

EVICTION COURT DISPLACEMENT RATES

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ABSTRACT—This Essay introduces the concept of *eviction court displacement rates*, defined as the percentage of eviction filings that result in tenant displacement. The Essay argues that a jurisdiction’s eviction court displacement rate provides crucial insight into the role of its legal system in driving substantive eviction outcomes. The Essay then compiles existing data on court displacement rates and compares those rates across jurisdictions. This comparison reveals massive variation in court displacement rates nationwide. In some jurisdictions, a tenant’s likelihood of displacement upon receiving an eviction filing is approximately one in twenty. In other jurisdictions, it is higher than one in two. The Essay outlines the challenges involved in distilling the factors underlying this variation. Notwithstanding these challenges, it identifies and assesses potential explanations for the disparities. The Essay calls for empirical analysis to understand precisely which parts of the eviction legal system—the substantive laws, procedures, and access-to-justice factors—shape eviction court outcomes.

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INTRODUCTION

Eviction is the ordinary, everyday way in which low-income Americans interact with the U.S. property law system. Nearly four million eviction cases are filed annually in the United States—over ten times the number of *all* civil cases filed in the federal district courts.¹ Landlords disproportionately file these cases against people of color, women, and families with children.² As Matthew Desmond beautifully chronicled in his Pulitzer Prize-winning book *Evicted*, eviction is endemic in the lives of poor families across both rural and urban areas of the country.³

Over the past several years, in large part due to enormous data-collection efforts undertaken by the Princeton University Eviction Lab, commentators have paid increasing attention to two statistics regarding eviction: 1) the “eviction filing rate,” i.e., the percentage of renters in a jurisdiction that receive an eviction filing annually, and 2) the “actual

¹ See Ashley Gromis, Ian Fellows, James R. Hendrickson, Lavar Edmonds, Lillian Leung, Adam Porton & Matthew Desmond, *Estimating Eviction Prevalence Across the United States*, PNAS (May 24, 2022), <https://www.pnas.org/doi/full/10.1073/pnas.2116169119> [<https://perma.cc/3WJN-8KDB>]; *Federal Judicial Caseload Statistics 2020*, U.S. CTS., <https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2020> [<https://perma.cc/9E4T-Y87E>] (reporting 332,732 civil cases filed in the federal district courts in 2020).

² Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOCIO. 88, 104 (2012); David Robinson & Justin Steil, *Eviction Dynamics in Market-Rate Multifamily Rental Housing*, 31 HOUS. POL’Y DEBATE 647, 664 (2021) [hereinafter Robinson & Steil, *Eviction Dynamics*]; DAVID ROBINSON & JUSTIN STEIL, CITY LIFE VIDA URBANA, EVICTIONS IN BOSTON: THE DISPROPORTIONATE EFFECT OF FORCED MOVES ON COMMUNITIES OF COLOR 1, 3, 6 (2020); ELAINA JOHNS-WOLFE, CINCINNATI PROJECT, “YOU ARE BEING ASKED TO LEAVE THE PREMISES”: A STUDY OF EVICTION IN CINCINNATI AND HAMILTON COUNTY, OHIO, 2014-2017, at 7 (2018); AUBREY HASVOLD & JACK REGENBOGEN, FACING EVICTION ALONE: A STUDY OF EVICTIONS, DENVER, COLORADO, 2014–2016, at 1, 2 (2017); *Project*, KAN. CITY EVICTION PROJECT, <https://www.evictionkc.org/project> [<https://perma.cc/9R9H-NWU4>]; ZOE THIEL, MINNEAPOLIS INNOVATION TEAM, EVICTIONS IN MINNEAPOLIS 2, 4 (2016), <http://homelinemn.org/wp-content/uploads/Eviictions%20in%20Minneapolis%20Report.pdf> [<https://perma.cc/Y9PX-XW5C>]; Michael C. Lens, Kyle Nelson, Ashley Gromis & Yiwen Kuai, *The Neighborhood Context of Eviction in Southern California*, 19 CITY & CMTY. 912, 923 (2020); IRA GOLDSTEIN, EMILY DOWDALL, COLIN WEIDIG, JANINE SIMMONS & BRIAN CARNEY, REINVESTMENT FUND, POLICY BRIEF: EVICTIONS IN PHILADELPHIA: A DATA AND POLICY UPDATE 7 (2019), https://www.reinvestment.com/wp-content/uploads/2019/10/ReinvestmentFund_PHL-Eviictions-Brief-Oct-2019.pdf [<https://perma.cc/GT8D-3Q2G>].

³ MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 296 (2016).

eviction rate,” i.e., the percentage of renters that are ordered evicted by a court annually.⁴ However, what has received less attention is the relationship between these two rates. What is the actual eviction rate *relative to* the eviction filing rate? In other words, once a landlord files an eviction case in court, what is the likelihood that the tenant will be displaced? This statistic, which I call the “court displacement rate,” provides crucial insight into the role of the legal system in shaping eviction outcomes. It sheds light on where, and to what extent, eviction courts limit the ability of landlords to dispossess their tenants, or alternatively, the extent to which they enable landlords to quickly recover possession. Likewise, this statistic offers the best clues into the other roles the eviction legal system may play in structuring landlord–tenant relationships.

