following the entry date).

unrepresented,[45] this may be all the time it takes for a landlord to obtain an eviction order.

By comparison, a represented tenant can make eviction a time-consuming and costly process. For example the tenant may be entitled to a trial by jury[46] and time for discovery.[47] If the tenant loses, he may obtain a stay of the order pending appeal, which may add months or even years to the landlord's wait. In the end, the landlord may decide the wait is not worthwhile, and settle with the tenant, by either dropping the action or paying the tenant to leave. Under some circumstances, the eviction may be blocked entirely.[48]

In addition to the costs and delays of prosecuting the eviction, the landlord also faces the possibility of a significant monetary counterclaim by the tenant based on a breach of the IWH, or some other requirement of the law.[49] Depending on the severity of the breach and the length of the tenant's tenure, this counterclaim can amount to many times the tenant's monthly rent.[50] If the landlord has intentionally ignored needed repairs, he may also be liable under the state's Consumer Protection Act for multiple damages and attorney's fees.[51]

As this discussion indicates, tenants in at least some jurisdictions have considerable power to resist eviction actions. Endowed with the appropriate legal resources, low income tenants can use this power to

45. In *Great Green Hope*, *supra* note 22, at 739-40, the authors found that only 23% of all unlawful detainer actions filed by private landlords in the San Francisco municipal court were contested. Similar figures were found in a study of Detroit's landlord-tenant court. *Id.*

46. *See* Pernell v. Southall Realty, 416 U.S. 363 (1974) (holding that seventh amendment requires jury trials in eviction actions in District of Columbia).

47. *See, e.g.*, MASS. ANN. LAWS, Unif. Summary Process R. 7(b) (Law. Co-op. 1990) (allowing automatic postponement of trial for two weeks upon discovery request).

48. Only in "good cause" eviction jurisdictions is the warranty an actual defense against any eviction. *See* N.J. STAT. ANN. § 2A:18-61.1 (West 1987 & Supp. 1991); 1976 MASS. ACTS ch. 36, § 9 (barring evictions in Cambridge Rent Controlled Apartments except for an enumerated list of just causes). In most jurisdictions, a tenancy-at-will may be terminated at the pleasure of the landlord for any reason. Most implied warranty jurisdictions, however, also provide that "retaliation" is a defense against any eviction. *See* MASS. GEN. L. ch. 239, § 2A (1981) (creating a rebuttable presumption of retaliation where landlord attempts to evict within six months of a tenant complaint or legal action against the landlord); Robinson v. Diamond Housing Corp., 463 F.2d 853 (D.C. Cir. 1972) (requiring a legitimate business justification for evicting a tenant who appears to be withholding rent to protest substandard conditions).

49. *See supra* note 41.

50. In one extreme case, a tenant in the Boston Housing Court obtained a judgment for $61,475 against a landlord who intentionally harassed her and provided no utilities for long periods of time. *See* Haddad v. Gonzalez, 410 Mass. 855, 576 N.E.2d 658 (1991).

51. *See, e.g.*, MASS. GEN. L. ch. 93A, § 9 (1981); Wolfberg v. Hunter, 385 Mass. 390, 432 N.E.2d 467 (1982).

their advantage in countering the economic power of the agents of gentrification.

III. The Economic Implications of an Eviction Free Zone

A. Setting the Pessimistic Stage

The ultimate benefits of an EFZ strategy are not self-evident. Because the keystone of the EFZ strategy is enforcement of the IWH, skeptics may point to the generally critical body of "law and economics" literature analyzing the likely consequences of broad-based enforcement of the IWH.[52] Most mainstream economists take a hostile view of the IWH,[53] characterizing it as well-intended but economically unsound.[54] Neoclassical economists generally maintain that enforcement of the warranty which imposes extraneous costs on landlords produces a negative supply effect in the affordable housing market.[55]

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52. *See* Abbott, *supra* note 28; Hirsch, *supra* note 22; Komesar, *Return to Slumville: A Critique of the Ackerman Analysis of Housing Code Enforcement and the Poor*, 82 YALE L.J. 1175 (1973); Meyers, *The Covenant of Habitability and the American Law Institute*, 27 STAN. L. REV. 879 (1975); R. POSNER, ECONOMIC ANALYSIS OF LAW, § 16.8 (2d ed. 1982) [hereinafter Posner]; Rabin, *supra* note 26. *Compare* Ackerman, *Regulating Slum Housing Markets on Behalf of the Poor: Of Housing Codes, Housing Subsidies and Income Redistribution Policy*, 80 YALE L.J. 1093 (1971) [hereinafter Ackerman I]; Ackerman, *More on Slum Housing and Redistribution Policy: A Reply to Professor Komesar*, 82 YALE L.J. 1194 (1973) [hereinafter Ackerman II]; Markovits, *The Distributive Impact, Allocative Efficiency, and Overall Desirability of Ideal Housing Codes: Some Theoretical Clarifications*, 89 HARV. L. REV. 1815 (1976) [hereinafter Markovits]; Kennedy, *The Effect of the Warranty of Habitability on Low Income Housing: "Milking" and Class Violence*, 15 FLA. ST. U.L. REV. 485 (1987) [hereinafter Kennedy].

There are, of course, non-economic justifications of the implied warranty. *See* Keller, *Does the Roof have to Cave In?: The Landlord/Tenant Power Relationship and the Intentional Infliction of Emotional Distress*, 9 CARDOZO L. REV. 1663 (1988); Mallor, *The Implied Warranty of Habitability and the "Non-Merchant" Landlord*, 22 DUQ. L. REV. 637 (1984). *Cf.* Scherer, *Gideon's Shelter: The Need to Recognize a Right to Counsel for Indigent Defendants in Eviction Proceedings*, 23 CIV. RTS.- CIV. LIBERTIES L. REV. 557 (1988).

53. *See* Komesar, Meyers, and R. POSNER, *supra* note 52; Abbott, *supra* note 29; Rabin, *supra* note 26.

54. *Id.*

55. This conclusion is based on the assumption that consumers interact with sellers in a voluntary and rational way, that each individual is the best judge of his own needs, and that each consumer will allocate funds towards different expenses in a way that produces the most satisfaction. It follows that each person will purchase exactly as much of each commodity (e.g., food, shelter, clothing) as is desired. Governmental interference with this freedom to allocate income, however, produces "inefficiency." Individuals must spend money on things that they do not want, and must reduce spending on those things they prefer.

Not surprisingly, neoclassical economists believe the prevalence of slum housing to be the result of rational and voluntary behavior on the part of landlord and tenant. They see

The traditional analysis suggests that poor tenants, as a group, are harmed because enforcement of the IWH decreases the supply and increases the price of housing. Although other theorists suggest a more ambiguous result,[56] all standard economic analyses suggest that enforcement of the IWH has, at best, a neutral effect on the supply of

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the poor as unwilling or unable to offer enough rent to provide landlords with incentive to voluntarily maintain buildings at a "habitable" level. Rental of subpar units is, according to this view, an informed choice, not a result of the landlord's power over or fraud upon the tenant. Any effort to disturb this voluntary exchange results in "misallocation" of housing resources.

The imposition of an IWH disturbs this "voluntary" relationship between landlord and tenant by increasing the landlord's maintenance costs. As a result, the critics argue, the landlord is forced to pass some of these increased costs on to tenants in the form of higher rent. Those tenants not able to afford the higher rents will be forced to either "double up" or become homeless. Other tenants will remain in their units, but will have less disposable income available for other (more desirable) expenditures. The inevitable result is that tenants are forced to pay higher rents for improvements for which they did not voluntarily bargain. For variations on this mainstream neoclassical attack on the IWH, *see* Meyers and R. POSNER, *supra* note 52.

