

## Review Section

# The Cyclical Nature of Poverty: Evicting the Poor

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DESMOND, MATTHEW. *Evicted: Poverty and Profit in the American City*. New York: Crown Publishers, 2016.

*From the medical field to the housing market to the criminal justice system, poor people must navigate labyrinthian organizations that often perpetuate social and economic inequality. Arguably it is through these social institutions, and through multiple processes embedded within each of these institutions, that the governance of urban poverty is effectively maintained. This essay revolves around one such process, examining how Matthew Desmond's Evicted: Poverty and Profit in the American City (2016) points to the eviction process as an important producer of urban poverty in and of itself. After delving into housing law and Desmond's ethnographic and quantitative research methodologies, the essay examines four sites where the law is at work in eviction: the eviction court; the "law-on-the-books" versus the "law-in-action"; practices in the shadow of the law; and the relationship between the criminal justice system and the housing market. One goal of the essay is to place eviction within the law, punishment, and social inequality literatures.*

## INTRODUCTION

Much has been written on the causes of urban poverty, but Matthew Desmond's recent book *Evicted: Poverty and Profit in the American City* (2016) points us to an overlooked, yet severely consequential, factor: the process of eviction. In this essay, I place Desmond's scholarship on the eviction process in conversation with a diverse array of law and society scholarship. To do this, the essay is organized into three parts. First, I will present a brief overview of important international and national housing law. Second, I will set out a description of the book and the research methodologies. Finally, I will examine four sites of sociolegal intervention: the eviction court; the "law-on-the-books" versus the "law-in-action"; the practices in the shadow of the law; and the relationship between the criminal justice system and the housing market.

By examining these varied sites alongside each other, I will draw attention to how Desmond's scholarship has made a significant contribution to the law and society field. Through *Evicted: Poverty and Profit in the American City* (2016) and a series of articles on the eviction process (Desmond et al. 2013; Desmond and Gershenson 2017;

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Desmond and Bell 2015; Desmond 2012a; 2012b), policing in the urban city (Desmond and Valdez 2013; Desmond, Papachristos, and Kirk 2016), ethnographic theory (Desmond 2014), and American poverty more generally (Desmond and Western 2018), Desmond's scholarship draws attention to the myriad roles law plays in the reproduction of American inequality. In doing so, he advances a rich heritage of law and society scholarship on whether law and legal institutions can alleviate social ills (see Stryker 2007 for a review). I conclude that although law has mitigated some of the most deleterious effects of urban poverty and housing inequality over the last century, the law—in large part—is continuously drawn upon as an exploitative tool. Drawing attention to this dynamic elucidates why and how the housing market and the eviction process are important objects of study for future law and society scholars.

## THE LEGAL LANDSCAPE OF HOUSING

It would almost be an understatement to describe housing law as a complex, contested terrain. Some policymakers and scholars conceptualize housing as a commodity, like an automobile or an article of clothing one purchases in the free market; others conceptualize it as a fundamental human right (see Pattillo 2013 for a review). The right to housing was first enshrined in international law in the wake of World War II, within the Universal Declaration of Human Rights in 1948:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (Section 1, Article 25)

While not a binding international treaty, all 192 member states—including the United States—are signatories to the Declaration.

Building on this, at the level of domestic American law there have been a number of important legal efforts which have sought to lay out a jurisprudence for the protection of each person's right to a home. But while it is certainly true that US housing law has somewhat alleviated the worst excesses of American inequality, at the same time the law (and its very absence) has been central to the proliferation of America's poor (see Desmond and Bell 2015 for a review).

A variety of factors have undermined legal efforts to protect people's right to shelter. For example, Congress passed the American Housing Act of 1949, which affirmed "the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family." Although commendable in ambition and scope, the Act lacked a timetable and any sense of how the government would determine when the goal of a decent home would be recognized as "feasible."

Another important aspirational statement was contained in Title VIII of the Civil Rights Act, commonly referred to as the Fair Housing Act of 1968 (FHA), which declared "it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." With its passage, discrimination

in the sale, rental, or financing of a home—based on the applicant’s race, religion, national origin, or sex—was legally prohibited.

Crucially, though, by the time the Act made it through Congress, Everett Dirksen, a Republican senator from Illinois, had successfully introduced a debilitating amendment which effectively stripped the bill’s enforcement mechanisms intended to penalize homeowners, landlords, and others who engaged in discriminatory housing and rental practices (Schill and Friedman 1999). Under the FHA that ultimately passed, people who felt they had been discriminated against were severely limited in their recourse (Johnson 2011). Lawsuits had to be filed within 180 days of the alleged violation; victims were only entitled to sue for actual damages and \$1,000 in penalties; and if the court failed to find discrimination present against the plaintiffs, they were liable for all associated court costs and attorney’s fees (Massey 2015).

