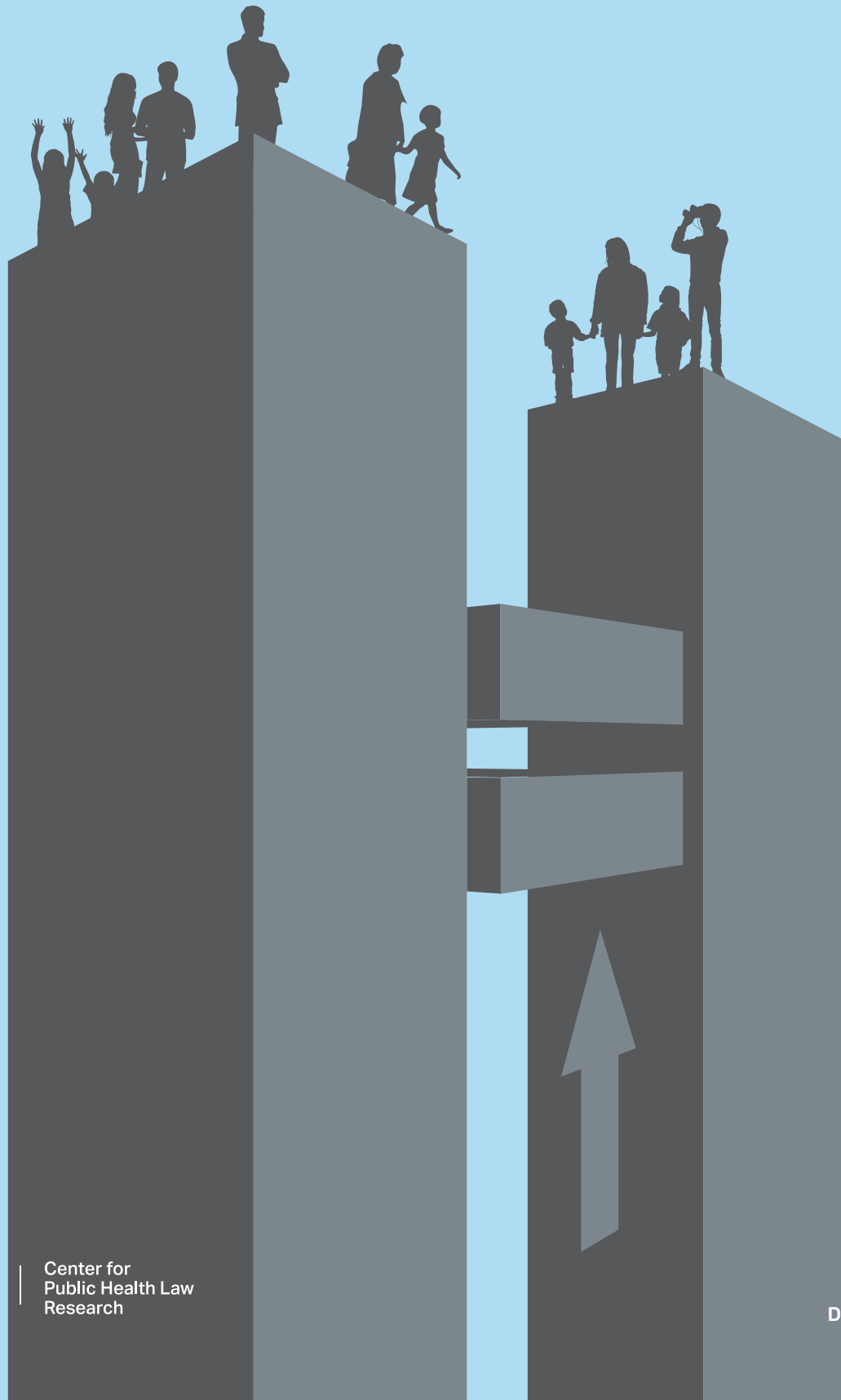


PART 5

# GOVERNING HEALTH EQUITY IN HOUSING



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## **The Legal Levers for Health Equity through Housing Report Series**

This is the fifth in a series of reports exploring the role of law in housing equity and innovative uses of law to improve health equity through housing. The reports are based on extensive literature scans and semi-structured interviews with people who are taking action in housing policy and practice. The full series includes: Report I: A Vision of Health Equity in Housing; Report II: Legal Levers for Health Equity in Housing: A Systems Approach; Report III: Health Equity in Housing: Evidence and Evidence Gaps; Report IV: Creative People and Places Building Health Equity in Housing; Report VI: Health Equity through Housing: A Blueprint for Systematic Legal Action.

# GOVERNING HEALTH EQUITY IN HOUSING

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"Creating healthy communities will require a broad range of players—urban planning, education, housing, transportation, public health, health care, nutrition and others—to work together routinely and understand each other's goals and skills."

– Robert Wood Johnson Foundation Commission to Build a Healthier America (Robert Wood Johnson Foundation Commission to Build a Healthier America, 2014)

## Introduction

"Governance" is the management of the course of events in a social system. In its public management sense, governance refers to the set of powers, institutions, and processes (like a zoning board or a regional planning authority) through which government can try to coordinate the many individual legal and policy levers for housing development, preservation, and equity. In a broader sense, governance encompasses how policymakers, but also citizens, businesses, and other individuals and organizations manage the law (and each other) to attain their ends. In this way, governance moves from a focus on government to many different kinds of actors using many different kinds of power to adapt to and influence events they cannot entirely control and may only partially comprehend (Burris, Drahos, & Shearing, 2005; Burris, Kempa, & Shearing, 2008).

We turn to the concept of governance because we recognize that the complex problems of housing cannot be solved simply by governments deploying individual legal rules and fiscal resources to regulate housing from the top down. Like other systems, housing is determined by how markets, regulations, political imperatives and social attitudes interact and influence each other over time — resisting any sort of centrally-planned change (de Savigny & Adam, 2009). Governments and other actors in the domain of housing can only achieve the goal of health equity in housing by adaptively influencing the path of systems

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"Frankly, I think the complexity of housing governance ... is something that scares away a lot of people from getting more interested in the field. A lot of people sort of throw up their hands."