This kind of attack on the IWH is an instance of a more general critique of the regulatory state. *See generally* M. FRIEDMAN & R. FRIEDMAN, FREE TO CHOOSE (1980).

56. *See* Komesar, *supra* note 52, at 1179-81; Markovits, *supra* note 52, at 1827-30. *See also* Kennedy, *supra* note 52, at 498.

The ambiguity stems from the observation that it is impossible to know, *a priori*, how the imposition of minimum standards will affect the "consumer surplus" generated in the housing market. "Consumer surplus" refers to the surplus value achieved by consumers (i.e., tenants) who would be willing to pay more than the clearing price for a commodity (i.e., rental housing). *See* Hicks, *The Rehabilitation of Consumer's Surplus*, 8 REV. OF ECON. STUD. 108 (1941).

Consumer surplus exists because not all tenants value (in an economic sense) apartment quality in the same way. Some are willing or able to pay more for housing amenities than others. It is the marginal tenant, the one who values quality the least, who sets the price. It follows that all of the other tenants, who would be willing to pay more for what they are getting, receive a kind of windfall, or surplus, from the price structure of the market. The amount of this surplus is the product of how much more the average tenant values the existing level of apartment quality over the marginal tenant, times the total number of tenants.

When the implied warranty is enforced, there are two likely effects. First, the consumer surplus will probably shift because an improvement in the quality of housing changes the amount that individuals are willing to pay for the units. This shift, however, may not be uniform. Assuming the amount each tenant is willing to pay now is some multiple of what she was willing to pay earlier, however, it is possible for consumer surplus to have actually increased (for those tenants still housed) as a result of IWH enforcement. In such a case, the remaining tenants would find themselves collectively better off than they were earlier. *See* Ackerman I, Ackerman II, and Markovits, *supra* note 52.

The second potential effect is a problematic decrease in the number of units. One solution that has been suggested is the creation of a selective subsidy of those poorest tenants who would otherwise be displaced by the decrease. *Id.* Such a subsidy, aimed at a small subset of those tenants benefitting from IWH enforcement, would be far more cost effective (in terms of government expenditures) than the alternative posed by the neoclassical economists of paying tenants directly so that they might afford higher quality housing.

affordable housing.[57]

A pessimist might also observe that, while the EFZ strategy may significantly delay or prevent many evictions,[58] no strategy will thwart all of them. Those skeptical of the EFZ strategy might contend that a constant external demand for gentrified housing will, over time, overwhelm any local attempt to block the influx of gentrifiers. According to this view, tenants who successfully resist evictions might gain a short-term benefit from the EFZ,[59] but resistance must eventually sag as the ranks of original residents are whittled away by gradual displacement.

Such a dismal prognosis may be a disincentive for community groups and legal services providers considering whether to implement an EFZ strategy. Certainly, an effective EFZ requires the allocation of significant legal and organizational resources into eviction defense and tenant education. If implementing an EFZ means only delaying the inevitable, it may be more appropriate to put money and energy into finding alternative housing for tenants. The following analysis, however, demonstrates that this pessimistic outcome is not inevitable. By examining the dynamics of neighborhood change in a gentrifying market, this Article concludes that the EFZ strategy may be used to block, entirely and permanently, the gentrification process.

B. An Alternative Understanding of Implied Warranty Terms: Changing Power Relations Between Landlord and Tenant

This section presents an alternative model for understanding the potential effects of an EFZ strategy. This model differs from the traditional (and pessimistic) analyses in two important respects.

First, it assumes, contrary to the conventional analyses, tenants in poor neighborhoods typically do not generally enforce the IWH on a broad basis.[60] Studies of both housing quality and tenant enforcement rates indicate that tenants are unlikely to enforce the warranty on their own, and that legal services agencies are unable to provide legal representation to all tenants who might benefit from IWH enforcement.[61]

Second, the alternative model presents a more complex understanding of the mechanisms underlying the gentrification process. The

57. *Id.*

58. *See* Lazerson, *supra* note 42.

59. The tenant can benefit by staving off eviction, delaying it long enough to find other accommodations, or by receiving a monetary settlement from the landlord.

60. Empirical studies of the use of implied warranties indicate that the IWH is not widely enforced. *See supra* note 22 and accompanying text.

61. *Id.*

commonplace perception of gentrification is that it is an external force, an invasion of a community by outsiders, propelled by regional economic forces over which community residents have no control.[62] In this view, gentrification is a kind of natural force (the "tide" metaphor works well here), the prevention of which would require perpetual and unrealistically effective resistance.

What the commonplace view fails to account for is the striking *unevenness* of gentrification. Typically, when gentrification strikes an urban region, some neighborhoods gentrify while others, similarly situated, remain stable or even suffer a decline.[63] While regionwide economic forces certainly contribute to the gentrification process,[64] these forces do not determine which neighborhoods will gentrify.

The model presented here explains the unevenness of gentrification by taking into account the "neighborhood effect" integral to the gentrification process; that is, the tendency of gentrification to sustain itself by transforming the economic potential of the neighborhood in which it occurs. When gentrifiers begin infiltrating a neighborhood, a new dynamic, independent of regionwide economic forces, takes over. The result is a "neighborhood effect," a kind of "positive feedback" in the local housing market.[65] The more gentrified a neighborhood becomes, the more profitable it becomes to gentrify the surrounding area.

Recognizing the neighborhood effect in the gentrification process is crucial to our analysis of the potential anti-gentrification effects of the EFZ strategy. The view of gentrification presented here is not one of an unstoppable onslaught, but of a process evolving over time. After recognizing that the gentrification process has its own internal dynamic, we may then ask how the process may be disrupted. The re-

62. *See, e.g.* Smith, *supra* note 3, at 147-49 (arguing that gentrification is a response to the falling rate of profit in developed suburbs and the undercapitalization of ground rent in the inner city).

63. *See Anti-Displacement Zoning* and *Connections*, *supra* note 10.

64. *See supra* note 10.

65. A classic example of positive feedback, in a different context, is the "audio feedback" produced by public address systems. When a microphone is placed too close to the loudspeaker to which it is connected, a familiar loud, high-pitched noise is produced. This noise is the result of positive feedback. The microphone picks up any small noise and amplifies it through the loudspeaker. This amplified noise is picked up by the microphone, which sends it through once again and makes it even louder. The process continues over time until the noise is excruciatingly loud. A characteristic of most positive feedback systems is the extreme sensitivity of "output" to "initial conditions." Thus, a slight change in the distance of the microphone from the loudspeaker determines whether the high-pitched noise or merely silence will be produced. Similarly, in a potentially gentrifying neighborhood, a very slight change in the initial conditions of price and demand spells the difference between complete gentrification or long-term stability.

mainder of this Article will analyze the degree to which an EFZ strategy might undermine the self-perpetuating forces of gentrification and ultimately preserve a neighborhood's stock of affordable housing.[66]

C. The Economics of Gentrification: Uneven Impact and the Undermining of Neighborhood Stability

Imagine a low income neighborhood ripe for gentrification. It is comprised of a fixed geographical area and lacking many undeveloped parcels. The neighborhood offers little potential for new housing construction. Any increase in the number of housing units would require removing or renovating existing housing units. The composition of the neighborhood changes primarily through the gradual turnover.

The neighborhood is well-defined. Residents see themselves as living "within" a recognizable area, and value the quality of life that the neighborhood provides. Consequently, neighborhood conditions influence housing prices to some extent.

In its current condition, the neighborhood is run-down, but stable. The housing stock is comprised primarily of old buildings which have filtered[67] down to low-income residents. The buildings are poorly

66. One previous analysis of the role of "neighborhood effects" in local housing market dynamics was Duncan Kennedy's study of landlord "milking" in declining neighborhoods. *See* Kennedy, *supra* note 52.