This Essay empirically and theoretically explores the role of eviction courts, laws, and procedures—what I refer to collectively as the “eviction legal system”—in determining eviction outcomes. In doing so, it situates eviction courts as sites of (re)distribution of property rights. It argues that eviction courts across jurisdictions produce highly divergent distributional outcomes, as measured by the court displacement rate, and that these outcomes do not align neatly with the overall pro-landlord or pro-tenant leaning of the substantive law. It further argues that while variations in court displacement rates are certainly affected by housing market characteristics and the extent to which landlords use eviction filings as a tool to collect rent (rather than to obtain actual eviction), court displacement rates are not merely a function of these factors. Instead, the Essay argues for the need to more closely analyze procedural and substantive law factors that drive

⁴ See, e.g., Peter Hepburn, Renee Louis, Joe Fish, Emily Lemmerman, Anne Kat Alexander, Timothy A. Thomas, Robert Koehler, Emily Benfer & Matthew Desmond, *U.S. Eviction Filing Patterns in 2020*, SOCIUS: SOCIO. RSCH. FOR A DYNAMIC WORLD (Apr. 27, 2021), <https://journals.sagepub.com/doi/pdf/10.1177/23780231211009983> [<https://perma.cc/A9YU-SAH4>] (describing eviction filing rates in 2020); Olivia Jin, Emily Lemmerman, Peter Hepburn & Matthew Desmond, *Neighborhoods with the Highest Eviction Filing Rates Have the Lowest Levels of COVID-19 Vaccination*, SOCIUS: SOCIO. RSCH. FOR A DYNAMIC WORLD (Aug. 25, 2021), <https://journals.sagepub.com/doi/pdf/10.1177/23780231211040885> [<https://perma.cc/N9S5-L9UQ>] (exploring the association between eviction filing rates and COVID-19 vaccination rates); Lillian Leung, Peter Hepburn & Matthew Desmond, *Serial Eviction Filing: Civil Courts, Property Management, and the Threat of Displacement*, 100 SOC. FORCES 316, 320–21 (2021) (examining the rate of repeated eviction filings against households at the same address); Robinson & Steil, *Eviction Dynamics*, *supra* note 2, at 648 (describing associations between market-rate eviction filing rates and neighborhood racial composition); Gregory Preston & Vincent J. Reina, *Sheltered from Eviction? A Framework for Understanding the Relationship Between Subsidized Housing Programs and Eviction*, 31 HOUS. POL’Y DEBATE 785, 798–804 (2021) (examining associations between eviction filing rates and subsidization status of properties); Emily Badger & Quoc Trung Bui, *In 83 Million Eviction Records, a Sweeping and Intimate New Look at Housing in America*, N.Y. TIMES (Apr. 7, 2018), <https://www.nytimes.com/interactive/2018/04/07/upshot/millions-of-eviction-records-a-sweeping-new-look-at-housing-in-america.html> [<https://perma.cc/2669-UZFT>] (describing findings from the Eviction Lab’s database of eviction filing rates and actual eviction rates across jurisdictions).

distributional outcomes. While acknowledging and detailing the challenges involved in performing such analyses, it sets forth an agenda for scholars to do so.

The Essay begins by framing the court displacement rate as a statistic that provides insight into the role of the court system in driving substantive eviction outcomes. It then compiles existing data on court displacement rates and compares those rates across jurisdictions. This comparison reveals massive variation in court displacement rates across jurisdictions. In some jurisdictions, a tenant's likelihood of displacement upon receiving an eviction filing is approximately one in twenty. In other jurisdictions, it is higher than one in two. The Essay outlines the challenges involved in distilling the factors underlying this variation. Notwithstanding these challenges, it identifies and assesses potential explanations for the disparities. The Essay calls for empirical analysis to understand precisely which parts of the eviction legal system—the substantive laws, procedures, and access-to-justice factors—shape eviction court outcomes.

Understanding the variation in court displacement rates across jurisdictions and its underlying factors offers powerful clues into the types of reforms to the legal system most likely to be effective in reducing actual eviction. Many of the policy solutions advanced to reduce the prevalence of eviction—substantive law reform, procedural reform, and access to counsel—aim to intervene directly in the legal process. These reforms are all founded on the assumption that the legal system matters for eviction outcomes. In other words, they assume that eviction outcomes are not merely a function of housing market dynamics or economic forces. Yet we lack understanding about what specific parts of the eviction legal system matter, how much they matter, and why. This Essay aims to set forth an agenda for gaining this understanding and to contribute modestly towards advancing it.

I. COURT DISPLACEMENT RATES ACROSS JURISDICTIONS

In 2018, the Princeton University Eviction Lab published a treasure trove of data on eviction filings and eviction judgments nationwide, compiled based on court records collected from an extraordinary number of jurisdictions across the country. Prior to this, eviction data was largely unavailable on a broad scale. The Lab gave the public and researchers alike easy access to information on the “eviction filing rates” and the “eviction rates” by city and state.⁵ The Lab defines the eviction filing rate as the

⁵ The Eviction Lab's initial published data is from 2000–2016. The Lab drew on tens of millions of court records in publishing its initial database. See *About Eviction Lab*, EVICTION LAB, <https://evictionlab.org/about> [<https://perma.cc/662T-KCJ8>].

number of eviction filings divided by the number of renter-occupied households.⁶ It defines the eviction rate as the number of eviction judgments divided by the number of renter-occupied households.⁷ Exposing the values of these two rates across jurisdictions nationwide has contributed enormously to our understanding of the prevalence of eviction. The data demonstrates that some cities, such as Richmond, Virginia, are eviction “hot spots,” with eviction filing rates as high as 28.9% and eviction rates as high as 9.6%, whereas in other locations eviction is far less common.⁸

Both the eviction filing rate and the eviction rate serve as helpful statistics for understanding the scope of eviction and its consequences. Overall, the eviction filing rate captures the extent to which tenants in a particular jurisdiction are vulnerable to being brought into court to defend against an eviction case. Simply facing eviction through receipt of an eviction filing, regardless of the case outcome, has been shown to result in a host of adverse outcomes for tenants.⁹ Among other consequences, records of eviction filings are widely used by landlords to screen out tenants, resulting in substantial barriers to securing future housing for any tenant who has received an eviction filing.¹⁰ Meanwhile, the eviction rate captures the

⁶ See MATTHEW DESMOND, ASHLEY GROMIS, LAVAR EDMONDS, JAMES HENDRICKSON, KATIE KRYWOKULSKI, LILLIAN LEUNG & ADAM PORTON, EVICTION LAB METHODOLOGY REPORT: VERSION 1.0, at 35, 42 (2018), <https://evictionlab.org/docs/Eviction%20Lab%20Methodology%20Report.pdf> [<https://perma.cc/25H9-M5X7>].