– Barbara Samuels, ACLU of Maryland

of housing over time, using a variety of levers, and learning all the time.

In earlier reports in this series, we looked at the formal legal levers for governing the housing system — levers like regional planning and the Affirmatively Furthering Fair Housing Rule. In Report 4, we heard from voices in the field about these levers’ particular strengths and weaknesses. In this report, we focus on “governance” as an approach to the challenge of achieving health equity in housing (HEIH). We start with the theoretical perspective, offering a description of governance as a multi-level, multi-actor practice embracing complexity and using an adaptive strategy of experimentation and learning that is measured by results. We then illustrate the successful practice of effective governance for HEIH in one of fair housing’s greatest success stories, the achievement and maintenance of HEIH in Oak Park, Illinois.

## Housing Systems Governance: Many Players at Many Levels with Many Levers

In Report 2, we laid out the case for HEIH as an overarching goal for systems change. HEIH provides legal work in housing with a *motive* — an organizing principle that can guide the independent use of many legal levers by many actors — and a *measure* — regardless of how any particular lever works, we judge success by whether the system is producing more HEIH. In this report, we focus on a third necessary element: the *methods* of governance for HEIH.

Legal levers give actors in the housing system power to govern. This is true even though, as we have seen in earlier reports in this series, many legal levers seem to fail in their primary intended purposes. For example, the Fair Housing Act has not desegregated Chicago, but the *Gautreaux* litigation has given fair housing

advocates a long-term positive role in the operation of subsidized housing programs. From a governance point of view, laws are resources for getting and exercising influence over the housing system.

Table 5.1 shows some of the key tools of governance, and how certain actors can use law to wield them. Law, of course, *sets basic standards and goals*. For all its limitations, the Fair Housing Act still stands as a national commitment to integration. Given the centrality of money to the housing system, legal levers that *shape the flow of resources* are critically important. Law assigns authority, and when that authority stands in the way of HEIH, legal levers can be used to *(re-)define government powers and duties*. If zoning is a barrier to affordable housing,

then state law giving localities zoning authority is a lever for changing the local politics of development. Similarly, law *creates rights and privileges* that help people and organizations get their way: the right to a lawyer potentially changes the power relations in eviction cases; rent caps give tenants more security, and can reduce the influence of developers over a local housing market. The politics of housing, like all politics, is in part about who has a voice and what issues are seen as important. Legal levers like the Affirmatively Furthering Fair Housing Rule, litigation and regional planning processes can be used to *set the policy agenda and win a seat at the table*.

The governance of housing in the United States is both “poly-centric” and “multi-level.” By poly-centric, we

Table 5.1: Examples of Levers, their Uses and Users

Governance Function	Legal Levers	Users
Instigate and enable planning and agenda setting	Regional Planning Law	State governments
	Affirmatively Furthering Fair Housing	HUD Public and private stakeholders
	Fair Housing or other lawsuits (e.g., <i>Mount Laurel</i> )	Community-based organizations (CBOs) Developers
Define structure and power of government	Municipal corporation law	State legislatures
	Education law	
Set and enforce standards (and define implicit or explicit goals)	Fair Housing Act, zoning laws, housing codes	Federal, state and local governments, private litigants
Regulate the use of funds	LIHTC QAP	State and some local governments
	Voucher eligibility and use	HUD, Housing authorities
Confer rights, privileges, and immunities	Landlord-Tenant Law	Landlords, tenants
	Fair Housing Law	Individuals, CBOs, government enforcement agencies
	Right to counsel for eviction	Tenants
	Property rights (e.g., takings)	Owners