Kennedy proposed that the IWH be used selectively in a "declining neighborhood" to prevent landlords from "milking." *Id.* at 489-90. Kennedy demonstrated that in a declining neighborhood, (that is, one where housing prices are in constant decline), landlords will find that their most profitable course of action is to hasten the destruction of their buildings by ceasing maintenance and to "milk" whatever value remains in them. Landlords will do this because, as Kennedy illustrated, the constant decline in prices inevitably makes the landlord's (shortened) rent stream without maintenance costs greater than the (longer) stream obtainable from a maintained building. *Id.* at 490.

Kennedy's model predicts, therefore, that rational landlords in a declining neighborhood will engage in anti-social behavior by purposely accelerating the decline of neighborhood housing stock. Besides its obvious negative impact on tenants, this "milking" phenomenon also damages the position of other landlords by accelerating the general decline of the neighborhood, thus forcing them to "milk" as well.

In light of this analysis, Kennedy argues for enforcement of the implied warranty only against landlords who engage in "milking." *See id.* at 499-501. He further argues that such selective enforcement would produce economic effects different from those anticipated in the more traditional analyses; that is, selective enforcement would increase the supply of housing while decreasing the price. *Id.* at 500-01. Such enforcement would increase the supply of housing by preventing the premature abandonment of otherwise healthy buildings. It would also decrease the price of housing because more units would be available on the market. Additionally, by slowing the rate of abandonment, Kennedy's scheme may slow, or even reverse, the neighborhood decline that initially induced the abandonment. *Id.* at 502-06.

67. *See supra* notes 6-8.

maintained and, in their present state, not desirable to affluent tenants.[68]

What economic conditions might result in the gentrification of such a neighborhood? Conventional economic analysis suggests that gentrification is the product of increased regionwide demand for high-amenity urban housing.[69] This theory has superficial allure, as there are several factors which might explain such an increase. In a particular city, the increase might reflect growth in the white collar "FIRE sector":[70] the employees of FIRE sector industries often inhabit urban neighborhoods, proximate to the central business district. Regionwide demand pressures might also be created by larger, long term demographic trends. For example, the trend among "baby boomers"[71] to defer marriage and eschew suburban life has increased the demand for high amenity urban housing.[72] When the general trend outward and away from the city slowed, these high-income renters began looking for homes closer to the city.

This conventional model of the gentrification process is shown graphically in Figure 1:

68. We can say that the housing market is segmented by class into a high-income market and a low-income market. Low-income renters do not buy gentrified housing and potential gentrifiers ordinarily will not choose to live in low-income housing. Accordingly, the high-income and low-income housing markets can be represented by two distinct pairs of supply and demand curves.

69. Alternatively, gentrification could be the result of changes in the cost of producing gentrified housing. For example, it could be the product of a "rent gap" which occurs when the original cost of existing (old) structures has been fully amortized. At such a point, the potential ground rent exceeds the rents obtainable from the existing structure and it becomes cost-effective to renovate or reconstruct the building. This result is equivalent to a one-shot increase in the supply of gentrified units, with similar effect. *See* Smith, *supra* note 3, at 147-49.

70. *See supra* note 10.

71. The "baby boom" refers to the demographic "bubble" caused by the dramatic rise in the number of births in the 1950's. People born during this period became adults in the 1970's, and constitute what are commonly called the "yuppie" generation. *See Baby Bust*, *supra* note 9, at 237-38.

72. *See id.* at 238-41.

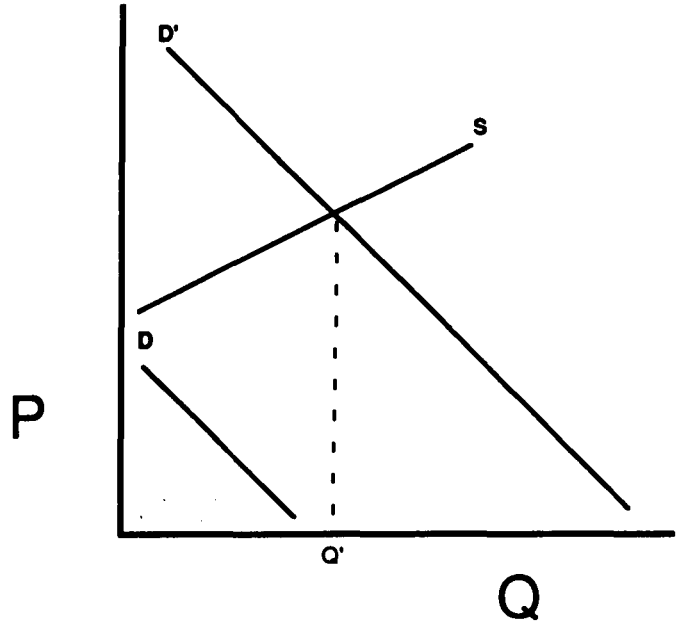

Figure 1:

Gentrification as a "One-Shot" Increase
in Consumer Demand Levels

Figure 1 expresses the supply and demand schedules for gentrified housing, that is, old housing that has been repaired or renovated to such an extent that it is suitable for gentrifiers. S is the supply curve for gentrified housing. It is sloped upward to reflect the fact that some units are easier to rehabilitate than others. Units most inexpensive to convert will be the first to gentrify.

D is the demand schedule for gentrified urban housing prior to major gentrification. It is sloped downward to reflect the fact that there is a range of offering prices among potential buyers for gentrified housing. D does not intersect S, reflecting the fact that it is not profitable to produce gentrified housing. D' is the demand schedule for gentrified housing after an extrinsic change in the regional housing economy. It is shifted up and to the right of D to reflect the fact that after this change, an increased number of buyers are willing to purchase gentrified housing at any given price (and any given buyer will offer more for a given unit). The result of the shift from D to D' is that both the price and quantity of gentrified housing increase. Buyers along D' are willing to pay more for a given quality of housing than those along D. Therefore some units (which could not have been

profitably converted previously) have been added to the stock of gentrified housing (at the intersection of D' and S).

This conventional demand-shift characterization of gentrification is inadequate because it does not explain what is perhaps the most salient feature of gentrification: its apparently chaotic[73] and highly uneven quality. The demand-shift described above may explain the existence of gentrification *somewhere* in a city; but it does not explain why particular neighborhoods gentrify completely while others, similarly situated, remain stable or even fall into decay.[74]

A model that explains why a particular neighborhood gentrifies must take into account the neighborhood factors which contribute to the demand for gentrified housing. The demand for gentrified housing, D,[75] can be said to consist of two components: D(u) and D(n). D(u) is the component of demand that reflects the regionwide desire for gentrified housing units. D(n) reflects the impact of neighborhood quality on the demand for units within the neighborhood. While D(u) is a characteristic of high quality units throughout the region, D(n) is a characteristic common only to those units within the neighborhood. Thus, the price of an individual unit, assuming a constant supply curve, is the result of two independent factors: the general demand for a particular quality of housing in the region [D(u)], and the premium that buyers are willing to pay to live within the neighborhood surrounding a unit [D(n)].[76]

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73. *See* Beauregard, *supra* note 10 (describing the "chaotic" and fortuitous nature of gentrification and criticizing purely "structural" theories for their inability to systematically predict those neighborhoods where gentrification actually occurs). *See also* R. GOETZE, UNDERSTANDING NEIGHBORHOOD CHANGE 59-63, 100-03 (1979) (describing the vital role played by the creation of a positive image for Boston's Jamaica Plain and Bay Village neighborhoods by "pioneers" in spurring on its eventual gentrification); D. GALE, NEIGHBORHOOD REVITALIZATION AND THE POSTINDUSTRIAL CITY 10-13, 157-59 (1984).