⁷ *Id.* The Eviction Lab excludes “serial filings”—multiple filings made against the same household within a short period of time—from the eviction rate but not the eviction filing rate. *See id.*

⁸ Eviction Data for Richmond, Virginia, EVICTION LAB, <https://evictionlab.org/map> [<https://perma.cc/BFA8-QYFS>] (choose “Original Data” from dropdown; then search for “Richmond City, Virginia”).

⁹ Jack Tsai, Natalie Jones, Dorota Szymkowiak & Robert A. Rosenheck, *Longitudinal Study of the Housing and Mental Health Outcomes of Tenants Appearing in Eviction Court*, 56 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 1679, 1684–85 (2021); Hugo Vásquez-Vera, Laia Palència, Ingrid Magna, Carlos Mena, Jaime Neira & Carme Borrell, *The Threat of Home Eviction and Its Effects on Health Through the Equity Lens: A Systematic Review*, 175 SOC. SCI. & MED. 199, 199–206 (2017) (summarizing findings from a collection of articles). *But see* John Eric Humphries, Nicholas S. Mader, Daniel I. Tannenbaum & Winnie L. van Dijk, *Does Eviction Cause Poverty? Quasi-Experimental Evidence from Cook County, IL 2* (Nat’l Bureau of Econ. Rsch., Working Paper No. 26139, 2019) (suggesting that the adverse effects of eviction on financial health are “much more moderate” than many sources estimate).

¹⁰ *See generally* Kathryn A. Sabbeth, *Erasing the “Scarlet E” of Eviction Records*, APPEAL (Apr. 12, 2021), <https://theappeal.org/the-lab/report/erasing-the-scarlet-e-of-eviction-records/> [perma.cc/2DFC-XAY4] (describing how a prior eviction can substantially reduce one’s ability to secure future housing); Esme Caramello & Nora Mahlberg, *Combating Tenant Blacklisting Based on Housing Court Records: A Survey of Approaches*, CLEARINGHOUSE REV., Aug. 2017, at 1 (discussing how the existence of a recent housing case can cause landlords to deny applicants housing and can often be the sole factor that tenant-screening bureaus consider when making their recommendations); Rudy Kleysteuber, *Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records*, 116 YALE L.J. 1344, 1346–50 (2007) (noting that landlords regularly purchase and rely on tenant-screening reports that reveal landlord–tenant disputes and court filings).

extent to which tenants of a given jurisdiction are at risk of a formal order of eviction. Research has also shown a plethora of adverse consequences that flow from actual eviction, including, among others, homelessness and “downward” moves to worse housing conditions.¹¹ Both eviction filings and actual eviction are also associated with adverse mental and physical health outcomes, including higher rates of very low birth weight and infant mortality.¹² Much literature has explored the extent to which sociodemographic and housing market characteristics affect eviction filing rates and eviction rates.¹³

Little research, however, has examined the relationship between these two rates. More specifically, there has been little focus on the eviction rate

¹¹ See, e.g., Robert Collinson & Davin Reed, *The Effects of Evictions on Low-Income Households* 3, 5 (Oct. 2018) (unpublished manuscript), https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf [<https://perma.cc/YFQ7-D8PU>] (explaining how eviction increases the likelihood of homelessness and causes worsened mental health in adults); Maureen Crane & Anthony M. Warnes, *Evictions and Prolonged Homelessness*, 15 HOUS. STUD. 757, 762 (2000) (discussing the results of a study of forty-five elderly British individuals who cited eviction as a contributing factor to their homelessness). Where eviction does not lead to homelessness, it often leads to what are considered “downward” moves—moves to worse housing conditions and/or neighborhoods with higher rates of poverty and crime. See Matthew Desmond & Tracey Schollenberger, *Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences*, 52 DEMOGRAPHY 1751, 1768 (2015).

¹² See Gracie Himmelstein & Matthew Desmond, *Association of Eviction with Adverse Birth Outcomes Among Women in Georgia, 2000 to 2016*, 175 JAMA PEDIATRICS 494, 497–98 (2021); Corey Hazekamp, Sana Yousuf, Kelli Day, Mary Kate Daly & Karen Sheehan, *Eviction and Pediatric Health Outcomes in Chicago*, 45 J. CMTY. HEALTH 891, 892, 895, 897–98 (2020); Vásquez-Vera et al., *supra* note 9, at 202, 204–06; Kathryn Leifheit & Jacky Jennings, *Eviction as a Social Determinant of Sexual Health Outcomes*, 46 SEXUALLY TRANSMITTED DISEASES 69, 69 (2019); Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity Among Low-Income and Minority Tenants*, 24 GEO. J. ON POVERTY L. & POL’Y 59, 61, 77, 83 (2016); Matthew Desmond & Rachel Tolbert Kimbro, *Eviction’s Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 295, 316, 318 (2015).

¹³ See, e.g., Preston & Reina, *supra* note 4, at 806 (finding that in communities with higher shares of Black and Latino renters, and in those with higher shares of children and households headed by single mothers, “subsidized housing is associated with lower eviction filing rates relative to market-rate housing”); Dan Immergluck, Jeff Ernsthausen, Stephanie Earl & Allison Powell, *Evictions, Large Owners, and Serial Filings: Findings From Atlanta*, 35 HOUS. STUD. 903, 919 (2020) (finding that larger owners and larger buildings tend to have higher rates of serial filings, and that nonserial filings are highest in Black neighborhoods); Benjamin F. Teresa & Kathryn L. Howell, *Eviction and Segmented Housing Markets in Richmond, Virginia*, 31 HOUS. POL’Y DEBATE 627, 641 (2021) (finding that there are housing submarkets where eviction and the threat of eviction are likely to be worse); Lens et al., *supra* note 2, at 925 (finding that eviction filings are much more likely to occur in “neighborhoods with higher poverty rates or shares of African American individuals”). Note that researchers have consistently emphasized that both the eviction filing rate and the eviction rate fail to capture the full scope of eviction because they omit informal evictions. Some studies have estimated that informal evictions are more than five times as common as formal (i.e., court-based) evictions. See Ashley Gromis & Matthew Desmond, *Estimating the Prevalence of Eviction in the United States*, 23 CITYSCAPE 279, 281 (2021). Informal evictions are particularly prevalent among small-scale landlords. See John Balzarini & Melody L. Boyd, *Working with Them: Small-Scale Landlord Strategies for Avoiding Evictions*, 31 HOUS. POL’Y DEBATE 425, 427, 437–39 (2021).