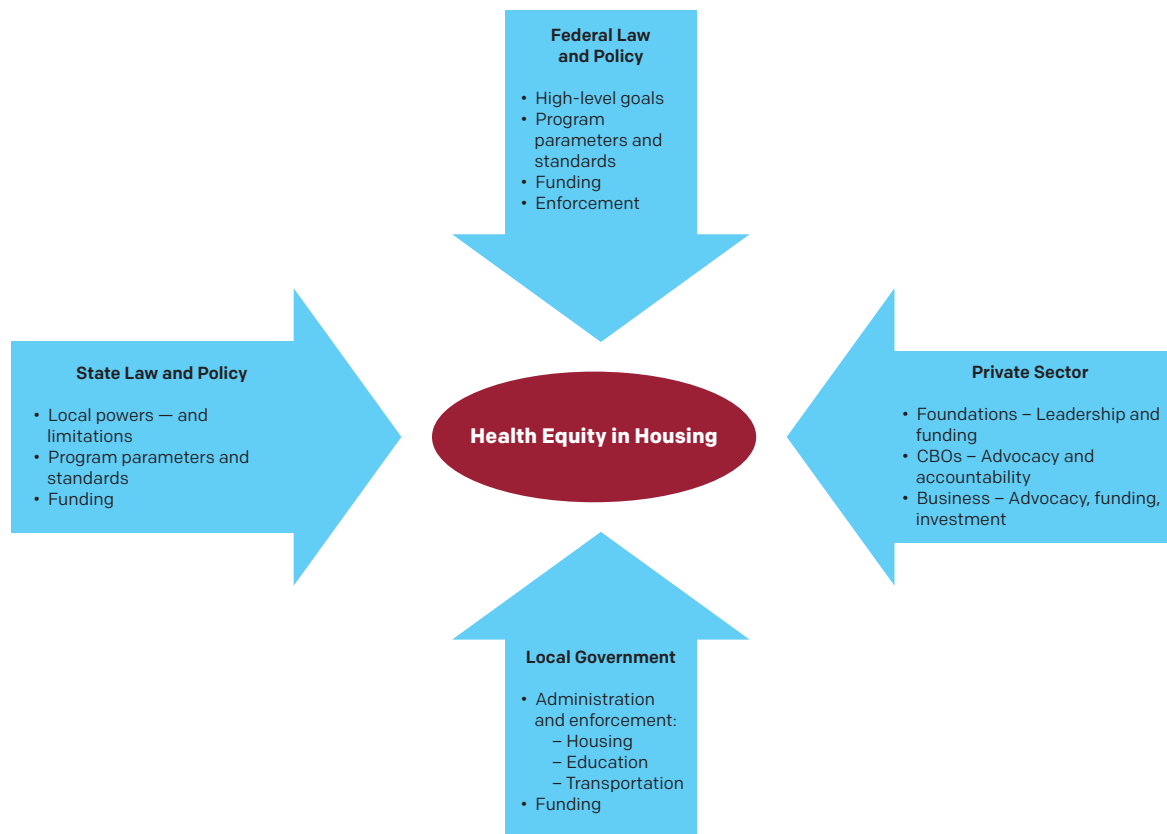


mean that all sorts of actors, both public and private, operating in many different settings, can and do use the levers they have at hand to nudge the system in the direction they desire. We are not just concerned with what government does: advocates, developers, and neighborhood residents all have interests and ways to pursue them through law. The term multi-level refers to the legal hierarchy in the United States, in which federal law generally supersedes state law, and state law generally supersedes local. Figure 5.2 depicts, in broad terms, a governance approach for HEIH. We will have specific recommendations for legal action in the final report in this series, so for present purposes we will focus on the key roles.

As we and many experts see it, the primary locus of housing governance is local (Boudreaux, 2011;

Davidson & Foster, 2013). Cities and towns are where housing actually gets built and maintained. Every unit is in a specific place, embedded in local markets, cultures, values, and politics. Local governments govern zoning, building, enforcement of housing codes, and implementation of strategies to provide access to equitable, affordable, healthy housing (Davidson, 2017 pp.587-595). Cities and towns are where the beliefs and preferences of residents and builders and landlords are enacted in disputes over specific units. They are where the backyards of NIMBYism are found, and where the deals are made that shape the implementation of even state and federal rules. They are where the planning, negotiation and legal analysis are deployed to work out the details in specific cases. And towns and cities bear the direct weight of housing failure. The costs of homelessness

Figure 5.2: A governance approach for health equity in housing



or unhealthy homes often falls on cities. Cities pay the opportunity costs of a lack of affordable workforce housing.

Cities may be the place where the brick meets the mortar, but there is much in the housing system that localities cannot govern. Housing — and HEIH — depend on state, federal, regional, and market conditions over which locals have little or no control. Putting local governments with limited resources at the very heart of housing governance in America means that the entities with the fewest resources face the strongest economic, political, and social forces (Boudreaux, 2011 pp.11-60; Orfield, 2012a; Rothstein, 2017).

To accept that localities are the locus of action for HEIH does not mean that localities can be counted on to pursue it. We have socio-economic segregation in part because of local preferences that ignore the interests of people outside the locality, or the needs of some community members. Even communities that might not oppose greater diversity and affordability might not place it high enough on the agenda to do anything about it on their own, may not know what to do, or may lack key resources for action. Thus, supporting local governance for HEIH requires embedding local authority and discretion in a framework that supports positive local efforts and constrains local backsliding, evasion or abuse. This is, in broad terms, what our federal system of government is designed to do. It is also a role for civil society.

The federal government sets many of the most important standards (in areas from lead and public housing eligibility to mortgage finance and the LIHTC program) and supplies the lion's share of government funding for housing and related programs. U.S Department of Housing and Urban Development (HUD) rental assistance programs (public housing, Section 8 project-based rental assistance, and vouchers) funding was more than \$41 billion in 2019 (Bell, 2019). LIHTC adds almost another \$10 billion each year (Congressional Research Service, 2019).

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"I have seen [NIMBY] up close and personal recently in my own community... I ... have seen my neighbors — and I live in very Democratic California and in a very liberal county — ... just go insane over the possibility of affordable housing coming to our community. Just insane. Raising every possible reason why it is a bad idea. The environment. Parking. Traffic. One thing after another. So I just feel disheartened by what happens. I think NIMBYism is probably one of the main, if not the main, reason why it would be very difficult to apply a sort of [Mount Laurel] fair share rule in a lot of places. I am not saying we shouldn't do it, we should."

— Liza Cristol-Deman, Brancart & Brancart

It also has the option to aggressively enforce these rules and standards in a variety of powerful ways, including litigation and funding conditions. The federal government has generally *not* used its power effectively to promote HEIH, but it could, and getting it to do so is a primarily element of governance for HEIH.

State governments also provide money and standards, often in tandem with federal efforts. And states have important powers that the federal government does not, most notably in determining the structure, powers, and jurisdiction of local governments. States can ultimately decide whether and to what extent localities can exercise zoning authority. State governments ultimately decide how the boundaries of cities, housing authorities, school districts, transportation systems, economic development and planning entities relate, and how all these entities can raise revenue. State law provides the bulk of landlord-tenant rules, and the court systems that enforce them. Thus states have enormous potential authority to reshape the local landscape of housing policy.

That's just the government. The central role of governments should not divert our attention from the reality that private actors generate much of the action in the housing system. Most housing is privately owned, and the \$27 trillion value of that housing dwarfs the publicly-owned or subsidized stock (Housing Finance Policy Center, 2019). From individual gentrifiers renovating a residence for personal use, to hedge funds buying up thousands of houses (Casselmann & Dougherty, 2019), private decisions drive the housing market far more proximately than government plans. The governance role of the non-government sector is pervasive even in the legal realm. Private advocacy and lobbying shapes the national and state standards and enforcement; the size of the funding pie, and how it is cut up; and the stated goals of the housing system. And at the local level, the war of real-estate and landlord interests, NIMBYism, and local spending and policy is a central driver of housing decisions.