74. *See supra* note 73; *Anti-Displacement Zoning, Connections, supra* note 10.

75. It is important to be perfectly clear about what D represents. Although gentrified units will in practice vary in quality, we make the usual economic assumption here that gentrified units are of a uniform quality. D represents the schedule of offering prices for one of these generic gentrified units within the neighborhood. D slopes down and to the right because buyers who are more marginal will offer less for the same generic level of housing quality.

It is also important to note that there is a distinct demand schedule for "non-gentrified" units within the neighborhood, which are also assumed to be of a (lower) uniform quality.

76. While the owner of a unit can control the first factor, he generally cannot directly control the second. In fact, changes in neighborhood quality may be difficult to predict and may be chaotic. *See* Beauregard, *supra* note 10. The term "chaotic" describes a class of dynamic processes where extremely small changes in the parameters of the system result in changes in output that cannot be easily characterized in terms of the original alteration. It follows that it is impossible to predict the quality of future behavior within

Returning to the low income neighborhood described above, prior to gentrification, it is not economical to convert the existing (old and dilapidated) units in the neighborhood to gentrified housing.[77] The neighborhood component of demand, or D(n), is low because, like most low-income neighborhoods, this one suffers from typical inner-city problems such as crime, poor services, and inconvenient shopping centers. Most importantly for the purposes of gentrification, the neighborhood has a "low-income character;" residents are, for the most part, poor and have received little formal education. The combination of these factors makes the neighborhood undesirable for more affluent urbanites.

For a developer to be induced to convert a unit, the profit from conversion must be positive. The developer's profit equals the selling price of the unit after conversion minus the sum of the pre-conversion selling price and the cost of conversion.[78] If D(n) is sufficiently low in the neighborhood, the price offered by potential gentrifiers for a converted unit will be too low to justify the expense of conversion. Such a situation exists in a non-gentrified neighborhood where landlords have not taken steps to convert.

Neighborhood gentrification begins when marginal members of the high-income class begin to relocate in the low-income neighborhood. The "pioneer" gentrifiers will be relatively wealthy persons with a high tolerance for low-income neighbors and for bearing the previously mentioned inconveniences (and dangers) of central urban living. Why do the first gentrifiers choose a particular neighborhood? The answer may be "chance." The factors that influence *which* neighborhood will receive the first influx of gentrifiers are numerous. The particular facts will vary in each situation.[79]

What is important to note is that, once gentrification has begun in a neighborhood, it tends to be self-sustaining.[80] After the initial influx, the reputation of the neighborhood improves and the neighborhood becomes attractive to progressively more "mainstream" buyers. Realtors, speculators and community development officials, all having a

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a chaotic system from studying its historical behavior. *See generally* J. GLEICK, CHAOS: MAKING A NEW SCIENCE (1988).

77. This is tautological. If conversion were profitable, it would have already occurred.

78. The "cost of conversion" may include reconstruction or renovation, or may simply be the cost of evicting the existing tenants.

79. *See* Beauregard, *supra* note 10, at 40 (citing speculation, historic restoration, creation of a gay enclave, redevelopment of abandoned housing and conversion of warehouses as possible underlying causes of gentrification).

80. *Id.* at 44-45.

stake in the rapid transformation of the community, will do their best to publicize "improvements" in the neighborhood in order to rehabilitate its image.[81] Those with a lower tolerance for poor people than the "pioneer" gentrifiers will be attracted to the increasingly "trendy" environs. D(n) begins to increase. The price of housing in the neighborhood increases as D(n) rises; consequently, more of the existing affordable units become profitable to convert. As more gentrifiers move in, lower-income inhabitants are forced out. This cycle reinforces itself as conversion of low-income units into high-income rentals and condominiums becomes more profitable and the rate of conversion increases.

This cumulative process of gentrification can be understood in economic terms by reference to Figure 2:

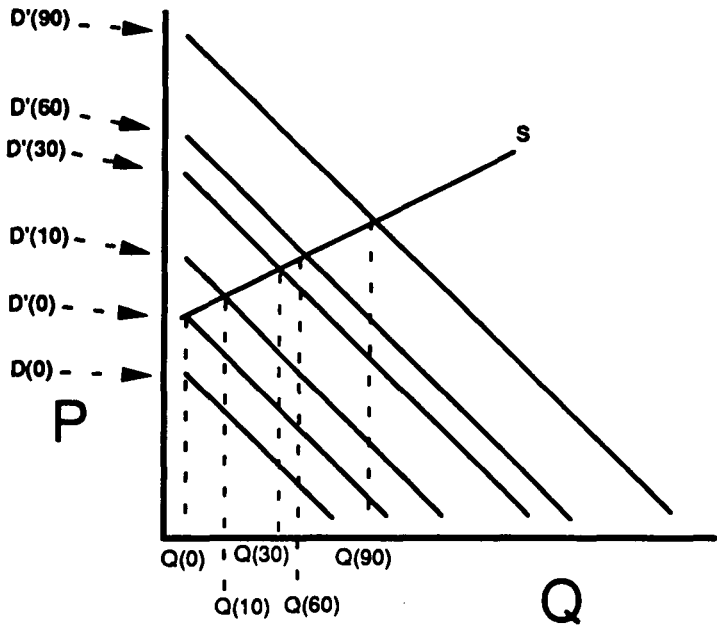

Figure 2:

Gentrification as a Gradual Self-Sustaining Process

In Figure 2, D(0) reflects the demand for gentrified units prior to gentrification (the zero here represents the fact that there is not yet any gentrified housing in the neighborhood). Because D(0) does not intersect the supply curve S, no gentrified units are sold. D'(0) is the

81. *See* R. GOETZE, *supra* note 73; Beauregard, *supra* note 10, at 51-53.

demand schedule after some external change in the housing economy increases demand for gentrified units but no units have, as of yet, been converted.[82] D'(0) is high enough that some gentrified units can be sold to early "pioneers" even though the neighborhood remains low-income in character.

At this point, the neighborhood effect comes into play. After the first few "pioneers" move in, the character of the neighborhood begins to change. No longer just a "slum" in the eyes of potential inmovers, it now comes to be considered "mixed-income" or "culturally diverse." This results in an increase in D(n), and a consequential further shift in the demand for gentrified housing in the neighborhood. This shift is reflected in the remaining demand curves on the graph. D'(10) is the demand when the neighborhood is 10% gentrified, D'(30) reflects a 30% gentrification level, and so on. As gentrifiers move in, the neighborhood becomes increasingly desirable, producing a further influx of "gentry."

This cumulative model explains the neighborhood-specific nature of gentrification. Unlike the previous one-step model, this model demonstrates that a relatively minor shift in housing market preferences is all that is required to initiate the gentrification process. Once triggered in a particular neighborhood, gentrification is self-sustaining. Each new gentrifier entering the neighborhood makes further (and eventually total) gentrification more likely by shifting the demand curve upward.

Significantly, the initial shift in demand may be small enough so that its effects are not felt uniformly among all neighborhoods in the region. Once gentrification begins to sustain itself in one or two neighborhoods, gentrifiers will flock to those "hot" areas. Other neighborhoods, with equal gentrification potential, may, by chance, not receive the initial influx of gentrifiers necessary to "get the ball rolling."