relative to the eviction filing rate—that is, the eviction rate per eviction filing—within a given jurisdiction. This rate, which I term the “court displacement rate,” measures the percentage of eviction filings that result in actual eviction. As an example, suppose the Jones, Smith, and Jackson families are a sample set of households in a jurisdiction. The Smiths and Jacksons have had eviction proceedings filed against them one time each. The Jacksons were successfully evicted, but the Smiths were not. The eviction filing rate, then, is 67%: two out of three tenants faced eviction. The eviction rate is 33%: one out of three tenants were successfully evicted. And the court displacement rate is 50%: one eviction out of two eviction filings.

The court displacement rate is a crucial statistic because it helps pinpoint the role of the jurisdiction’s legal process in actual eviction. In other words, does the court process—either through its procedures or through the application of substantive law—simply streamline the conversion of an eviction filing into actual eviction, or does it play a role in delimiting that outcome, operating as a meaningful buffer against eviction?

Where court displacement rates are high, it suggests that the eviction legal system may serve merely to greenlight evictions. Where court displacement rates are low, it suggests that the eviction legal system may play a role in blocking desired evictions from going forward. Additionally, the court displacement rate offers helpful clues into the other roles the eviction legal system may be playing in the landlord–tenant relationship. In particular, where court displacement rates are low, it signals the possibility that eviction filings are being used for nondispossessory purposes, such as to collect rent or to control tenant behavior.

Until very recently, it was quite difficult to discern court displacement rates across jurisdictions. Eviction filing rates were largely unknown, with information about case filings existing only in millions of separate court records that researchers had yet to compile. The state of our collective knowledge shifted dramatically in 2018 with the Eviction Lab’s collection of an extraordinary number of eviction case records across the country. The Lab published statistics of eviction filing rates by city and state, creating enormous public visibility into a previously opaque (albeit widespread) phenomenon. The Lab also published statistics on actual “eviction rates,” but as scholars, including some involved with the Lab, have noted, these statistics were less likely to be accurate.¹⁴ Court records often contain

¹⁴ See Adam Porton, Ashley Gromis & Matthew Desmond, *Inaccuracies in Eviction Records: Implications for Renters & Researchers*, 31 HOUS. POL’Y DEBATE 377, 378 (2021). The authors also point out that the eviction filing rate is often reflective of serial filings, and thus the eviction filing rate does not itself reflect the likelihood that a renter in the jurisdiction will face eviction. *See id.* at 380; *see*

imprecise or ambiguous information about outcomes, either failing to indicate whether a judgment was entered or noting only that a judgment was entered but not whether the execution (i.e., actual eviction) was stayed pending the tenant's compliance with terms.¹⁵ Recorded outcomes also often do not capture settlement agreements in which the tenant agrees to move out ("move-out agreements"), as such agreements can lack a judgment or execution. Further, court records can be plainly inaccurate, reflecting false information due to data inputting errors or other poor recordkeeping.¹⁶ In a review of eviction records from twelve states, Adam Porton and his coauthors found that, on average, 22% of state eviction records contained falsities or ambiguities.¹⁷

At a more general level, one of the persistent challenges of reporting eviction rates across multiple jurisdictions at once is that there is a high degree of variation in the substantive meaning of eviction records. As previously described, eviction laws and procedures differ significantly across states, and sometimes even at substate levels, such that there is no straightforward apples-to-apples comparison of records. In New York City, for example, an eviction requires a warrant, which must be executed by a deputy sheriff, city marshal, or constable.¹⁸ An appropriate measure of evictions in New York City is therefore the number of warrants executed by these officials. Yet warrants are nonexistent in Massachusetts eviction laws. There, actual evictions take the form of an "issuance of execution," which is levied upon by an officer of the court.¹⁹ Overall, what is appropriately counted as an eviction is highly context-specific, and measurement at a population-wide level often requires hand-coding of eviction files by someone with local knowledge.

Luckily, in the past several years, many local nonprofit and governmental organizations have undertaken highly detailed studies of eviction case outcomes in their own jurisdictions. By digging deep into the actual case files and carefully combing the court records, researchers have

also Daniela Aiello, Lisa Bates, Terra Graziani, Christopher Herring, Manissa Maharawal, Erin McElroy, Pamela Phan & Gretchen Purser, *Eviction Lab Misses the Mark*, SHELTERFORCE (Aug. 22, 2018), <https://shelterforce.org/2018/08/22/eviction-lab-misses-the-mark> [<https://perma.cc/4WGD-6G4L>] (describing the likely inaccuracies in the Eviction Lab's data and the conflicts between the Lab's data and the data compiled by the Anti-Eviction Mapping Project and Tenants Together).

¹⁵ Porton et al., *supra* note 14, at 379–80; Aiello et al., *supra* note 14. If execution is stayed pending the tenant's compliance with terms, it is possible that a judgment was entered but the tenant was not actually evicted. See Nicole Summers, *Civil Probation*, 75 STAN. L. REV. (forthcoming 2023) (manuscript at 4) (on file with author).

¹⁶ See Porton et al., *supra* note 14, at 378.

¹⁷ *Id.*

¹⁸ See N.Y. REAL PROP. ACTS. LAW § 749 (McKinney 2019).

¹⁹ See MASS. GEN. LAWS ch. 239, § 3 (2021).

been able to take into account indicia of displacement that are not otherwise visible in mass court databases. These studies have resulted in far more precise calculations of the number of actual evictions than were previously available. This data on actual evictions, combined with the researchers' as well as the Eviction Lab's data on eviction filing rates, for the first time has enabled reliable computations of court displacement rates.