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"Really what you need ... is something that gets closer to regionalization of government. You need to figure out a way to actually make credible commitments across jurisdictions. You need to get a way to have jurisdictions fully integrate their planning. ... We politically have abandoned regionalism. I think that was a huge mistake."

—Nestor Davidson, Fordham University School of Law

The non-governmental sector can be a powerful force in ensuring the availability of affordable housing and achieving HEIH. Community-based and public-service focused non-profits have led and sustained efforts for HEIH at the local and national level. Businesses that recognize the importance of affordable housing can invest in it. Colleges and universities have enormous research and knowledge resources, and train many of the people who will be working in the system across long careers. Foundations have political and economic power, and they can and do bring it to bear at the local, state, and federal level. They have the capacity to support big thinking and practical innovation — and the research and dissemination that helps new ideas and innovations become standard.

Managing the allocation of power in a multi-level, poly-centric system is a classic governance problem (Burriss et al., 2008). People at the local level know the problems and have the most immediate incentives to solve them: the case for decentralized governance is the case for giving locals the resources

and authority — and the freedom — they need to fix their own problems. Supporting local action is not just an issue for housing governance. It is central to efforts to improve the quality of the air and water that make up the biosphere in which we live (Coglianese & Mendelson, 2010; Silbey, 2013), and has been recognized as crucial to addressing health inequities and improving social determinants of health (Burris, Hancock, Lin, & Herzog, 2007). Yet along with limited control over state, federal and even global trends, local governance is susceptible to excessive self-interest, parochialism, corruption, and tyranny of elites or majorities. Federal and state authorities are in a position to establish and enforce a framework of principles to guide local governments and markets towards achieving HEIH. Good central governance can leave space for local knowledge, capacity, discretion and flexibility, while still creating standards, structures and forms of oversight that promote a broader vision of the good and create systems of accountability and constraint. Private citizens and organizations can articulate, promote and enforce norms of behavior, and monitor local compliance with state and federal standards.

Eleanor Ostrom’s Nobel-prize winning work on governance systems, and work from a number of scholars on “democratic experimentalism,” provide broad guidance for housing proponents struggling to meet this challenge. Ostrom, studying the governance of common pool resources,<sup>1</sup> explored how a combination of local self-management and external accountability could allow people to share a scarce resource fairly and sustainably. The rules governing shared but finite resources such as watersheds need to include some basic design features to define the boundaries of the resource, manage who can access and use it, monitor conditions, sanction cheating, resolve disputes, and make sure information concerning all of this is flowing to all stakeholders

(Ostrom, 2005 pp.221-236). But no two settings are alike, and the knowledge necessary to set and enforce the rules is mostly in the heads of the people using the resource. The design of governance systems therefore has to facilitate experimentation by local actors, but within a multi-level structure in which higher-level entities could support and hold accountable local groups (Ostrom, 2005 pp.219-221, 255-258).

Housing is not literally a common pool resource: we can make as much as we want. And, for better or worse, we already have an extensive, pervasive and detailed set of rules and governance structures in place. Nonetheless, Ostrom’s design principles for governing the commons are useful guidance as to how proponents of better governance for HEIH can reimagine and re-organize the roles of local, state and federal level actors. These include:

- **Clearly defining the boundaries of the governance system.** Housing markets and economies are metropolitan and regional, but in most places government power is divided into cities, towns, school districts, and special-purpose authorities. Aligning jurisdiction and authority to create power and accountability for HEIH in fractured places is core governance work for HEIH.
- **Matching rules and processes to local needs and conditions.** No two places are entirely alike in their housing needs, social preferences, economic situations, and politics. There is no one-size-fits-all path to HEIH, so towns, cities and regions need some freedom to decide how to achieve the goal.
- **Giving stakeholders a say in the rules.** Housing systems are metropolitan and regional, such that giving a housing veto to every jurisdiction within the system is a major governance problem. Yet local governments — and landlords, developers, residents, businesses, and fair housing advocates — all have knowledge and capacity to contribute and

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<sup>1</sup> Common pool resources are ones that “yield benefits where beneficiaries are hard to exclude but each person’s use of a resource system subtracts units of that resource from a finite amount available for harvesting” (Ostrom, 2005 pp.23-24, 79-80). Examples of common pool resources include water catchments, fisheries, forests and pasturage for domestic animals. Actors seeking to govern the use of these resources are “required to establish and enforce rules limiting the appropriation” of these resources (Ostrom, 2010 p.219).

preferences to express. Consultative and decision-making processes that bring more diversity into the planning and execution of HEIH are essential, if often difficult, tools for managing NIMBYism, the quest for profit, aesthetics, and the trade-offs of development.

- **Make sure that higher-level entities treat local rules and decisions with deference and respect.** Once local governance processes produce plans, higher authorities need to respect them as long as they move reasonably toward HEIH. Federal, state, and even metropolitan governments will be constantly tempted to override local decisions or short-circuit local processes. Localism only works if higher-ups take it seriously.
- **Have a monitoring system that locals participate in (and respect).** Progress in HEIH is the measure that matters. More housing in areas of concentrated poverty, or a development that is economically but not racially diverse, does not advance HEIH. Decisions about where to invest, what to scale-up, or when to intervene in local work all depend on monitoring this progress for their accuracy and legitimacy.
- **Regulate responsively, with a scale of graduated sanctions for resource appropriators who violate community rules.** A governance approach assumes the patience to let processes of deliberation, learning, and action play out over time, with local freedom to innovate, but it also requires accountability for monitored results. Local authorities have to enforce rules and agreements. Higher levels of government must maintain oversight and discipline local action toward the goal. That said, pressure and sanctions have to be responsive to those reasons and the conditions behind them. A town that resists affordable housing because of concerns about the burden on school budgets is different than a town that resists it because of racial or class bias. (For more on responsive regulation, see Ayres & Braithwaite, 1992.)
- **Provide mechanisms of conflict resolution that are cheap and easy to access.** Traditional litigation in

America is a good way to influence the course of policy, but for every story in which a community uses a lawsuit to get a voice, there is a story of a policy innovation that is chilled or stopped dead in its tracks by private interests with expensive legal help. Similarly, mechanisms like a builder's remedy to get around zoning barriers to affordable housing, or eviction to address landlord-tenant disputes, or fair housing complaints to fight discrimination, all require a fair amount of investment and entail often years of delay. Dispute resolution looks like a domain where innovation would be helpful for HEIH.