In part because of these weak enforcement mechanisms, discriminatory rental and sale practices across the housing market not only persisted but were endemic (Schill and Friedman 1999). In one study conducted in Boston, for example, prospective renters who were black were invited to look at 36 percent fewer apartments than their white counterparts (Yinger 1986; see also Wienk et al. 1979). Additionally, a nationwide study commissioned by Housing and Urban Development (HUD) in 1980 found that only one in four rental units would be rented to families (Colten and Marans 1982). While the former demonstrated enforcement mechanisms needed to expand to protect minorities, the latter demonstrated that by not designating one’s familial status a protected class, the FHA had left out an important group of people who routinely experienced housing discrimination.

By the end of the 1980s, there was broad government agreement that legislation was needed to strengthen the FHA. As Senator Edward Kennedy (1988) characterized it, the FHA was little more than a “toothless tiger,” and Congress passed the Fair Housing Amendments Act of 1988 (FHAA). The amendments primarily addressed two areas of concern: they strengthened the three areas of enforcement already contained in the FHA; and they placed two new groups of people—families with children and individuals with a handicapping physical or mental disability—under the protection of the Act. The FHAA states:

IN GENERAL.—It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

Despite this, there is a consensus among scholars today that the goals of the Fair Housing Act have fallen short (see Pedriana and Stryker 2012 for a review). Discriminatory practices against prospective tenants who fall under FHAA-protected classes continues to be widespread (Johnson 2011); neighborhoods remain hyper-segregated along race and class lines (Rugh and Massey 2013); and, perhaps with a hint of irony, resources to protect against race-based discrimination were diluted by the FHAA’s expansion of protected groups (Schill and Friedman 1999). At the very core of this crisis has been the inadequacy of laws and legal institutions to recognize

socioeconomic inequality in America—and the myriad social ills that emanate from it (Desmond and Western 2018).

## THE METHODOLOGIES OF EVICTED

As a graduate student in sociology, Desmond (2012a, 1300–04; 2012b, 96; 2016, 315–36) ethnographically followed eleven eviction cases and established relationships with six landlords. From May to September 2008 he lived in the Green Street Mobile Home Park in Milwaukee’s predominately white south side, and from October 2008 to June 2009, he lived in a rooming house in the city’s predominantly black inner city north side.

Across his ethnographic work on eviction, Desmond used the methodological approach of “relational ethnography.”<sup>1</sup> From this perspective, analytic priority is given to the relationship between landlords and tenants as they navigate the housing market and the eviction process from unequal positions of power. For example, one of the most memorable characters in the book is Lamar Richards, a forty-eight-year-old black man. The previous winter, Lamar<sup>2</sup> had his frostbitten legs amputated below the knee after an eight-day bender on crack-cocaine in an abandoned house (Desmond 2016, 27). He now lives off of a monthly welfare stipend of \$628 and is the sole financial support for his two teenage sons. Then there is Sherrena Tarver, Lamar’s thirty-four-year-old, black, female landlord. Sherrena owns more than thirty-six housing units in downtown Milwaukee as well as a shuttle service that transports family and friends to see loved ones in prison (Desmond 2016, 13). She gambles regularly, drives a sports car, and makes annual trips to Jamaica (Desmond 2016, 144).

By employing the relational ethnographic lens, Desmond draws attention to this unequal, yet symbiotic, relationship. As a tenant, Lamar holds a precarious position in relation to the eviction process. As a landlord, Sherrena is very much a beneficiary of the eviction process, occupying a position of relative prosperity and wielding a discretionary form of eviction power over her tenants.

At the same time, Desmond locates both tenants and landlords as players within a broader field of social and power relations. Indeed, landlords, even so-called “slumlords,” are in large part the inevitable byproduct of the free market system. It is the peculiar configuration of the economy and the law that incentivizes landlords like Sherrena to evict poor, disabled Lamar and his two boys.

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1. According to Desmond (2014, 554), what sets the relational method—developed in part in the work of Emirbayer (1997)—apart from other ethnographies is: “its focus on dynamics that emerge between groups or agencies qualitatively different from, yet oriented toward and enmeshed with, one another.” Practically speaking, this means that as the researcher is constructing the scientific unit of analysis of their study, prioritization is given to relationships rather than to groups of people or places. At the same time, it is also worth noting that there is an ongoing theoretical and methodological debate between Desmond and other sociologists such as Michael Burawoy (2017) on whether relational ethnography is in fact a methodological advancement and whether sociology needs to be freed from a “substantialist ethnography” that confines studies to bounded people and places.