The existing studies show that court displacement rates vary widely across jurisdictions. Washington, D.C. has the lowest court displacement rate—approximately 5.5%—among the jurisdictions with available data.²⁰ New York City also has a relatively low court displacement rate of approximately 9%–12%.²¹ Lauren Sudeall and Daniel Pasciuti's in-depth research into evictions filed in rural Georgia reveals an approximately 12% court displacement rate there.²² Yet court displacement rates in other jurisdictions are much higher. My own research in collaboration with Justin Steil finds that Boston has a court displacement rate of about 45%.²³ And a number of jurisdictions have court displacement rates above 50%: these include New Orleans (61%),²⁴ Minneapolis (67%),²⁵ Kansas City (75%),²⁶ and Denver (79%).²⁷ While only representative of a handful of jurisdictions, the above comparison of court displacement rates side by side makes clear that eviction courts are distributing, or redistributing, property rights in widely divergent ways. In some jurisdictions, an eviction filing results in the stripping of the tenant's property rights in three out of four cases. In other jurisdictions, this outcome happens quite rarely, in only approximately one in twenty or one in ten cases. By far the most common outcome in these latter

²⁰ See BRIAN J. MCCABE & EVA ROSEN, *EVICION IN WASHINGTON, DC: RACIAL AND GEOGRAPHIC DISPARITIES IN HOUSING INSTABILITY* 13 (2020).

²¹ See OFF. OF CIV. JUST., N.Y.C. DEP'T OF SOC. SERVS./N.Y.C. HUM. RES. ADMIN., *NYC OFFICE OF CIVIL JUSTICE 2020 ANNUAL REPORT* 24, 26 (2020). Nine to twelve percent is the range of court displacement rates from 2013 to 2019. I do not include 2020 data because during that year New York City had an eviction moratorium in place. The period from 2013 to 2019 includes some years in which New York City's Universal Access to Counsel program had begun to roll out, and some years prior to the 2017 rollout. *Id.* at 15.

²² Lauren Sudeall & Daniel Pasciuti, *Praxis and Paradox: Inside the Black Box of Eviction Court*, 74 *VAND. L. REV.* 1365, 1410 (2021).

²³ Dataset on file with author. The number can also be calculated from the data at Summers, *supra* note 15, at 25, 37 n.170. The eviction rate of 45% is the sum of the percentages of cases resulting in move-out agreements (19%), default judgments (15%), judgments for the landlord after trial (3%), and evictions for violation of civil probation (9%). Although the rounded percentages sum to 46%, the raw numbers sum to 45%.

²⁴ Davida Finger, *The Eviction Geography of New Orleans: An Empirical Study to Further Housing Justice*, 22 *U.D.C. L. REV.* 23, 35 (2019).

²⁵ THIEL, *supra* note 2, at 2.

²⁶ *Project*, *supra* note 2.

²⁷ HASVOLD & REGENBOGEN, *supra* note 2, at 2.

jurisdictions is that the tenant retains physical and legal possession of the premises. Overall, these outcomes reflect that eviction legal systems across jurisdictions distribute property rights between landlords and tenants in dramatically different ways.

II. UNDERSTANDING DIVERGENT EVICTION COURT OUTCOMES: AVENUES FOR FUTURE RESEARCH

The divergent court displacement rates presented above raise the obvious question of *why* eviction legal systems perform so differently across jurisdictions. As Kathryn Sabbeth has demonstrated, eviction courts tend to share a number of characteristics across jurisdictions.²⁸ Among other features, eviction courts are generally characterized by relatively low filing fees, default judgment rules that favor landlords, limitations on discovery, and rules that create obstacles to appeals.²⁹ Yet despite these general similarities, there exists a certain degree of variation in the substantive laws eviction courts apply, their procedural rules, and their structures. Sociologist Megan Hatch has developed a typology of substantive eviction laws, classifying state landlord–tenant policy approaches into three categories: “protectionist,” with laws that are generally pro-tenant; “contradictory,” with laws that contain a mix of protections for tenants and landlords; and “probusiness,” with laws that are more favorable to landlords.³⁰ Eviction procedures likewise vary substantially.³¹ In some jurisdictions, the entire eviction process can take place in a week, whereas in others, it lasts longer than a month at minimum.³² Some states require tenants to post bond in the amount of their rental arrears with the court in order to raise defenses to the eviction, whereas other states’ laws contain no such requirement.³³ Similarly, access-to-justice factors within eviction courts range widely—in some

²⁸ Kathryn Sabbeth, *Eviction Courts*, 18 U. ST. THOMAS L.J. 359, 377 (2022).

²⁹ *Id.* at 376–84. The other features of eviction courts that Sabbeth identifies are shortened timeframes, substandard service methods, limits on defenses and counterclaims available to tenants, rent bonds, laws that preclude access to legal services for tenants, and judges with limited legal training. *Id.*

³⁰ See Megan E. Hatch, *Statutory Protection for Renters: Classification of State Landlord–Tenant Policy Approaches*, 27 HOUS. POL’Y DEBATE 98, 109–11 (2017).

³¹ See generally Kyle Nelson, Philip Garboden, Brian J. McCabe & Eva Rosen, *Evictions: The Comparative Analysis Problem*, 31 HOUS. POL’Y DEBATE 696, 701–08 (2021) (describing differences in eviction procedures across four jurisdictions).

³² See Finger, *supra* note 24, at 32 (describing that in New Orleans the entire eviction process can take place within a week); Nelson et al., *supra* note 31, at 702–03 (describing that in Texas the entire eviction process can unfold within two weeks, whereas in Maryland it takes two months); Summers, *supra* note 15, at 19–20 (describing that in Massachusetts the eviction process typically lasts at least one month from service of the predicate notice to the execution of the eviction).

³³ See, e.g., FLA. STAT. § 83.60 (2013) (requiring rent bonds in Florida); CAL. CIV. PROC. CODE § 1167.3 (not requiring rent bonds in California).

jurisdictions, for example, nearly all landlords are represented and tenants have a right to counsel, whereas in others, the majority of both landlords and tenants are pro se.³⁴ In short, it is clear that eviction legal systems are different across jurisdictions, and thus it is understandable that outcomes—as measured by the court displacement rate—vary as well.