It bears repeating that the market pressure that sets off the gentrification process may be "large" or macroscopic, but the actual dynamic that finally produces gentrification is "small" and takes place within the neighborhood itself. The sale or rental price of units in the neighborhood increases primarily because of a rise in the perceived quality of the neighborhood, D(n), rather than an increase in the value of the amenities offered in gentrified units, D(u). The increase in neighborhood value attracts wealthier residents, who in turn accelerate the "neighborhood effect" by "improving" the character of the neighbor-

82. I.e., when D(u) for the region increases.

hood. As this process continues, more and more of the existing residents are priced out of the neighborhood and eventually the neighborhood consists solely of higher income residents.[83]

While the gentrification process described above is self-sustaining, it obviously cannot continue indefinitely. Once the neighborhood is completely gentrified, the demand curve will stop shifting and prices (absent additional external pressures) will stabilize. Of course since not all neighborhoods reach 100% gentrification, it is possible that the upward drift of the demand curve may stop at an earlier point. This point, an "equilibrium point," is reached when the demand for gentrified housing (generated by the existing level of gentrification) exactly equals the number of already-converted units in the neighborhood. Figure 3 illustrates the relationship between the degree of neighborhood gentrification and the demand for gentrified units by employing a "cumulative demand function," or "CDF."[84]

83. This vision of neighborhood dynamics is inspired in part by Peter Marcuse, who identifies the desire for "same-class" living as a cause of uneven patterns of gentrification and abandonment. *See Connections*, *supra* note 10.

84. The format used here is borrowed from Thomas Schelling's study of the dynamics of residential segregation. Schelling, *Dynamic Models of Segregation*, 1 J. MATH. SOC. 143, 181-86 (1971) [hereinafter Schelling]. Schelling sought to understand the "white flight phenomenon" in which all-white, apparently stable neighborhoods could experience a significant and rapid exodus of existing residents in response to the influx of a relatively small number of non-white families. In particular, Schelling sought to solve the riddle of why white flight occurred in neighborhoods in which typical residents appeared relatively tolerant of non-white neighbors.

The model Schelling developed explained white flight as a feedback process, *see supra* note 65. As non-whites begin entering a neighborhood, the most intolerant whites in that neighborhood leave. This in turn encourages more non-whites to move in, which, in turn, causes slightly more tolerant whites to exit. Depending on the distribution of tolerances in a neighborhood, the process can continue indefinitely until even the most tolerant whites leave.

To explain why some neighborhoods "tipped" like this while others remained stably mixed, Schelling introduced the idea of a "tipping point." The tipping point is that percentage of non-whites in a neighborhood at which white flight becomes self-sustaining. Schelling demonstrated that while the tipping point was related to the distribution of racial tolerance among whites in the neighborhood, it need not be closely related to the tolerance of the typical resident. He concluded that tipping was, in a sense, a kind of accidental event, not closely correlated to the prevalent degree of racism in a community. A minor difference in the distribution of tolerances in a community could cause one community to tip while another remains stable.

Schelling's model demonstrates how, in the context of racial tolerance, "neighborhood effects" can produce a dynamic process that results in an eventual outcome not initially desired by any of the original residents. The model presented in the Article is analogous, with the distribution of tolerance for economic class, rather than race, determining neighborhood market dynamics.

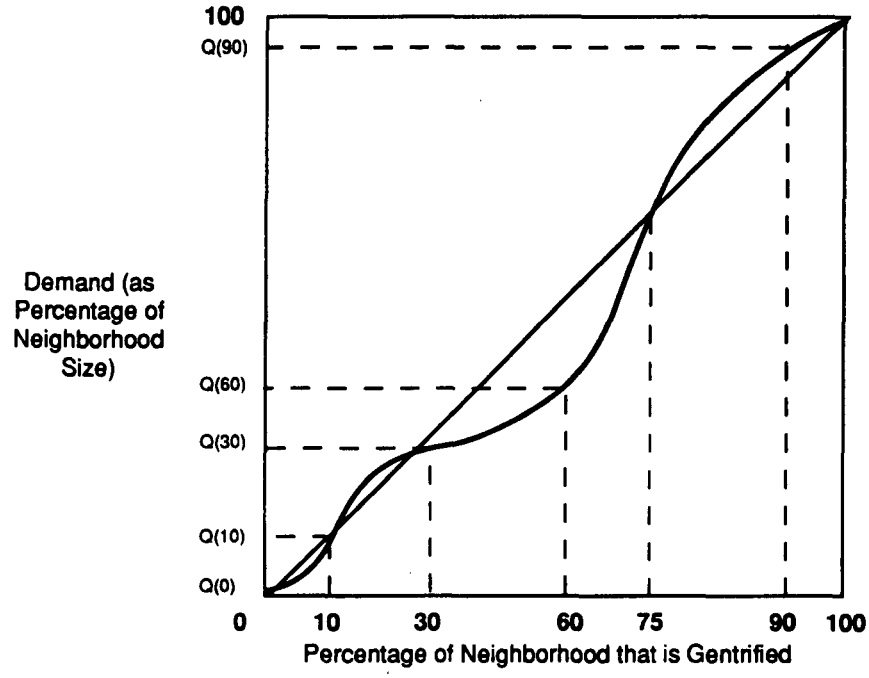

Figure 3:

A Cumulative Demand Function Corresponding to the Demand Shifts in Fig. 2

The CDF relates the percentage of gentrification in a neighborhood (horizontal axis) to the "clearing quantity"[85] for gentrified units in that neighborhood (vertical axis). The 45í line represents hypothetical points at which the demand for gentrified units in the neighborhood precisely equals the number already available.

The relatively steep sections of the CDF, between 10 and 30, and between 60 and 90 on the horizontal axis, correspond to the wide gaps between Q(10) and Q(30), and between Q(60) and Q(90) in Figure 2. Because the difference between Q(30) and Q(60) is correspondingly smaller, the slope of the CDF between 30 and 60 is more gradual.[86]

85. I.e., the quantity of units necessary to meet demand.

86. It should be emphasized that supply and demand curves presented in Figure 1 are highly schematic. They are presented as parallel straight lines only for simplicity's sake. The clearing quantities, while seemingly determined by the absolute position of the demand curves, are in fact determined by the (possibly non-linear) shape and position of both the supply and demand curves.

The uneven gaps between the various demand curves in Figure 2 are meant to indicate that while there is a positive correlation between the level of gentrification and the demand for gentrified housing in the neighborhood, it is not necessarily a linear one. For

The CDF indicates the dynamic potential of the gentrification process in a neighborhood by revealing its "equilibrium points." In a CDF, equilibrium points correspond to all of the positions at which the curve crosses the 45í line. In the above example, 30% is an equilibrium point. When 30% of the neighborhood is gentrified, the result is a demand for gentrified housing equal to 30% of the stock in the neighborhood.

In the long run, a neighborhood can only sustain a gentrification level equal to one of the equilibrium points on the CDF. When the composition of the neighborhood corresponds to a point below the 45í line, the demand for gentrified units is less than the existing number of units; therefore, some of the units are likely to be abandoned or converted back into low-income housing, or non-residential space. If the neighborhood composition is above the 45í line, however, the demand for converted units exceeds the supply; conversion into gentrified housing will continue, and the level of gentrification will increase until equilibrium is reached.

Two types of equilibrium points are possible on a CDF. One type, illustrated by the 30% position above, is a stable equilibrium point. It is stable because there will be a return to the equilibrium point despite minor fluctuations in neighborhood composition away from equilibrium. So, for example, if the composition were to drop suddenly to 28% gentrified, the corresponding CDF point would be above the 45í line and conversion would increase until the 30% mark was reached. If the neighborhood suddenly shifted to 32% gentrification, however, the result would be the opposite. There would be an excess supply of gentrified units, and some would have to be taken off the market, returning the neighborhood to a 30% gentrification level.