2. Following the stylistic choice in *Evicted* as well as Desmond’s other works (see, for example, 2012b), I introduce research subjects by their full pseudonym (when provided) and subsequently refer to them by first name only.

Beyond his ethnographic work, Desmond has conducted a number of related studies on the eviction process that draw on other methodologies. Among others, these include:

- The Milwaukee Area Renters Study (MARS), which interviewed approximately 1,100 renters between 2009 and 2011 (Desmond and Shollenberger 2015);
- The Milwaukee Eviction Court Study, an in-person survey of 250 tenants in eviction court over a six-week period in early 2011 (Desmond et al. 2013);
- An analysis of all 29,960 Milwaukee court-ordered evictions between January 1, 2003 and December 31, 2007 (Desmond 2012b, 92–93);
- An examination of 503 nuisance property citation letters issued by the Milwaukee Police Department (Desmond and Valdez 2013, 122); and
- An analysis of more than one million Milwaukee 911 call records (Desmond 2016, 333).

Both individually and alongside each other, these quantitative analyses work to enrich the overarching analysis advanced in *Evicted*. Moreover, when combined with the ethnographic component, the full magnitude of the racial, gender, and class inequality of the eviction process is displayed in even starker detail.

## EVICTION: A LAW AND SOCIETY PERSPECTIVE

The topic of housing has quite a rich history in the law and society arena. Early scholars examined rent-control violations and racial discrimination by landlords (Ball 1960; Ball and Yamamura 1960) and founders of the Law and Society Association actively helped shape the Fair Housing Act (along with other civil rights legislation such as the Voting Rights Act of 1965) (Garth and Sterling 1998). In the decades since, law and society scholars have assessed the legacy of the FHA (Massey 2015); conducted ethnographies of mass eviction in mobile home parks (Sullivan 2014); examined the rise of criminal background screening in the rental application process (Thacher 2008); and studied the role that counsel plays for tenants going through eviction court (Monsma and Lempert 1992; Seron et al. 2001).

To show what Desmond's sociology of eviction adds to our understanding of the centrality of housing, I will place his work in conversation with work focused on four sociolegal sites: eviction court; the gap between the "law-on-the-books" and the "law-in-action"; the practices that unfold in the shadows of the law; and the relationship between the criminal justice system and the housing market.

### Eviction Courts

The courtroom has, of course, occupied the agenda of many law and society scholars. Of these, a seminal contribution is certainly Mark Galanter's (1974) article "Why the 'Haves' Come Out Ahead." In it, he argues that financially well-resourced organizations have the social and economic capital to engage in strategic litigation efforts to shape the legal field to their advantage; these he terms "repeat players." By contrast, "one shotters" lack the resources necessary to challenge "repeat players." This leads to a gross disjuncture of power before the courts. While repeat players play the long game, one shotters are just trying to keep their heads above water. Desmond's scholarship draws attention to this type of unequal power distribution between

landlords and tenants in a number of ways; while some of these unfold outside of the purview of the law, others are a consequence of the law itself.

In 1963, the Supreme Court unanimously ruled in the landmark case *Gideon v. Wainwright* that defendants in criminal cases who are unable to afford their own attorneys would be provided one. The decision recognized legal representation as essential for a fair trial and extended the right to counsel from the federal government to the state level. Eighteen years later, however, the Court ruled in *Lassiter v. Department of Social Services of Durham County* (1981) that the right to counsel was reserved for defendants whose physical liberty was at stake. Following this decision, the federal government began to reduce funds for the provision of legal aid to the poor in civil matters such as eviction. A number of social scientific studies have documented the deleterious effects of not having counsel. In one randomized experiment in New York City in 2001, for example, researchers found tenants with counsel were more likely to appear in court and significantly less likely to be evicted than unrepresented tenants (Seron et al. 2001).<sup>3</sup>

More recently, in 2017, New York City became the first jurisdiction to provide civil legal assistance from their own funds.<sup>4</sup> Residents facing eviction whose income is 200 percent of the federal poverty level or less are now guaranteed the right to legal representation. While in 2013 only 1 percent of tenants appearing in housing court for eviction were represented by attorneys, in the last quarter of 2018 30 percent of tenants were represented by attorneys (Office of Civil Justice 2018, 5). While this is certainly a move in a more equitable direction, as Laniyonu (2019) points out, New York City, while large, is only one jurisdiction. By contrast, a recent study of 152 state courts selected to mirror the diverse organizational structures of state courts across the United States, found that in 76 percent of civil cases at least one of the parties, usually the defendant, was self-represented (Hannaford-Agor, Graves, and Miller 2015, iv).