- **Build responsibility for governing the housing system in nested tiers from the lowest level up to the entire interconnected system.** This principle restates the entire theme of governance design for HEIH. Many housing programs work or fail based on the ability of local, state, and federal stakeholders not only to respect each other's boundaries and roles, but also to work together actively and positively. Each community, and every level of governance, is part of a national system that has produced too few affordable units in places that lack the amenities and population diversity optimal for health and equity:

Each unit exercises considerable independence to make and enforce rules within a circumscribed domain of authority for a specified geographical area. In a polycentric system, some units are general-purpose governments while others may be highly specialized. Self-organized resource governance systems in a system may be special districts, private associations, or parts of a local government. These are nested in several levels of general-purpose governments that also provide civil, equity, as well as criminal courts (Ostrom, 2005 p.281).

These principles can inform the design of governance systems for HEIH. In the legal pursuit of HEIH, nothing is more important than a spirit and practice of democratic experimentalism. Given a system of legal levers that have robustly contributed to inequity and insufficiency of housing, the path to success starts with admitting that we don't know, with certainty, which legal levers to push and in what sequence. At all levels of governance, solutions have to be devised

and tested to learn what will actually promote HEIH (Huising & Silbey, 2011; Ostrom, 2005; Sabel & Zeitlin, 2012). Legal levers are the inputs. Actual progress toward HEIH is the measure of systems change (de Savigny & Adam, 2009 pp.39-45). The characterization of health equity in housing as the purpose or goal of a housing system thus allows stakeholders in a system to diagnose the state of the system by measuring whether housing is safe and affordable and whether access to housing is equitable. Over time, results validate measures or show they are failing. This is the story of Oak Park.

## Local Governance of Health Equity in Housing: The Oak Park Story

In 1968, Oak Park was a virtually all-white community on the western edge of Chicago with a population of 65,000 people: black residents made up just 0.2 percent of this population. That year, a local urban planner, Pierre de Vise, got residents' attention by predicting that within five years the village would see the emergence of segregated black neighborhoods and an exodus of white residents as the ghetto in Chicago expanded in its direction (Orfield, 2012b p.188; Ruby, 2001 p.37). De Vise had history on his side: as the west side of Chicago's black community was expanding and nearing Oak Park, there "had been virtually no record of stable integration in Chicago for half a century ..." (Orfield, 2012b p.188). Instead, temporary integration of white communities changed quickly to "resegregation" in all-black neighborhoods (Goodwin, 1979 pp.1-9). But Oak Park did not follow the "Chicago pattern" (Goodwin, 1979pp.52-53). To this day, the village has maintained "significant diversity with remarkable stability" for nearly 50 years (Orfield, 2012bp.186).

The achievement was the product of determined and creative effort by government and citizens to change

### Oak Park Today

Oak Park is a community of approximately 52,265 people in Cook County, Illinois. Part of the Chicago metropolitan area, it is 4.7 square miles in size. Based on the 2017 American Community Survey estimates, the population was 68.6 percent white, 19.8 percent black, 7.7 percent Hispanic, 4.5 percent Asian and 0.1 percent Native Hawaiian and other Pacific Islander (United States Census Bureau, 2018a). Estimated life expectancy in the Oak Park Regional Housing Center's census tract is 81.70 years, compared with that of 78.67 years in Cook County, and 78.60 years for the United States (Robert Wood Johnson Foundation). The median household income in 2017 was \$87,271 in Oak Park, compared with that of \$61,229 in Illinois. The estimated median value of owner-occupied housing in 2017 was \$370,400 in Oak Park, compared with that of \$179,700 in Illinois (United States Census Bureau, 2018a; United States Census Bureau, 2018b).

the prevailing block-busting and white flight script (Orfield, 2012b p.186). Early on, instead of trying to exclude new black residents, the village government adopted a comprehensive fair housing ordinance that prohibited discrimination in advertising, sales, rentals, and finance, and vested the Oak Park Community Relations Commission with enforcement authority (Goodwin, 1979 pp.149-150). The adoption of this ordinance in 1968, in the aftermath of the assassination of Martin Luther King, Jr., and the prediction of racial change, was important in “defining Oak Park in the minds of residents as ‘open’ and ‘integrated’” — even though at the time of its adoption Oak Park was nearly a completely white community (Goodwin, 1979, pp.205, 163; Historical Society of Oak Park & River Forest, 2018), and the Commission actually had no staff.

The fair housing ordinance was a “strong” one because it provided the Commission with injunctive



Lake Street, Oak Park, Illinois. Oak Park remains a diverse and stable community because of a determined and creative effort by government and citizens to change the housing script. Photo via Wikimedia Commons.

powers to enforce its prohibition on discrimination. In the first years after its enactment, however, there were few complaints and nearly all concerned apartment rentals. Nonetheless, in 1972, the village government doubled down, transforming the part-time Commission into a Community Relations Department with a full-time administrator and a full-time secretary. The next year, the city had its first fair housing complaint concerning home sales (Goodwin, 1979 pp.148-150).