But the question that eviction scholars need to address is which specific parts of the eviction legal system matter, and matter most, in determining systemic outcomes. Research has shown that the overall pro-tenant or pro-landlord leaning of the jurisdiction matters, but that tells us little about the specific laws that make a difference.³⁵ It also fails to solve a clear puzzle presented by the available data: why court displacement rates vary so dramatically among jurisdictions with the same policy approach (as determined by Hatch’s classification system). Boston and New York City, for example, both have protectionist (pro-tenant) policies, yet Boston’s court displacement rate is over four times that of New York City.³⁶ Among the protectionist jurisdictions with reliable data, court displacement rates range from around 10% (New York City) to 67% (Minneapolis). Court displacement rates among probusiness jurisdictions similarly range widely, from approximately 12% in rural Georgia to 79% in Denver.

As an initial matter, there may be jurisdictional differences independent of the eviction legal system that affect court displacement rates. First, differences in court displacement rates could be due, in large or small part, to jurisdictional differences in landlords’ predilections to file for eviction. In some jurisdictions, because of low court filing fees and other factors, researchers have found that landlords have particularly minimal thresholds for eviction filing.³⁷ In these jurisdictions, landlords readily file for eviction even where only small amounts of rent are owed, often because it is not

³⁴ See Ericka Petersen, *Building a House for Gideon: The Right to Counsel in Evictions*, 16 STAN. J. C.R. & C.L. 63, 78 (2020) (describing that the vast majority of tenants in eviction proceedings are unrepresented); OFF. OF CIV. JUST., *supra* note 21, at 15 (describing New York City legislation establishing universal access to counsel for tenants facing eviction); Sudeall & Pasciuti, *supra* note 22, at 1400 (reporting that in rural Georgia landlord representation rates are approximately 4%–12%). Other “access to justice factors” may include the judging model followed, the extent to which judges pressure the parties to settle, and the volume of case dockets. See Nelson et al., *supra* note 31, at 704–05.

³⁵ See Nelson et al., *supra* note 31, at 701–08.

³⁶ See Hatch, *supra* note 30, at 109–11; *supra* notes 24–30 and accompanying text.

³⁷ See Nelson et al., *supra* note 31, at 703–04. Other factors may include legal structures that do not require landlords to serve a predicate notice prior to initiating an eviction filing for nonpayment of rent. This legal structure, which exists in Maryland, is thought to dramatically expand the number of eviction filings by allowing landlords to initiate the eviction process immediately upon any amount of rent becoming past due. See *id.* at 702–03.

costly to do so.³⁸ For example, in Washington, D.C., the eviction filing fee is only \$15, and researchers attribute D.C.'s high eviction filing rate to this low fee.³⁹ In other jurisdictions, particularly where court filing fees are higher, landlords exhibit less inclination to file for eviction.⁴⁰ These differences may well reflect differences in landlords' preferences for actual eviction upon filing—where landlords file for eviction based on small amounts of rent owed, they may be less interested in obtaining actual eviction than where larger amounts are owed. Indeed, qualitative research has found that landlords frequently file for eviction with the goal of collecting rent or reforming tenant behavior rather than to displace their tenants.⁴¹ Where actual eviction is not the goal, landlords often engage in the practice of “serial eviction filing”—repeatedly filing against the same household as a form of threat in order to coerce rental payments.⁴² Put simply, if low filing fees or other factors in a jurisdiction result in landlords readily filing for eviction as a means to collect small amounts of rent, then the jurisdiction is likely to have a low court displacement rate.⁴³ That rate, however, will reflect little about the role of the eviction legal process in buffering against actual eviction; it instead simply reflects landlords' use of the eviction process for alternative, nondispossessory ends.

While more research is needed to pinpoint the precise role of landlord predilection for eviction filing in driving court displacement rates, surface comparisons suggest that it is far from fully deterministic. Studies of New York City and Minneapolis revealed that eviction complaints in both jurisdictions sought, on average, approximately two to three months of rental arrears (indicating a similar landlord predilection for eviction filing in both places), yet Minneapolis's court displacement rate (67%) is over six times higher than that of New York City (9–12%).⁴⁴ And the average amount of

³⁸ *Id.* at 703–04 (reporting results of statistical analysis showing that “the [eviction] filing rate is negatively associated with the [eviction] filing fee across cities”).

³⁹ See MCCABE & ROSEN, *supra* note 20, at 28.

⁴⁰ See Nelson et al., *supra* note 31, at 703–04.

⁴¹ See Philip ME Garboden & Eva Rosen, *Serial Filing: How Landlords Use the Threat of Eviction*, 18 CITY & CMTY. 638, 639 (2019); Leung et al., *supra* note 4, at 338; Immergluck et al., *supra* note 13, at 920.

⁴² Leung et al., *supra* note 4, at 317–21.

⁴³ It is also possible that substantive landlord–tenant laws affect eviction filing rates by encouraging or discouraging landlords from initiating cases in the first place. Where landlords desire actual eviction, strongly protective eviction laws may make landlords more reluctant to attempt eviction, whereas less protective laws may increase landlord willingness to file.

⁴⁴ See N.Y.U. FURMAN CTR., TRENDS IN NEW YORK CITY HOUSING COURT EVICTION FILINGS 6 (2019), https://furmancenter.org/files/publications/NYUFurmanCenter_TrendsInHousingCourtFilings.pdf [<https://perma.cc/7E9R-JQQL>] (finding that evictions in private housing sought on

rental arrears sought in eviction complaints is nearly identical in Washington, D.C. (\$1,207) and New Orleans (\$1,230), but Washington, D.C. has one of the lowest court displacement rates (5.5%) and New Orleans has one of the highest (64%).⁴⁵ Were landlord willingness to file eviction cases the primary driver of court displacement rates, we would expect to see much greater convergence across jurisdictions with similar amounts of rent on the eviction complaint (as this amount reflects landlord predilection for filing).