The second type of equilibrium is unstable. The point at 75% in Figure 3 is in an unstable position; any minor perturbation at this point will drastically change the neighborhood. Moving to 74% will result in a downward spiral that will not stabilize again until 30%; moving to 76% will result in total gentrification. The dynamic significance of these points is illustrated in Figure 4:

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example, an initial small colony of "pioneer gentrifiers" may cause a sharp increase in the desirability of the neighborhood, and a large shift in the demand curve. On the other hand, later increases in the gentrification level may have a negligible effect on the reputation of the neighborhood, producing little or no increase in demand. A CDF which reflected this underlying economic potential would be steep in the lower levels of gentrification and relatively flat afterwards.

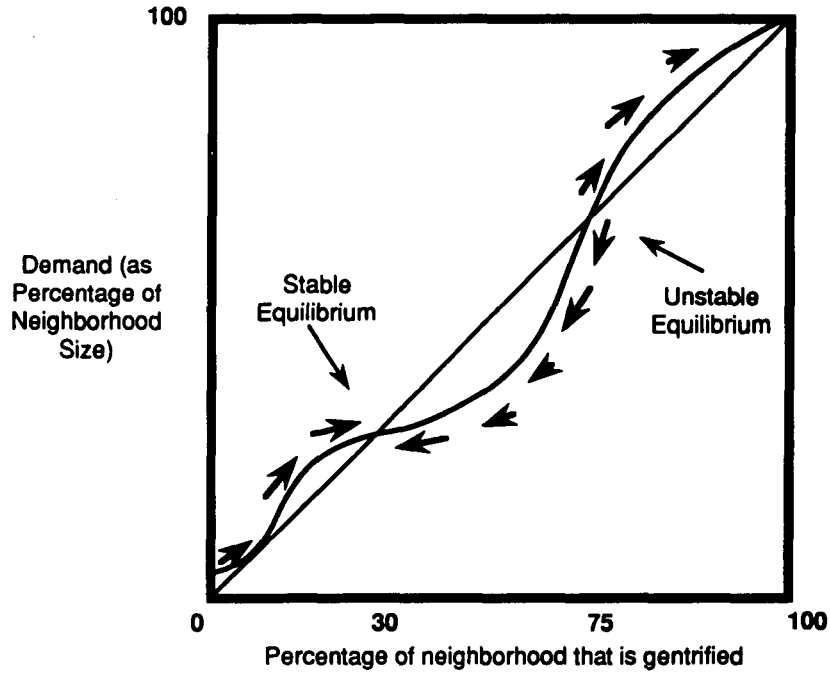

Figure 4:

An Example CDF Showing Stable and Unstable Equilibrium Points

D. Gentrification as a Breakdown of Neighborhood Equilibrium

In our hypothetical neighborhood, before gentrification, we assume that demand is at equilibrium. There are few if any gentrified units in the neighborhood, and little demand for such units from the outside. In order for gentrification to occur, equilibrium must be disrupted. Such a disruption may occur in one of two ways. If the neighborhood is at unstable equilibrium, as in Figure 5, it would require only a slight perturbation in its level of existing gentrification to initiate an upward spiral. This might be induced, for example, by an "urban renewal" project creating a new high amenity development on the edge of the neighborhood.

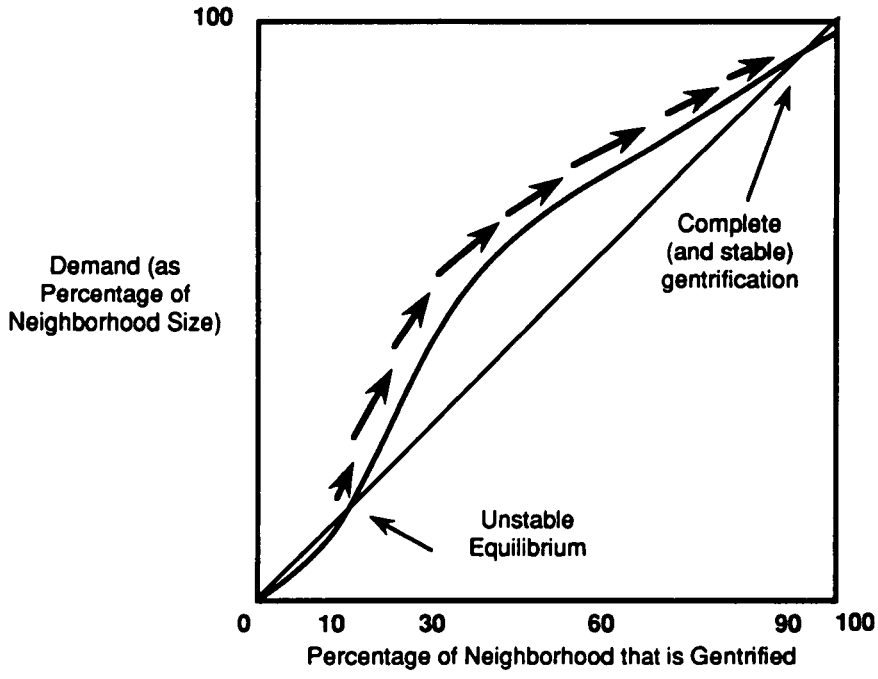

Figure 5:

A Slight Perturbation at Unstable Equilibrium Leads to Complete Gentrification

By comparison, a neighborhood in stable equilibrium can be disrupted only by an external change altering supply or demand. As Figure 6 illustrates, an overall increase in demand will produce a CDF that is higher at any given level of G. This corresponds to an upward shift of the CDF. Such a shift can remove a stable equilibrium point and initiate the gentrification dynamic previously described.

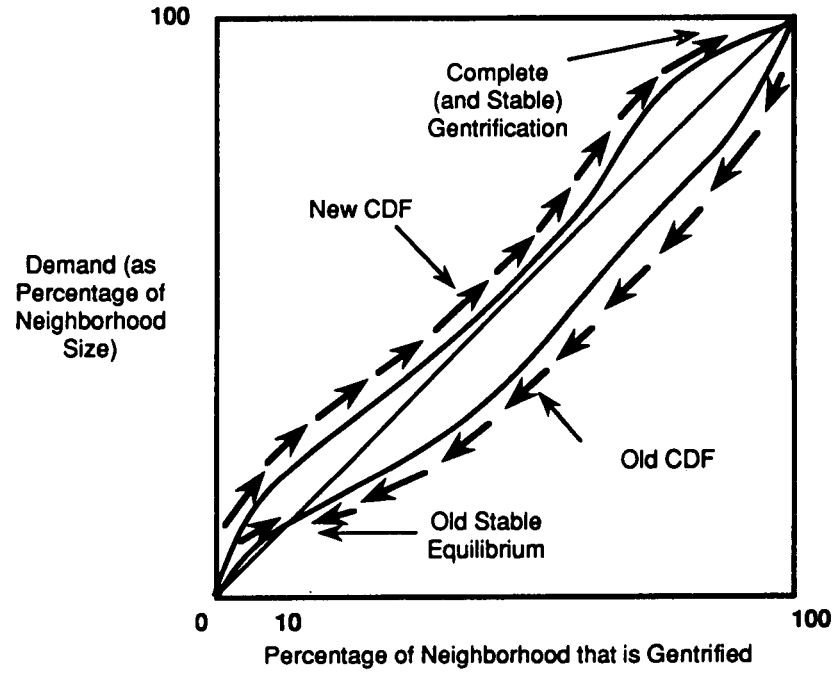

Figure 6:

A Shift Upward in the CDF Destroys an Equilibrium Point

In both of these cases (illustrated by Figures 5 and 6), the eventual result of the initial disruption is the same: absent equilibrium points to the right of the point representing the current (and now out-of-equilibrium) configuration, the gentrification process will continue. Neighborhood composition will move rightward on the CDF until 100% gentrification is achieved.[87]

E. The EFZ as a Barrier to Gentrification: Restoring Equilibrium

The previous discussion has illustrated that gentrification results from the breakdown of a stable neighborhood configuration. It follows that anti-gentrification strategies such as EFZ will be effective if able to produce stable equilibrium points corresponding to acceptable levels of gentrification.