Desmond's work, while not directly focused on legal representation, highlights the place housing court occupies in the urban metropolis and the complex relationship between landlords and tenants. He relates the story of a young black female tenant, Patrice Hinkston, who goes to work instead of to her eviction hearing because she could not find anyone to cover her shift. As she put it, "Everybody I know, except for my white friends, I swear they got an eviction on their record" (2016, 99). On the one hand, Patrice has a deep fear of losing her job—a job she struggled to secure in the first place. On the other, she is facing a likely eviction from her apartment. While both are far from ideal, missing court to her seems like less of a risk than missing a day at the job, especially when eviction is an event quite common among her black friends.

Even if she were to attend her eviction hearing, Patrice would face significant obstacles. Not only is she a "one shotter," she is also a single, poor, young, black female. Lucie White (1990) has written that women like Patrice face myriad entrenched—even subterranean—obstacles *despite* the absence of formal legal barriers. According to White (1990, 4, 32), speech, gender, race, and class inequality reproduce discrimination in

3. The type of eviction case—for example, whether an eviction case arose from nonpayment as opposed to illicit behavior—affects the extent to which legal representation is helpful, and even then, that is context-dependent and changes temporally (Monsma and Lempert 1992).

4. Five other cities (Cleveland, Philadelphia, Newark, Santa Monica, and San Francisco) have since passed similar legislation to guarantee tenants the right to counsel in eviction cases (Kusisto 2019).

the courtroom, causing them to operate as barriers in their own right. This stark legal reality painted by White also evokes Kimberlé Crenshaw's (1989) concept of "intersectionality," which posits that the inequality structures of discrimination experienced by black women in American society are mutually compounding.

Desmond's relational approach allows him to articulate some of the nuances that surround eviction court and the relationship between landlord and tenant. At one point in the book, for example, Sherrena, the black landlord introduced earlier in this essay, is going to evict her tenant Arleen Belle and the two of her six children who live with her. Arleen, a thirty-eight-year-old, single, black mother, had fallen behind in her rent payments after contributing a significant amount of her welfare check to pay for her sister's funeral. Sherrena was taking Arleen to small claims court in order to recoup some of that rent.

In spite of the adversarial relationship, Sherrena had helped Arleen out in various ways. Once, she purchased groceries for her, and even on the morning of the hearing, she called Arleen to remind her; in part because of that reminder, the both of them sat in court that afternoon. After stating their cases, the Commissioner ruled that instead of Arleen owing Sherrena \$5,000, she would owe \$1,285. Immediately, Sherrena grew visibly frustrated, exclaiming, "It's still not fair! . . . I'll never see the money. These people are deadbeats" (Desmond 2016, 102).

What is important here is the way in which Desmond draws out the complexity of the relationship between inner-city landlords and poor tenants. While Sherrena the landlord was the catalyst for her and her tenant Arleen going to small claims court in the first place, she also called Arleen to remind her of the hearing. Indeed, even after Sherrena's derogatory comments toward Arleen, she still gave her a ride back home (Desmond 2016, 106).

### The Gap Between the "Law-on-the-Books" and the "Law-in-Action"

A second area of law and society Desmond's work engages with is "gap" studies. As Malcom Feeley (2001) notes, gap studies tend to take a three-part approach: a rule is described; empirical evidence is presented to show a gap between the rule as it is written and as it is experienced; and policies are suggested to remedy the demonstrated gap. As a methodological orientation, gap studies are often viewed as foundational to the field of law and society itself (Seron and Silbey 2004; Gould and Barclay 2012), while there is also a vast literature critiquing the approach (Nelken 1981; Feeley 1976).

Gap studies occupy an important place in the literature on lower courts. For example, a study by McEwen and Maiman (1984) looked at the gap between compliance and noncompliance in small claims courts, and found that defendants were nearly twice as likely to comply with a negotiated settlement versus a court-mandated settlement. In another study, Susan Silbey (1981) found that lower trial courts do not appear to comport with "formal" rational law because lower courts are tasked with addressing many of society's ills.

Viewing Desmond's findings from the perspective that there are "gaps" between what housing law formally states and the ways that these laws are implemented by street-level actors provides a clearer recognition of law's strengths and weaknesses.

By placing Desmond's findings in conversation with various housing laws, remedial social policies may then be identified.

For example, as I noted earlier, the FHA was passed to protect minorities from racial discrimination, and twenty years later, the FHAA was passed to expand these housing protections to families with children. Desmond's findings, though, stand in stark contrast to these laws' formal pronouncements. In one study, Desmond and colleagues (2013) analyzed aggregate and individual-level eviction data to assess the likelihood that the presence of children at either the neighborhood-level and the household-level increases the likelihood of eviction. They found that the presence of children is an eviction risk factor at both levels (Desmond et al. 2013). A subsequent study found that with each successive child, the odds of eviction increased (Desmond and Gershenson 2017, 369).