Second, differences in housing markets may also impact court displacement rates. A growing body of literature reveals differences in eviction filing practices by landlord type. More specifically, quantitative research has shown that large-scale landlords and landlords of certain subsidized properties file for eviction more frequently than smaller-scale landlords and landlords of unsubsidized units.⁴⁶ Researchers have also consistently found that landlords' eviction filing practices are racially disproportionate, with landlords filing for eviction at higher rates in neighborhoods with larger concentrations of nonwhite residents as compared with neighborhoods with larger shares of white residents.⁴⁷ These differences in eviction filing practices may inflate or deflate the denominator of the court displacement rate, resulting in lower or higher rates that are not due to any meaningful differences in the eviction legal system but instead flow from differences in landlord behavior and objectives. Similarly, we might expect that court displacement rates are merely a function of the affordability and tightness of rental markets, with high-cost markets resulting in higher court displacement rates because landlords have a greater incentive to turn over properties.

Surface comparisons again paint a perplexing picture. Boston and New York City are both high-cost rental markets with low vacancy rates and

average 2.5 to 3 months' rent); THIEL, *supra* note 2, at 2 (finding that eviction complaints on average sought two months of rental arrears). The fact that eviction complaints in New York City sought a slightly greater number of months of arrears as compared with Minneapolis makes the divergent court displacement rates even more perplexing, as one would expect that a higher arrears amount (indicative of a lower landlord willingness for eviction filing) would be associated with a higher court displacement rate. Yet New York City has a significantly lower court displacement rate than Minneapolis.

⁴⁵ See MCCABE & ROSEN, *supra* note 20, at 6; Finger, *supra* note 24, at 36.

⁴⁶ See Henry Gomroy, *The Social and Institutional Contexts Underlying Landlords' Eviction Practices*, 100 SOC. FORCES 1774, 1775, 1788 (2021) (concluding "that large-scale landlords file and evict at two to three times the rates of small-scale owners," and that "medium[-scale] landlords evict 47 percent more," controlling for property characteristics); Preston & Reina, *supra* note 4, at 800 (finding "that tenants in public housing and in [project-based Section 8 subsidized] properties are, respectively, 21–68% and 52–76% less likely to experience an eviction filing than are tenants in similar market-rate properties"); Immergluck et al., *supra* note 13, at 921 (finding "that larger owners and owners of larger properties are more likely to be serial [eviction] filers").

⁴⁷ See *supra* note 2 and accompanying text.

a high percentage of cost-burdened households,⁴⁸ yet Boston has a 45% court displacement rate compared to New York City's 9–12% rate. Denver's housing market can also be characterized similarly to Boston's and New York City's,⁴⁹ and its court displacement rate is 79%. Again, while housing market characteristics quite likely play some role in court displacement rates, the data suggests that the rates are far from wholly determinative.

Research is sorely needed to unpack the reasons behind the variation in court displacement rates. It would certainly be helpful to more rigorously interrogate the roles of background jurisdictional characteristics (e.g., landlord predilection for filing and housing market) in determining court displacement rates. Yet we also need much more detailed, in-depth research on how various components of the eviction legal system drive outcomes. Scholarship assessing the inputs of the eviction legal system has centered mainly on two of them: access to counsel for tenants and the strength of the jurisdiction's implied warranty of habitability laws.⁵⁰ This scholarship is

⁴⁸ See CARRIE BERNSTEIN, CALANDRA CLARK, IAN DINNIE, TOM HOPPER, MARK MELNIK, ABBY RAISZ & CLARK ZIEGLER, THE BOS. FOUND., THE GREATER BOSTON HOUSING REPORT CARD 2021, at 10, 42 (2021), https://www.tbf.org/-/media/tbf/reports-and-covers/2021/gbhrc2021_final.pdf [<https://perma.cc/TWL4-EM6A>] (showing data that 23% of renter households in Greater Boston are severely cost burdened and describing persistently low vacancy rates in the Greater Boston area); Tom Acitelli, *Nearly Half of Boston-Area Tenant Households 'Cost-Burdened,' Report Says*, CURBED BOS. (Oct. 9, 2019, 1:53 PM), <https://boston.curbed.com/2019/10/9/20906570/boston-tenants-cost-burdened> [<https://perma.cc/3HZR-R6ML>]; *State of the City 2021: State of Renters and Their Homes*, N.Y.U. FURMAN CTR., <https://furmancenter.org/stateofthecity/view/state-of-renters-and-their-homes> [<https://perma.cc/25TU-3TSP>] (presenting data showing that approximately 26% of renter households in New York City are severely cost burdened while rental shares increased in New York similarly to the national rate).

⁴⁹ See Kelcey McClung, *Half of Denver's Renters Are Cost Burdened, Report Says*, DENVER BUS. J. (Dec. 18, 2017), <https://www.bizjournals.com/denver/news/2017/12/18/half-of-denvers-renters-are-cost-burdened-report.html> [<https://perma.cc/VNN6-MNVH>] (describing findings from Harvard University's Joint Center for Housing Studies that half of Denver's renters spend at least 30% of their income on housing); *Denver Among Top 10 U.S. Cities with Highest Income Needed to Pay Rent*, CBS NEWS (Aug. 11, 2020), <https://www.cbsnews.com/colorado/news/denver-ranked-top-10-cities-income-pay-rent/> [<https://perma.cc/JAZ9-BTPM>] (describing study findings showing Denver, Boston, and New York City as three of the top ten cities with the highest income needed to pay for a two-bedroom apartment).

⁵⁰ See, e.g., Michael T. Cassidy & Janet Currie, *The Effects of Legal Representation on Tenant Outcomes in Housing Court: Evidence from New York City's Universal Access Program* 1–3 (Nat'l Bureau of Econ. Rsch., Working Paper No. 29836, 2022) (studying the effectiveness of access to legal representation for tenants facing eviction in New York City); Ingrid Gould Ellen, Katherine O'Regan, Sophia House & Ryan Brenner, *Do Lawyers Matter? Early Evidence on Eviction Patterns After the Rollout of Universal Access to Counsel in New York City*, 31 HOUS. POL'Y DEBATE 540 (2021) (examining the effects of access to legal representation on eviction case outcomes); Carroll Seron, Martin Frankel, Gregg Van Ryzin & Jean Kovath, *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 LAW & SOC'Y REV. 419, 426 (2001) (showing that tenant access to counsel affects outcomes); D. James Greiner, Cassandra Wolos Pattanayak & Jonathan Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 906–09, 959 (2013)

highly valuable, but it leaves unexplored a multitude of factors that potentially contribute in significant ways to the divergences in overall court displacement rates.