Although our analysis has heretofore focused on the effect of

87. Of course there may be, contrary to our illustration, an intermediate stable equilibrium point. In such a case, gentrification would naturally abate, leaving the neighborhood in a "mixed" configuration. Such an intermediate equilibrium point is illustrated in Figure 4.

changes in demand on CDF stability, we have noted[88]that the shape of the CDF is also influenced by changes in the supply schedule, S, for gentrified units. Just as an extrinsic shift to greater demand shifts the CDF upward, an increase in the cost of supplying gentrified housing can produce a more gently sloping CDF.[89] The reason for this change in slope is illustrated in Figure 7:

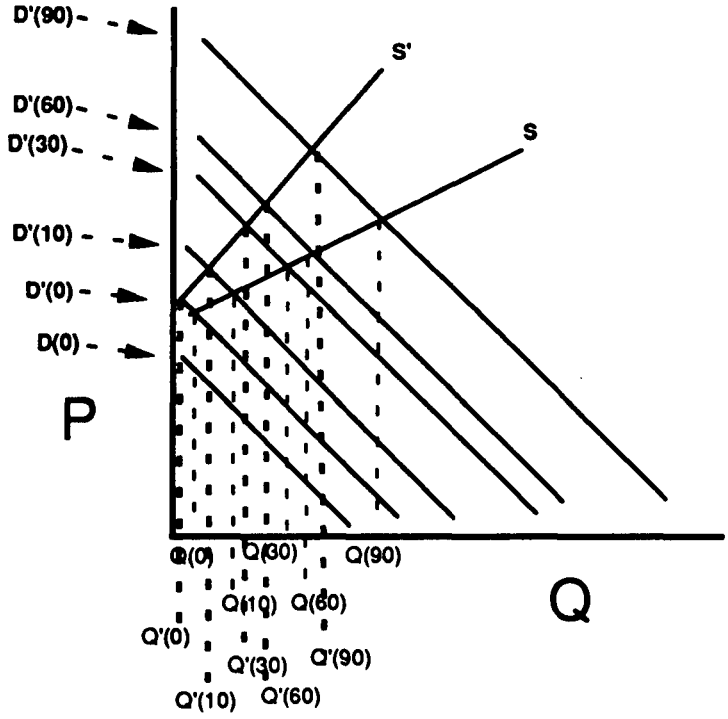

Figure 7:

An Upward Shift in the Supply Schedule Decreases the Consumer Demand at Each Level of Gentrification

S', a supply curve, reflects a progressive increase over S in the cost of conversion of low-income units in the neighborhood. Here the values of Q represent the quantity of gentrified units demanded at various levels of G. The values of Q', reflecting the new supply schedule, change with respect to the original values of Q; the Q' values are closer together and have decreased in magnitude. Because the spac-

88. *See supra* note 69.

89. Because clearing quantities at any given level of gentrification will be lower.

ing of these Q' values determines the shape of the CDF, the curve will possess lower values and will rise more gradually. Since the CDF will be closer to the 45í line, it will be more likely to exhibit stable equilibrium points somewhere along its length.

Because an effective Eviction Free Zone strategy can produce an increase in the cost of supplying gentrified units, shifting the supply curve upward, it may be effective in returning a neighborhood to stability. An EFZ makes the first step in any conversion process — eviction — costly. Before an EFZ is in place, tenants can be forced out of the neighborhood with little trouble or cost. With an EFZ in operation, however, tenants may be able to delay, or even prevent, evictions. As the neighborhood becomes known as an EFZ, potential converters will include the high cost and uncertainty of eviction in their profit calculus.[90] This will be reflected in a higher, steeper supply curve.

Figure 8 illustrates how an EFZ might successfully return a gentrifying neighborhood to stability. The graph contains three CDFs for the target neighborhood. CDF1 is the CDF for the neighborhood when it was stable. It is positioned below the 45í line; no danger of gentrification exists. CDF2 is shifted upward from CDF1 as the result of an external increase in the demand. Finally, CDF3 is the CDF that results after an EFZ has been effectuated, increasing the cost of conversion. Two possible scenarios of preliminary gentrification followed by countermeasures are illustrated in Figure 8:

90. This is especially true if the converter is a speculator rather than a long-term landlord. The speculator is likely to have purchased the building at an inflated price with a mortgage that cannot be repaid with the existing rents. The speculator must convert the building quickly or he will lose this investment to the bank. Even if some evictions are not challenged, owners will not know in advance whether they will be able to evict a given tenant easily, and will have to include that risk in their cost projection.

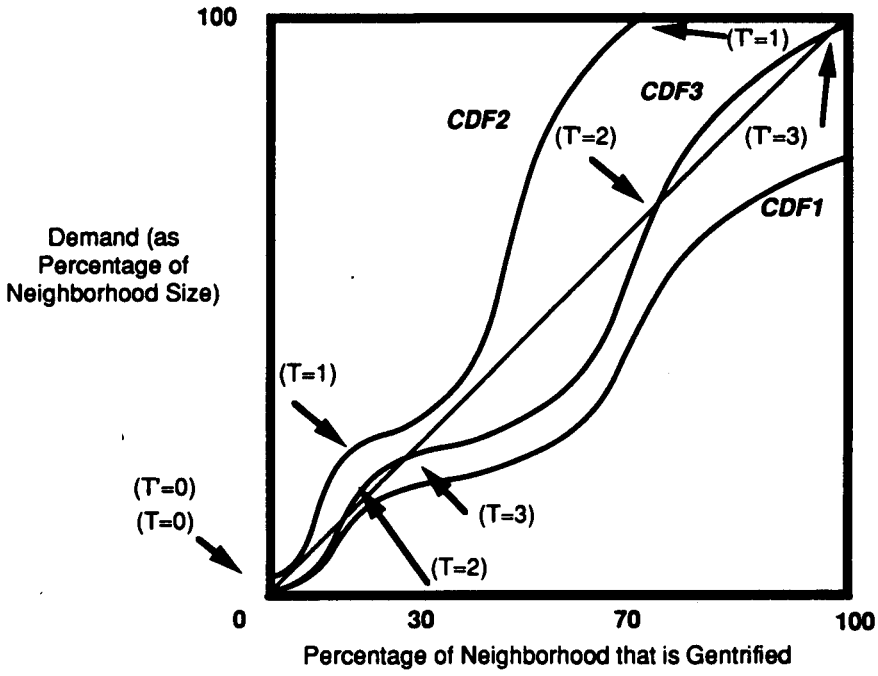

Figure 8:

3 CDFs -- Before Gentrification, During Gentrification, and After the Application of an EFZ

In the first sequence of events (indicated by the T points), the initial rise in demand, indicated by CDF2, triggers a gentrification process. No stable equilibrium points to the right remain. Thus, if nothing is done, the neighborhood will gentrify completely.

At time T=1, an EFZ becomes operational. The result is a shift to a new CDF, CDF3. The new location of the neighborhood on this CDF is indicated by T=2. This point, however, is not stable; gentrification will continue until the stable equilibrium point at T=3 is reached. The net result is that the EFZ has changed the fate of the neighborhood from 100% gentrification (if it had followed CDF2) to an acceptable 30% level of gentrification.