The ethnographic data yielded similar conclusions for race. While following Milwaukee residents as they navigated the eviction process over a period of time, Desmond found significant racial disparities both in terms of the resources kinship networks could provide evicted individuals (Desmond 2012a, 1324) and in terms of how one's race could dramatically alter their search for housing. One arresting illustration of this was the experience Arleen and her boys went through following their eviction from Sherrena's unit. First, they moved to a homeless shelter. From the shelter, Arleen called dozens of property managers. The going was so slow that she even began telling managers that she did not need to inspect the unit prior to her initial rent payment. By the time all was said and done, it was the nineteenth landlord she called who finally said his rental agency would work with her (Desmond 2016, 282).

Arleen's struggle could not be more different from the experience of a white couple named Pam and Ned who were evicted from a trailer park. Ned was wanted on a drug charge, and between the two of them, their legal records contained multiple evictions and convictions. Pam received a monthly welfare check and Ned was perpetually unemployed, so to make ends meet, they worked side jobs. Plus they had five young daughters.

Nevertheless, less than two months after their eviction, Pam and Ned were able to secure a decent two-bedroom apartment for their family in a working-class area of Milwaukee (2012a, 1324). Desmond concludes that the explanation for this difference is that "they were white" (2016, 238); in fact, *all* of the black men and women Desmond followed had a significantly more difficult time securing housing following an eviction than the white individuals he followed. Despite housing laws purporting to protect against racial discrimination, these data highlight quite starkly that a gap exists in the everyday life of the law.

### Dispute Resolution in the Shadow of the Law

It is both empirically and theoretically significant to recognize that the removal of someone from their place of tenancy does not necessarily have to be accomplished through the courts. A wide range of law and society literature on the shadow of the law helps to shed light on this.

In their seminal article, Mnookin and Kornhauser (1979) examined divorce settlements as a case study of legal outcomes largely bargained and determined outside of the courts—in a space they term "the shadow of the law." Felstiner, Abel, and Sarat

(1980) argue that dispute resolution is a temporal process of naming, blaming, and claiming that can be conceptualized as a dispute “pyramid,” where disputes are resolved before the adjudication process through a variety of strategies. Building on this space and most useful for the understanding of eviction and poverty is Bumiller’s (1987) feminist-legal analysis of the shadow of the law, where she found that women and people of color who have experienced discrimination adopt an “ethic of survival” that entails the avoidance of legal institutions.

Desmond extends this literature in a number of ways, documenting not only the strategies carried out by landlords and tenants in the shadow of the law but also the sheer magnitude of the informal eviction process in-and-of itself—48 percent of Milwaukee renters were forced to move through an informal eviction process (Desmond and Shollenberger 2015, 1761; see also Desmond 2016, 330). In this space of informal eviction, Desmond identifies a variety of strategies such as cash incentives for tenants to vacate and allowing tenants to work off delinquent rent by doing chores on the landlord’s property.

In an article preceding the book, Desmond (2012b, 95) recounts how Joe Parazinski, a white building manager in black inner-city Milwaukee, preferred to pay delinquent tenants \$200 to vacate, rather than take them to eviction court; as Joe put it, “for every eviction I do that goes through the courts, there are at least ten that don’t.” For Joe and other landlords like him, incentivizing tenants to vacate has substantial benefits; they avoid paying lawyer fees and court costs and losing time out of their workday. Tenants get a windfall, but they forego the protections that the court might offer.

Use of the second strategy—where landlords allow tenants to work odd-jobs rather than be evicted—shows the precarity of the process for the tenants. Desmond found that landlords might allow indebted male tenants to pay off their rent through miscellaneous handyman jobs such as laying concrete, patching roofs, and painting rooms. For example, when Lamar, the handicapped tenant introduced earlier in the essay fell behind in rent, he begged his landlord Sherrena to have the opportunity to pay off his debt through handyman work. After some back and forth, she finally gave in. Despite his handicap, Lamar spent the better part of a week painting. On the last day, Desmond helped out. Once finished, they called Sherrena to come over and inspect their work, but she was not impressed. Despite the fact that Lamar had worked hard the whole week painting by crawling around on his hands and knees, she refused to reduce his debt and initiated his eviction shortly thereafter (2012b, 113; 2016, 20–31).

Beyond the structural conditions that enable this exploitation, culture—in the form of powerful stereotypes—also influences eviction decisions. Tenants’ physical ability, their communication style, gender, and other aspects of their personhood exist in a space where landlords hold discretionary power over whether they will be evicted or not. The result is that some tenants who owe significant sums of money are not evicted, whereas others who owe far less are. For example, Desmond finds that landlords appreciate male tenants who confront them after receiving an eviction notice; this “gruff, masculine way of doing business” helps to facilitate common ground between landlords and male tenants and mitigate the unequal relationship between the two (2016, 129; see also 2012b, 112).