As neighboring Austin repeated the pattern of all-white, to temporarily integrated, to black re-segregation, a realization grew that more had to be done than simply prohibiting discrimination, and an idea emerged of what that might be (Goodwin, 1979 p.205). The creation of the Community Relations Department marked a shift in community relations from an important, but peripheral, function of government to a central and guiding principle for government in Oak Park (Goodwin, 1979; Saltman, 1990, p. 305). More importantly, citizens and community organizations were taking the lead in imagining a more proactive, deliberate approach to fostering true neighborhood-level diversity and integration. The emerging goal was not just to make sure that no prospective residents experienced discrimination, but that the community would actively foster stable integration, using its resources to affirmatively further what was being called “dispersal”: “a mixture of racial and ethnic groups throughout the village” (Goodwin, 1979 p.158). This approach deviated from a “civil rights” model built on the individual right to move anywhere in the community without facing discrimination. By contrast, as Evan McKenzie and Jay Ruby argued in 2002, Oak Park “developed a complex [set] of ordinances, practices, departments, programs as well as private non-profit agencies designed to maintain a particular vision of diversity in which different ethnic groups are dispersed throughout the community” (McKenzie & Ruby, 2002, pp.11-12).

The village government both encouraged and adapted to the emergence of an integrated web of institutions that took on responsibility for achieving an inclusive and integrated system of housing in Oak Park. A pivotal moment in the process of linking government action to community-driven change came with the founding of a new community institution, the Oak Park Housing Center. In January 1972, prior to the creation of the Community Relations Department, the Community Relations Commission had received a request from the First Congregational and First Presbyterian churches to approve a new community-based housing referral service, which would have the mission of promoting a dispersed pattern of racial integration in the village (Goodwin, 1979 pp.152-153). While the Community Relations Commission had no formal authority to approve or disapprove the opening of a housing referral center as such, the churches believed that the proposal to create a housing referral center should not proceed unless it received the support of the city agency responsible for fair housing (Goodwin, 1979 p.153). After some hesitation, and despite the wishes of some of the members of the Commission not to give any formal endorsement to support its formation, the Commission ultimately recommended that the churches provide space for the new housing center, which would be operated by a community activist. This decision of the Commission was another marker of the government's growing commitment to "active and directed intervention" in the design of an integrated community (Goodwin, 1979 p.154).

By April of 1973, the active approach had prevailed across the village government. Having already elevated the Commission to a full-fledged department, The Village Board of Trustees affirmed the change in goals with a resolution:

Efforts to achieve diversity are nullified by the resegregation of neighborhoods from all white to all black. We, individually and as a community, have worked long and hard on behalf of open housing in Oak Park; we must not succumb to Big-City-style residential patterns.

A free and open community – equal and diverse – can only be achieved through dispersal: a mixture of racial and ethnic groups throughout the village (Goodwin, 1979 pp.157-158).

With the resolution setting the tone, the village board deployed several related tactics. It took action to influence public perceptions about and confidence in the city's future. It decided to build a new \$4 million Village Hall in a transitional neighborhood as a "vote of confidence" (Goodwin, 1979 p.124; Saltman, 1990 pp.306-307). It launched "gateway" projects of cosmetic improvements consisting of landscaping and parkways and medians to mark the boundary between Oak Park and Austin (Goodwin, 1979 pp.126-127). It passed a \$1.5 million bond issue for use in housing rehabilitation (Saltman, 1990 pp.306-307). It improved housing inspections, expanding oversight to include "neighborhood walks" and inspection of alleys (Goodwin, 1979 p.161; McKenzie & Ruby, 2002 pp.20-21; Saltman, 1990 pp.306-307). It added extra police patrols in south-east Oak Park on the boundary with Austin (Goodwin, 1979 pp.111-112, 124-125). It hired a public relations firm to get its message out, and sponsored an annual meeting of people from communities across the country pursuing the same path (Saltman, 1990 pp.306-307).

When realtors expressed concern about the dispersal approach, the village government and the Oak Park Regional Housing Center did not back down. They enforced and even strengthened the rules against discrimination, but also used legal authority to back confidence-building, and to deal with specific threats and problems in the dispersal process. Measures included:

- Fair housing testing to determine whether realtors were engaging in practices of redlining or steering (Goodwin, 1979 pp.156-157).
- A ban on all "For Sale" signs for all residential property except new properties and condominiums (Goodwin, 1979 p.154; McKenzie & Ruby, 2002 pp.16-17).



- A ban on “redlining”(Goodwin, 1979 p.156).
- The introduction of a scheme to license all apartments with mandatory inspection and a report on the race of occupants required for each annual license renewal (Goodwin, 1979 p.161).

In 1975, the village government decided against the adoption of racial quotas in specified sections of Oak Park. The rationale supporting the adoption of racial quotas was to limit the numbers of black residents living in those sections of Oak Park that were most immediately affected by the on-going risk of re-segregation. Ultimately, the village government did not adopt racial quotas, relying instead on actions that directly and indirectly supported the broad range of strategies outlined above (Goodwin, 1979 pp.159-161).

In subsequent years, the Oak Park village government deployed other levers of governance in its efforts to achieve a racially integrated community. In 1978, the village government supported the creation of an “Equity Assurance Program,” an insurance scheme to protect homeowners from the impact of declining housing value. The program was “a way of preventing white flight that was based upon fear of having the value of your house decline because of integration”—part of the standard block-busting playbook (McKenzie & Ruby, 2002 p.16). Within the first four months of its operation, 99 households in nearly all-white neighborhoods enrolled in the program. Ultimately interest in this program waned because house prices went up rather than down (McKenzie & Ruby, 2002 p.16). In the period after 1980, the village raised funds to purchase and rehabilitate poorly maintained apartment buildings. In 1984, the Village government adopted a Diversity Assurance Program. This program used financial incentives in conjunction with strict enforcement of building codes to encourage landlords to support the village’s goals of achieving an integrated system of housing by cooperating with the Housing Center to find tenants (McKenzie & Ruby, 2002).

The village administration worked with school authorities in developing policies, plans, and programs to maintain “racial balance” — and address educational disparities (Orfield, 2012b) — in every school. By working proactively to address resident concerns about education,

the Oak Park Elementary school board and the school administration were able to deal with racial change as it began to occur, instead of responding only when the black enrolment had reached a high proportion. While minority percentages in the Oak Park schools were still low, school officials anticipated the trends that could culminate in racial imbalance and — one their most important considerations — potential violation of state desegregation rules (Goodwin, 1979 p.92).