First, research should explore the role of procedural rules in eviction outcomes. Do jurisdictions with eviction processes that involve multiple court events have lower court displacement rates compared with similar jurisdictions with only a single court event? For example, it may be the case that having an initial court date before the trial date lowers court displacement rates because it facilitates settlement. But the opposite may also result: perhaps two court dates simply increases the probability that the tenant will default at one of them, thereby increasing the court displacement rate. Relatedly, to what extent do answer requirements or different default judgment rules correlate with court displacement rates?⁵¹ Does a jury trial right for tenants matter? Procedural rules should be closely examined across jurisdictions to better understand what differences exist and to what extent those differences correlate with differences in court displacement rates.⁵²

Second, research should interrogate whether and to what extent variations in specific substantive laws drive the differences in court displacement rates. As described above, the same overall landlord–tenant policy approach—whether protectionist, contradictory, or probusiness—is associated with different court displacement rates. Clearly, we need to dig deeper into the specific substantive laws that matter for outcomes. As mentioned, a good deal of scholarship has empirically examined as well as theorized the role of warranty of habitability laws in eviction outcomes.⁵³ In prior research, I have hypothesized that laws affording tenants an extended right-to-cure period affect court outcomes, but researchers have only begun to examine this question empirically.⁵⁴ Aside from this scholarship, there has been little inquiry into the role of specific substantive laws in driving court displacement. Among other inquiries, researchers should examine the extent

(studying the impact of full legal representation on eviction outcomes); Serge Martinez, *Revitalizing the Implied Warranty of Habitability*, 34 NOTRE DAME J.L. ETHICS & PUB. POL'Y 239, 272, 276, 279 (2020) (arguing that strengthening the implied warranty of habitability doctrine would change eviction outcomes); David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CALIF. L. REV. 389, 458–63 (2011) (discussing the effects of the implied warranty of habitability on housing issues).

⁵¹ Some jurisdictions do not require tenants to file an answer in order to avoid default. *See, e.g.*, MASS. UNIF. SUMMARY PROCESS R. 10(a) (“If the defendant appears but has failed to file a timely answer, no default shall enter . . .”).

⁵² I propose performing correlational rather than causal estimates simply because I think it would be difficult to design a study that would allow for causal conclusions to be drawn. However, to the extent such study design is feasible, causal conclusions are of course preferable.

⁵³ *See supra* note 50.

⁵⁴ *See Summers, supra* note 15, at 63–64; Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 U. CHI. L. REV. 145, 215–17 (2020).

to which fair housing laws, laws providing tenants equitable defenses to eviction, and other laws recognizing substantive eviction defenses correlate with court displacement rates.

Third, we should seek to understand how court structures and access-to-justice factors affect court displacement rates. As described, researchers have examined the effects of access to counsel for tenants, but aside from this body of literature there has been little empirical study of other factors related to court design and access. Does simplification of court procedures correlate with lower court displacement rates? Do mandatory mediation or other forms of alternative dispute resolution affect outcomes? To what extent does co-locating social services (e.g., rental assistance, services for tenants with disabilities) matter? And what is the role of legal technology? Commentators have advocated for, and in many cases jurisdictions are experimenting with, all of these “solutions” for lowering court displacement rates, but we do not yet have rigorous empirical evidence about whether they result in meaningful differences in outcomes (in other words, whether they are effective).⁵⁵

CONCLUSION

The wide variation in court displacement rates across jurisdictions should be seen as an invitation to explore what is working and what is not when it comes to court-based displacement. Research should seek to understand why Boston’s court displacement rate is so much higher than New York’s, why Washington, D.C.’s rate is so shockingly low, and why Minneapolis’s and Denver’s rates are so high. What is “working”—from the perspective of tenant displacement—in Washington, D.C. and New York? And why does nearly everyone who receives an eviction filing get evicted in Denver? Court displacement rates are not a tell-all statistic, and they are undoubtedly influenced by factors outside the eviction legal system itself, such as the local housing market and landlords’ readiness to file for eviction in the jurisdiction. But to the extent the eviction legal system influences court

⁵⁵ See, e.g., PANDEMIC RAPID RESPONSE TEAM, NAT’L CTR. FOR STATE CTS., FIVE KEY ASPECTS FOR COURT CO-LOCATED RESIDENTIAL EVICTION DIVERSION PROGRAMS 1–9 (2022), https://www.ncsc.org/_data/assets/pdf_file/0022/71914/Eviction-diversion-whitepaper-Jan.pdf [<https://perma.cc/Q44N-2X6W>] (describing the use of co-located services in eviction courts across jurisdictions as a tool to reduce evictions); Sherley E. Cruz, *Coding for Cultural Competency: Expanding Access to Justice with Technology*, 86 TENN. L. REV. 347, 349 (2019) (arguing that legal technology can improve outcomes for tenants in eviction proceedings); Kathryn A. Sabbeth, *Simplicity as Justice*, 2018 WIS. L. REV. 287, 288 (describing the push towards simplification of court procedures in “poor people’s courts,” including eviction courts); Gerald Lebovits & Lucero Ramirez Hidalgo, *Alternative Dispute Resolution in Real Estate Matters: The New York Experience*, 11 CARDOZO J. CONFLICT RESOL. 437, 437–38, 450–51 (2009) (describing the rise of the use of alternative dispute resolution in the New York City Housing Court).

displacement rates at all—which, I have argued, it very likely does—we should endeavor to figure out what those influences are. Doing so will lead us towards evidence-based policy solutions for addressing the eviction crisis.