In contrast, when women were given an informal opportunity for repayment, Desmond found “it sometimes involved trading sex for rent” (2016, 129; see also 2012b, 113). Oftentimes though, landlords perceived female tenants as avoiding them all together after receiving an eviction notice. Rather than seeking to console them, landlords generally despised these “ducking and dodging” tenants and moved to evict them rather than work with them (Desmond 2016, 128–29; see also 2012b, 113–14). When female tenants did adopt a masculine demeanor, this was often viewed by landlords as a manifestation of their sexual orientation. As Bob Helfgott, a long-time landlord remarked, “That angry dike thing, it drives me crazy. Okay, they’re just terrible. Always complaining, . . . so they’re tough to deal with” (Desmond 2012b, 114; see also 2016, 364).

### **The Criminal Justice System and the Housing Market**

As the sociologist Douglas Massey (2007, 110) has concluded: “two structural configurations are central to perpetuation of black disadvantage in the post-civil rights era: the housing market and the criminal justice system.” Both individually and in tandem, the structural configuration of the housing market and the criminal justice system produce and exacerbate social stratification, economic inequality, and disadvantage for black Americans. In this section, I discuss the interrelation between inner-city policing practices and the eviction process.

#### ***Third-Party Policing: The Case of Nuisance Property Ordinances***

Over the last four decades, there have been important shifts in police practice. Evidence-based policing, guided by actuarial risk assessment instruments (Harcourt 2007) and reaffirmed by a commitment to the governing logic of prevention (Ashworth and Zedner 2015), has led to a diverse array of policing practices (Herbert, Beckett, and Stuart 2018). One particular area of growth has been that of “third-party policing,” defined by David Garland (2001, 170) as “a third governmental sector . . . positioned between the state and civil society, connecting the criminal justice agencies with activities of citizens, communities and corporations.” Third-party policing weds the public and private spheres by assigning law enforcement practices to nonstate, civil actors.

One of the most popular third-party policing practices has been the creation and enforcement of nuisance property ordinances, which enable the police to designate properties as nuisances if a certain number of 911 calls are made within a defined timeframe. Once a property is designated as a nuisance, the owner faces a variety of sanctions if they do not address the cause of the nuisance. In Milwaukee, for example, the legal threshold for a property to be deemed a nuisance is three or more 911 calls within a thirty-day period. Once a property is designated a “nuisance,” property owners can face monetary fines, property forfeiture, or even incarceration if they do not appropriately abate the nuisance (Desmond 2016, 186–96; see also Desmond and Valdez 2013).

Legal scholars have explored how these nuisance property ordinances can negatively impact victims of intimate partner violence (Arnold and Slusser 2015;

Gavin 2014). As Fais (2008) first persuasively argued, for example, not only do nuisance property ordinances essentially blame the victim of the domestic violence, but by making eviction a potential outcome of repeated police calls, they may actually embolden the perpetrator of the violence to repeat their attacks until the victim is evicted. In this way, these ordinances can have the effect of forcing victims of domestic violence to make a decision between calling law enforcement and risking eviction or not calling 911 only to continue facing their abuser in isolation.

Desmond and Valdez examine this legal quandary by analyzing every nuisance citation issued in Milwaukee between 2008 and 2009. Over the two-year period, 503 citations were issued to private residential properties managed by 431 unique landlords (2013, 122–23). They found landlords responded to the overwhelming majority (83 percent) of nuisance citations issued for domestic violence with either an eviction or the threat of eviction if the tenant/victim calls 911 in the future (2013, 133). It is troubling that while victims of domestic violence are disadvantaged by these ordinances, other areas of law and policy, such as the Violence Against Women Act, are designed to protect this same population (Fais 2008, 1206).

Desmond's work also highlights the racialized contours of nuisance violations. For example, his finding that "properties in black neighborhoods disproportionately received citations, and those located in more integrated black neighborhoods had the highest likelihood of being deemed nuisances" (Desmond and Valdez 2013, 117), supports Blalock's (1967) "minority threat thesis" which predicts that heightened policing efforts will be aimed at integrated neighborhoods where black residents are the majority. His work also highlights the importance of an intersectional analysis which recognizes that black women—the population most affected by these ordinances—are marginalized and discriminated against based on their race, gender, and sexual orientation (Crenshaw 1989).