Perhaps most importantly, the village supported citizen task forces and block groups, and created space for the work of the Oak Park Housing Center as the hub of important governance outside government (Goodwin, 1979 pp.165-197; McKenzie & Ruby, 2002 pp.22-30). The Center became almost “an official arm” of the village government in Oak Park (Goodwin, 1979 p.177). In one commentator’s assessment the Center came to fulfill four significant functions:

1. As a “unique promoter and agent for Oak Park’s real estate.”
2. As a coordinator that was otherwise non-existent in the rental market.
3. As a watchdog over real-estate and lending practices.
4. As a central point for exchanging and disseminating pertinent information and for catalyzing new strategies to promote racial stability (Goodwin, 1979 pp.176-177).

The Center, from its inception, represented Oak Park as an integrated community and engaged in the practice of counter steering, that is, directing white clients toward apartments in the integrated section of Oak

Park on the boundary with Chicago, and black clients into areas that were not yet integrated (Goodwin, 1979 pp.171, 176, 178; Breymaier, 2017). The Center was open about its aims and methods. Shortly after its formation, the Center began to give each client a card setting out the Center's approach to handling applications for housing in Oak Park.

The policy of the Oak Park Housing Center is to assist in stabilizing integration in the village. To this end, there will be encouragement of white clients to move into buildings or areas that are already integrated, and the encouragement of black clients to move into buildings or areas which are not substantially integrated. Listings will be provided in keeping with this policy, with the understanding that under both local and federal laws, all clients are free to pursue the housing of their choice (Goodwin, 1979 p.174).

The Center (subsequently renamed the Oak Park Regional Housing Center) became a conduit of information from the broader community about how to develop strategies (Goodwin, 1979 pp.167-168). With this orientation, the Oak Park Housing Center became an important node in the network of relationships that supported the Oak Park system. In an interview for this project in 2017, Rob Breymaier, who was then Executive Director of the Oak Park Regional Housing Center, argued that allowing Oak Park to become a racially and economically diverse community required a supportive practice of on-going community engagement and participation:

You can't just say, 'Come here. We love you,' and then leave it at that, because that's not entirely true. It's more of like, 'Come here and we'll be okay with it as long as it doesn't get out of hand,' as a resident of that community might say. They'll accept a certain level of this change, but then after a while there's going to be some backlash, unless you put into place some sort of community relations strategy that helps people continue...it reaffirms those values. It provides forums for people to interact. It provides ways for us to learn. One of the things we do here in Oak Park is we try to have community forums that combine the idea that we all have very similar aspirations. We want our children to

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"[W]e do a lot of work to promote integrated community and we do that by working with folks in their own individual decision-making process, as to where they want to live."

– Rob Breymaier, Heartland Alliance (formerly Executive Director, Oak Park Regional Housing Center)

succeed. We want to have a safe place to live. We want to be able to get ahead in life to the best of our ability. We recognize that we're not all going to be in exactly the same place at exactly the same time. Some of us will excel a little bit more than others, etcetera. But, we all want a certain level of decency in our lives (Breymaier, 2017).

**The Oak Park Regional Housing Center has used its ties across the community and its pivotal place in the local housing eco-system to “enforce” the policy aimed at creating and preserving an “inclusive community” in low-intensity but effective ways. In his interview with this project in 2017, Rob Breymaier outlined this approach to enforcement.**

We had a survey a few years ago that the village did with an enforcement agency. ... We knew who were the bad actors in the community, and we tested them. So, those numbers looked pretty bad, because eight out of 12 showed that, yeah, there was something going on. We tested race and disability. It was mostly denial of the 'Have a nice day,' sort of racism, smiling and saying, 'No, we don't have anything available.' So, those are things that you can't deal with unless you test, or you have an agency like ours in place where people can come back to us and say, 'The landlord said that they don't have anything available, but you gave me this listing.' Then, we can call the landlord and say, 'Did you rent that unit?' The landlord says, 'No,' and then we can say, 'Well, we just sent somebody over there and one of your people told them that they rented it, so you might want to give them a call and let them know the unit is available.' Right there, we've fixed the problem. Nobody had to sue anybody. We just worked it through in a more immediate process, for sure, because as you know, fair housing complaints take years to resolve. By that time, somebody has moved on, which is why even on those 20 percent where we find probable cause, very few of those people even want to pursue the case because they just want to find a different place to live (Breymaier, 2017).

**The results have been inspiring. Setting integration at the center of the vision had a series of beneficial effects.**

We have been doing it for 45 years in Oak Park and we haven't gotten there yet. But, we've made it a lot farther than most places have. Because of our residential integration, our elementary schools are all integrated. Because of our residential integration, our social networks are more integrated than they would be in other communities. The use of our parks is more reflective of the full diversity of the community (Breymaier, 2017).

As it turns out, our integration strategy has also been a prosperity strategy. The community is actually at a point now where we have to think harder and harder about affordable housing issues, because through our branding and marketing of the community as this wonderfully diverse place, we have way more demand than we can deal with in most cases. Housing prices and rents have gone up based on the very heavy demand for the community, because there's nowhere else in the Chicago region that you can get what you get in Oak Park (Breymaier, 2017).

**The 1973 diversity statement was affirmed each year by the village government of Oak Park until 1999, when it was rewritten (McKenzie & Ruby, 2002 p.15). The rewritten statement was affirmed every year until 2019 when it was revised again. The current version of the Oak Park Diversity Statement includes a reference to an “inclusive community.”**

The people of Oak Park choose this community, not just as a place to live, but as a way of life and as a place to seek shelter, refuge and acceptance. Oak Park commits itself to equity, diversity, and inclusion because these values make us a desirable and strong community for all people. Creating a mutually respectful, multicultural and equitable environment does not happen on its own; it must be intentional. ... Our goal is for people of widely differing backgrounds to do more than live next to one another. Through intentional interaction and fair treatment, we can respect our differences while fostering unity and developing a shared, intersectional vision for the future. We believe in inclusion because we need to go beyond numerical diversity and strive for authentic representation, empowered participation, full access, and a true sense of belonging for all people. Oak Park recognizes that a free, open, and inclusive community

is achieved through full and broad participation of all community members and the ongoing commitment to active and intentional engagement across lines of difference. We believe the best decisions are made when everyone is authentically represented in decision-making and power is shared collectively (Village of Oak Park, 2019).