In the second scenario, the EFZ does not become operative until much later. The neighborhood is approximately 70% gentrified at T'=1. Even with the application of the EFZ at this time, a shift to CDF3 still leaves the neighborhood in disequilibrium at T'=2; full gentrification is inevitable at T'=3.

F. Judging the Effectiveness of the EFZ Strategy.

The preceding analysis illustrates that an EFZ strategy may be an effective way to interfere with the de-stabilizing dynamic of gentrification and, ultimately, to restore a neighborhood to a stable acceptable mix of gentrified and non-gentrified housing. How effective an EFZ is in practice will depend on factors particular to the housing market involved. Of primary importance, of course, is the shape of the CDFs for the neighborhood, before and after an EFZ is imposed. If the pre-EFZ CDF reveals a stability point at some tolerable "mixed" level of gentrification, the application of the EFZ strategy may not improve the situation much. If the post-EFZ CDF is still too steep to reach stability, an EFZ would prove entirely ineffective.

Ultimately, three factors determine the shape of the CDF: the size of the pool of potential gentrifiers, the cost schedule for supplying gentrified housing in the neighborhood, and the consumer preferences of the gentrifying class. The size of the pool effects the CDF by influencing the absolute level of demand at all levels of gentrification. All things being equal, a larger number of buyers in the regional market[91] will produce a higher level of demand.

The cost of supplying gentrified units[92] will also have an effect on the shape of the CDF. For example, if some portion of the existing stock of affordable units would be extremely expensive to convert to gentrified stock,[93] this would be reflected in a steep slope on a portion of the supply curve, and a consequential trough in the slope of the corresponding portion of the CDF.[94]

Finally, the inherent distribution of preferences for "gentrified living"[95] among potential gentrifiers will clearly have a direct impact on the shape of the CDF. Suppose, for example one segment of the pool of potential gentrifiers required only a low level of existing gentrification to make a neighborhood very attractive, while another segment would not react[96] very much until the neighborhood was highly gentrified. In this situation, the CDF would reflect the bifurcated nature of consumer preferences by exhibiting a steep section at low levels of

91. Such a change might be caused, for example, by growth in FIRE sector industries. *See supra* note 10.

92. Apart from any cost imposed by an EFZ.

93. These units might have extreme structural defects, asbestos, or lead paint, making them very costly to convert.

94. The slope of the CDF would lessen at the point where additional gentrification would require conversion of the hard-to-convert units.

95. That is, living in central urban areas with at least some mixture of economic classes living in close quarters.

96. By offering higher prices.

gentrification, a relatively flat section in the middle, and then a steep section again at higher levels of gentrification. Conversely, if potential gentrifiers were uniformly sensitive at all levels of gentrification, the resulting CDF would be relatively constant in its slope.

EFZ proponents must also consider the question of timing. When should an EFZ be introduced, and how long does it have to remain in effect? As Figure 8 and accompanying text indicate, timing may be crucial to ensure the effectiveness of an EFZ strategy. If the target neighborhood has passed the point where stability can be restored without complete gentrification, an EFZ will not be effective. Thus it is clear that the sooner an EFZ is applied, the more likely its chance of success.

A more complex issue to be considered is how long an EFZ should remain in effect. The simple answer is that it should remain in place as long as external pressures would destroy equilibrium in its absence. In practical terms, determining the answer involves assessing the strength of factors which led to gentrification in the first place: regional economic pressures and the characteristics of the local neighborhood. For example, if the regional economy were to enter a recession, this might lessen the regional demand for gentrified housing and bring the neighborhood back to equilibrium. On the local level, the EFZ might, in addition to depressing the supply schedule for gentrified housing, have the secondary effect of discouraging those agents (i.e. speculators, realtors and community development officials) who were promoting the original influx of gentrifiers[97] in the first place. Were the neighborhood to lose its long term appeal to gentrifiers, the result could be a permanent reduction in the D(n) component of demand.

An appreciation of the qualitative factors which affect the shape of a CDF can assist EFZ proponents in assessing the potential effectiveness of an EFZ strategy in a particular neighborhood. Although the CDF is an abstract characteristic of a neighborhood's housing market which cannot be measured in practice, it does provide a theoretical framework for understanding how qualitative factors interact to create the potential for gentrification, and the possibility of subsequent stabilization. By analyzing population trends, consumer preferences and conversion costs, EFZ proponents may begin to make informed assessments about the potential efficacy of this strategy.

97. *See* R. GOETZE, *supra* note 73.

V. Conclusion

The Eviction Free Zone strategy described in this Article may be controversial, even among those who accept the economic analysis of its effectiveness. The Article has not addressed, for example, the ethical,[98] professional responsibility[99] and broader political[100] issues that a legal services attorney must consider before undertaking to apply the EFZ strategy. Even from a purely economic perspective, there is no guarantee of success for any particular attempt to block gentrification, as the analysis here indicates.

What this Article has demonstrated is that tenants have a latent power which can be used to offset the economic might of gentrifiers. Because gentrification is not inevitable, but in fact results from a pro-

98. For example, it might be argued that the use of the implied warranty as an eviction defense tool is an abuse of a law intended to remedy an entirely distinct social ill, and that the only responsible manner in which to oppose gentrification is to appeal to the legislature for anti-displacement legislation. One response to this argument is that the "intent" of a law is never clear. *See* Kennedy, *Legal Formality*, 2 J. LEGAL STUD. 351, 391-98 (1973) (arguing that judges can never escape the need to make discretionary interpretations of the law). *Cf.* note 34 and accompanying text. Another view sees certain types of legislation as the outcome of a kind of "contract" negotiated by various "interest groups" in society. *See* Easterbrook, *The Supreme Court 1983 Term: Foreword: The Court and the Economic System*, 98 HARV. L. REV. 4, 4-5 (1984). The implication of this position is that judges should not look to "purposes" in interpreting laws, but should rather understand them as a kind of "settlement" between two competing groups, with no teleological content. It follows from either of these positions that litigants are not bound by any clear standards as to the "appropriate" use of legal entitlements.

Another ethical issue to be considered is the impact that the EFZ strategy has upon the non-wealthy members of the landlord class. At least in some neighborhoods, landlords are not a class of wealthy exploiters, but long term neighborhood residents who have saved sufficiently to buy a multi-family house and who are, in general, only slightly better off than their tenants. *See* G. STERNLIEB & R. BURCHELL, RESIDENTIAL ABANDONMENT: THE TENEMENT LANDLORD REVISITED xvi-xvii (1973). A reply to this critique is that such landlords are only penalized under the EFZ if they attempt to capitalize on a fortuitous windfall by evicting existing tenants.

99. Hostile judges may see participation in the EFZ as grounds for attorney discipline. *See* FED. R. CIV. P. 11(a) and its state cognates, which provide for penalties against attorneys who file frivolous pleadings.

100. The EFZ might, for example, backfire in the long run by mobilizing real estate interests to change existing landlord-tenant laws, making it more difficult to enforce the IWH under any circumstances in the future. *See* Lazerson, *supra* note 42, at 135-37. In addition, a popular impression that EFZ tactics are unethical or counterproductive for the long term health of the city may lead to divisions within the political support base of the organizations attempting to implement it.

Once the appropriateness of using an EFZ is accepted, the question of what goals the EFZ is intended to achieve remains open. As the foregoing analysis indicates, there may be a number of stable demographic configurations which may result after an EFZ has been applied. EFZ proponents must ask themselves whether they desire to prevent all gentrification from occurring, or whether some stable "mixed" neighborhood is the preferred outcome.

cess that is sensitive to minor perturbations in demand, it is susceptible to attack by grassroots activists. Because gentrification is a process that occurs *within* a neighborhood, and not just a force imposed from without, neighborhood residents have the ability to alter the course of that process and take some measure of control over their environment.