An extended example of the situation of Vanetta Evans, a twenty-year-old black woman, shows how these processes can create conditions of intergenerational economic struggle (Sharkey 2013). Vanetta was raised by a mother who had cognitive disabilities in homeless shelters and public housing across Illinois and Wisconsin. She had her first child at sixteen, her second a year later, and a third the year after that. Suffice to say, Vanetta held a lot of responsibility despite her young age. The father of her oldest child, was D'Sean. Although D'Sean "was a good dad when he wasn't drinking" (Desmond 2016, 260), he was physically abusive to Vanetta, which had prompted her to call 911 several times for assistance. In one instance, after the police arrived, D'Sean left, but he returned drunk and beat her; Vanetta's landlord responded with an eviction notice. Shortly thereafter, when D'Sean was picked up for a parole violation, the judge cited the 911 calls as one reason to keep him in prison. Vanetta was left homeless with her three children without support from D'Sean.

### *Eviction and Incarceration: A Relationship of Cyclical Disadvantage*

Desmond also draws attention to the myriad pathways between the housing market and the criminal justice system. As he writes: "These twinned processes, eviction and incarceration, work together—black men are locked up while black women are locked

out—to propagate economic disadvantage and social suffering in America’s urban centers” (Desmond 2012b, 121; see also 2016, 98). Eviction, which is central to the housing market, and incarceration, which is central to the criminal justice system, both affect the black urban poor in deeply consequential ways. Turning to the literature on mass incarceration, housing, and discrimination elucidates how these multifaceted processes unfold.

The entanglement of black males in the United States criminal justice system is deeply racialized. Black males disproportionately experience inner-city police violence (Desmond, Papachristos, and Kirk 2016); they are imprisoned at a rate nearly six times that of white males (Bronson and Carson 2019, 1); and for black males born since the mid-1970s who have dropped out of high school, 68 percent have been imprisoned (Western and Pettit 2010). Imprisonment is so common for these young, low-skilled black men that it may be best understood as a stage in their life course (Pettit and Western 2004). Relatedly, black females are imprisoned at a rate almost double that of white females.

When prisoners complete their sentences and reintegrate into society, they face numerous institutional, legal, administrative, and de facto barriers to successful reentry as convicted felons. Among the most consequential of these barriers are those relating to lawful employment (see Kirk 2018 for a review). A robust sociological literature has examined how employers discriminate against individuals based on their criminal record. In a classic study (Schwartz and Skolnick 1962), researchers sent four sets of fabricated resumes to prospective employers, with varying criminal records for each of the applicants. They found that employers were less likely to pursue applicants with any criminal justice system contact, even if the applicant’s resume was accompanied by a letter of support from a judge. Extending this line of inquiry in a now-classic field experiment,<sup>5</sup> Devah Pager (2003; see also 2007) had matched pairs of males (one black and one white) apply in person for entry-level jobs and randomly assigned criminal records to some of them. She found that blacks with a criminal record are significantly less likely than whites—also with a felony conviction—to receive interest as a potential hire.

This in-opportunity structure pushes many of these men to perpetual unemployment, the underground economy, or the informal work sector. But those lines of work lack the pay stubs that are so often necessary for becoming a leaseholder. Moreover, while some convicted felons do manage to secure jobs in the formal economy, they still face other forms of housing exclusion, such as criminal background screening during the housing application process (Thacher 2008) or eviction from public housing supported by federal “one-strike” policies (Geller and Curtis 2011). Given that black women have a higher likelihood than their male counterparts of a clean criminal record, employment in the formal job sector, or access to social assistance economic benefits (Pager 2007), black women disproportionately sign as

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5. Field experiments, also referred to as audit studies, entail researchers selecting matched-pairs of human subjects so that the variable to be studied (such as race) can be isolated as a potential causal mechanism (see Pager 2007 for a review). These studies have been used in fair housing audits, first developed in the 1970’s by researchers at the Department of Housing and Urban Development to study discrimination in the housing market (Wienk et al. 1979). Twenty years later, the audit model was adapted and applied to the employment arena by researchers at the Urban Institute (Cross et al. 1990).

leaseholders. Nevertheless, they are usually employed in positions that pay hourly wages and provide little to no job security. When they are laid off or have to deal with an unexpected expense, they are often unable to pay rent.

Desmond charts these entangled processes through both qualitative and quantitative methods. In his analysis of Milwaukee eviction court records between 2003 and 2007, he finds that: “In black neighborhoods, women outranked men within the eviction records by a rate of 2.5: 1” (2012b, 99). In the supplemental MARS survey he finds that “among evicted tenants, black women outnumbered black men by 1.75:1 and white women by 6.13:1” (2012b, 104). In his ethnographic work, Desmond finds that although eviction is disproportionately experienced by black females and incarceration is disproportionately experienced by black males, both eviction and incarceration can be experienced by the same person. Returning to the character Vanetta reveals how this happens.