The Oak Park case study demonstrates the practical use of experimental governance to achieve health equity in housing. Beginning in 1968, the village — government agencies, community organizations, citizens, business people — devised a vision of what they wanted their community to be and jointly and severally worked towards that goal. Along the way, they developed new institutions and used legal and other levers to advance the goal and smooth out barriers. When the village government and the churches were considering the application to establish a housing center in Oak Park, there was no pre-formed plan about how this body would work or, even, if it could do useful work. Rather, there was a willingness to experiment with the tools at hand to see whether it was possible to achieve, what seemed in 1972 to be, the barely recognizable goal of gaining some capacity to influence the local system of housing.

Looking back, we can see that Oak Park conformed to Ostrom’s principles for effective multi-level, poly-centric governance:

- Oak Park was a well-defined and appropriately bounded unit for action. The village was cohesive, and the village government had the authority to define the rules for housing in Oak Park within the larger state and federal structure of fair housing law. The Village of Oak Park had control over its own police force, and the local school district that was responsible for the local schools had boundaries that were coterminous with those of the Village of Oak Park.
- The city created its own version of the fair housing ideal and its own path. The village government set and enforced fair housing rules, but the

administration of the dispersal policy was centered in the non-government housing center, which was in turn supported by key community organizations. The dispersal policy itself spoke in an acceptable way to the residents, and the city used its power to build confidence in the policy and the future of the city.

- As a small self-governing jurisdiction, the village government was listening to and responsive to citizens, but it also listened to realtors, and landlords and the business community. The Housing Center was rooted in voluntary community organizations and was able to develop a strong practice of openness and responsiveness to community opinion.
- The state of Illinois and the federal government let the village pursue its own path, and other outside forces provided support. The Oak Park Housing Center initially drew half of its budget from foundations and other external sources. By 1976, it was bolstered by national acclaim for its work (Goodwin, 1979 pp.167-179).
- The Housing Center and the village collected and shared information about the progress of dispersal and the overall state of the village, supporting the ongoing project of dispersal and maintaining confidence in the results.
- The village and the center enforced non-discrimination and dispersal in a responsive way, using testing and other oversight tools to both assess compliance and deter backsliding, but it has relied primarily on low-intensity, non-punitive interventions that are enough to keep realtors and landlords in pretty-good compliance. Telephone calls, rather than fair housing complaints, are enough to resolve virtually all disputes.

Precisely because of its success, the Oak Park story ends with a big question mark: why was it not replicated in other communities across the country? There was, to start with, the desire and impetus to break the white flight script, but it was the compact and cohesive character of the community — the well-

defined boundary — that allowed the key elements of community engagement, monitoring and enforcement to develop and operate.

I would say this, you couldn't take our program and do it across the city of Chicago or across Boston. Like, a major city, we would have to identify specific neighborhoods or a specific set of neighborhoods. I don't think a population of over maybe 150,000 could be served by this model, at least without having branch offices that would be serving the different neighborhoods ... (Breymaier, 2017).

Yet Oak Parkers are also confident it can work in other places, if properly scaled.

I think what we do is so simple and so easily transferrable to any other neighborhood ... It would be very difficult for us to have a branch in the loop in Chicago and say, 'We can help you figure out every neighborhood in Chicago.' It's hard to do that. It could be done, but it would be a much, much more intense project. But, if we were to identify, say, five neighborhoods in the city of Chicago that we wanted to have an effect on, and if they were fairly contiguous, we could easily do that. Even more importantly, in the suburbs, this is eminently doable (Breymaier, 2017).

Ostrom's admonition that local structures be "nested" within the higher levels of governance may also provide some insight. Oak Park undertook its experiment within a state and federal governance structure, but on its own impetus and largely with its own resources. If it was or is to be widely replicated, it will require the efforts of those "higher," outside actors to fund, incentivize, and replicate. That entails a hard look at the way Oak Park thought about the goal, and how we Americans think about efforts that are explicit in their attention to race and class.

The idea of dispersal and its focus on managed integration is arguably at the heart of the limited uptake of the Oak Park model. For proponents, there was never any doubt that "it's the racial segregation of these metropolitan areas that is the structure of inequality and inequity and injustice in America"

(Breymaier, 2017). The people of Oak Park refused to perpetuate this. Oak Park, responding to white citizens who wanted to protect their majority status, took managed integration as the goal. Yet there are also elements of the story that complicate a simple story of racial and class fairness. In an important way, the Oak Park experiment rested on accepting that many white residents were afraid of integration. The notion of managed dispersal combined an appeal to the better angels of their nature with pragmatic action to address their worst fears. Being "race conscious" and designing programs to cater to the white perspective each make a lot of people uncomfortable, so it is easy to argue that the Oak Park approach fails in theory.

But it worked in practice. The village government and the Housing Center were able to help develop and maintain a community goal of integration. The village government used many legal levers, including effectively enforcing the Fair Housing Ordinance, but the goal of achieving health equity in housing was not dependent on any particular tool. By communicating the primary significance of achieving an integrated system of housing in Oak Park the village government helped to convince residents that the project of achieving this goal would require a community-wide, long-term social commitment. The question, as Rob Breymaier frames it, was "How do we put in place things that would actually codify the spirit of the Fair Housing law, rather than the mechanism for reporting discrimination" (Breymaier, 2017).

## Our Next Report

In our final report, we offer a set of qualified recommendations that integrate the empirical evidence, the voices from the field and the theories of system governance that we have reviewed so far. △

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