The fathers of Vanetta’s three young boys were either in prison or nowhere to be seen. To make ends meet, she worked five days a week at Old Country Buffet. When her assignment was cut down to one day a week, it was going to be impossible for her to cover both the rent and electricity. Soon after, she received yet another eviction notice—this time for nonpayment. The next thing Vanetta knew, she and another woman also facing eviction came together through their loose bond of friendship and a shared desperation for economic survival to commit an armed robbery (Desmond 2012a). According to court records, they were both arrested a few hours later. Confessing to the felony in the interrogation room without a lawyer, Vanetta explained: “I was desperate to pay my bills, and I was nervous and scared and did not want to see my kids in the dark or out on the street” (Desmond 2016, 244).

During her sentencing hearing, Vanetta once again took full responsibility and apologized profusely to the older white male judge: “At the time of this situation, me and my kids were going through a difficult time in our lives and on the verge of being evicted and our lights being cut off. I was overwhelmed by the difficulties” (Desmond 2016, 265). Despite these factors, the judge sentenced Vanetta to fifteen months of incarceration and sixty-six months of parole. As her three young children waved goodbye to her, Vanetta was escorted away crying and in handcuffs (Desmond 2016, 267).

What this vignette draws attention to are the variegated ways that the housing market and the criminal justice system interlock to perpetuate concentrated disadvantage. The fathers of Vanetta’s children were absent, navigating their own respective legal issues. This led to Vanetta—a single, young, black mother—having to lease her own apartment. Then, when her hours were dramatically cut at work, she chose to commit a crime. Although this act was driven in large part by her precarious financial situation, she was sentenced to prison and then parole. With the incarceration, Vanetta was physically removed from being a mother to her three young boys. Because it was a felony conviction, new barriers were also introduced to her life. It will be more difficult for Vanetta to secure employment, and more difficult for her to secure a place to rent. In this way, one hardship led to another hardship and then to another. Therefore, the cycle of poverty that engulfed Vanetta’s youth and her upbringing has come back full-force, altering not only her own life trajectory, but also the lives of her children.

## CONCLUSION

*Evicted* has broken significant analytic terrain in uncovering the mechanisms that make the eviction process “a cause, not just a condition, of poverty” (2016, 299). Building on this, and shifting the lens of analysis ever so slightly to a law and society perspective, this essay has elucidated the complex role law plays throughout this arena. First, in eviction courts, the law legitimates the eviction process in multiple ways. Perhaps most importantly, *Lassiter* (1981) limits the federal right to counsel to defendants whose physical liberty is at stake, which means that poor, uneducated tenants often must go head to head against their landlord’s lawyers. Usually, the consequence is that tenants are evicted.

Second, the gap between what the law formally states and how the law unfolds in action is significant. Black women with children, for example, although purportedly protected by the FHA and the FHAA, are profoundly discriminated against in the housing market. The very presence of a child at a place of residence is a risk factor for eviction, and black tenants have a significantly higher likelihood of receiving an eviction notice than white tenants (Desmond et al. 2013; Desmond and Gershenson 2017, 369). With informal dispute resolution, multiple exploitative practices are also at work. Here, in the shadow of the law, landlords may pay tenants to leave their premises before going to eviction court. Although this practice is beneficial in terms of tenants being able to avoid having an eviction placed on their legal record, the practice also highlights just how stark the power differential is between landlords and tenants. For a mere few hundred dollars the urban poor will vacate their homes.

Consideration of the relationship between the housing market and the criminal justice system illustrates the processes of urban poverty governance and the role of the law in the lives of the poor. Black men, who are disproportionately entangled with the criminal justice system, are often incarcerated or barred from rentals by private landlord screening practices; black women—most often working in the low-wage sector—disproportionately sign as leaseholders. When these women are evicted, securing a new rental will be made more difficult with an eviction on their record. It is this circle of poverty, deployed through myriad practices via numerous social institutions, that sustains a cycle of urban poverty.

Through the four diverse sites of sociolegal engagement I have considered in this essay, a disheartening portrait of the law in the private rental market emerges. Whether through the law itself or in the shadows of bureaucratic legal institutions, the poorest sections of the urban environment are permeated in classed and racialized ways. It is the law that legitimates the actions of inner-city landlords and private screening practices of prospective tenants’ criminal and eviction histories, and that does little to protect renters from experiencing discrimination.

Ultimately, though, what Desmond provides law and society scholars is not only a perspective of law’s shortcomings, but of the enduring exploitations and social inequalities that result. At the core of this problematic is the fact that housing in the United States is treated as a commodity rather than as a fundamental human right. The failings of social institutions are minimized whereas the failings of the individual are

maximized. The role for future legal scholars, therefore, is to more fully develop a theoretically infused, empirically based jurisprudence of human rights that helps to bring about a fundamental shift in the way housing is conceptualized.

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