Housing As A Human Right: The Gautreaux Cases and Housing Choice Vouchers in Chicago

Introduction:

The history of public housing in the city of Chicago is a story fraught with racial tension that often manifested itself through segregationist policy. The racial tension in Chicago was paralleled by the racial tension in the United States more broadly. In 1968 when the National Advisory Commission on Civil Disorders (led by Illinois Governor Otto Kerner) released its report on the state of race relations in the country, it concluded that “our nation is moving toward two societies, one black, one white -- separate and unequal” (Kerner Report, qtd. in Polikoff 61-62). This injustice was not going unnoticed; by the time the conclusions of the Kerner Commission were released, the landmark public housing desegregation lawsuit Gautreaux et al. v. Chicago Housing Authority had already been filed. This paper, predicated on the reality of housing as a human right, explores the historical context that led to the Gautreaux case, examines the wording of the decisions and how Nucleus of Chicago Homeowners reacted, and uses the lens of neoliberal ideology to inform our understanding of Housing Choice Vouchers as an effective method of dispersal. In this context, “CHA residents” is an umbrella term to refer to both public housing residents and HCV program participants. “Public housing residents” are defined as people who live in CHA site specific housing, and “HCV program participants” are defined as people who have received subsidized housing vouchers through the Housing Choice Voucher program.
The Historical Context that led to the Gautreaux case:

The Gautreaux case was based on the primary claim that the building practices of the Chicago Housing Authority (CHA) violated the 14th Amendment. The equal protection and due process clauses of the 14th Amendment had been central in the 1954 Brown v. Board of Education case, and these same two clauses were invoked for the Gautreaux case against the CHA (Polikoff 49). A companion lawsuit filed against the U.S. Department of Housing and Urban Development (HUD) ascended all the way to the Supreme Court in 1976. The second lawsuit claimed that HUD had violated the Civil Rights Act of 1964 by knowingly providing funding for the CHA’s segregative actions, despite the fact that the Civil Rights Act “[prohibited] racial discrimination in programs that received federal funding” (Polikoff 49). This pair of cases drew national attention to the state of public housing in Chicago and ultimately was the impetus for significant (if not sufficient) changes in how public housing was distributed across the city. But before exploring the legal decision itself and the changes it caused, it is pertinent to explore the reality of public housing in the period before the 1966 Gautreaux case. What was the reality of the housing conditions in Chicago that led to this suit being filed in the first place?

The Federal Housing Administration was established in 1934. During the early period of its existence, public housing was primarily intended as a means of housing white, working class families (Rothstein 45). At the time, the Neighborhood Composition Rule (NCR) asserted that “occupants of completed [Public Works Administration] projects should conform to the prevailing composition” of the neighborhood as it was before redevelopment, a sentiment which was supported by the racist climate in
Chicago’s City Hall (*Blueprint for Disaster* 54). Some argued that this practice was intended to match public housing residents with communities where they were most likely to feel smoothly integrated into the area’s culture. In practice, the NCR was nothing more than a thinly veiled justification for relegating public housing to places in the city with populations that were overwhelmingly African American. Chicago, as a city with a well deserved reputation for being both highly racially diverse and extremely segregated, was an easy place to apply this logic and end up successfully excluding African American public housing residents from neighborhoods with any substantial white population (Silver 1; “1950: Chicago By Race/Origin”).

It would be remiss to ignore though that these same racially segregationist policies were manifested in other places across the United States. St. Louis began redlining with a ballot measure in 1916, which “won by a substantial majority, creating an ordinance that designated some areas as Negro blocks” (Covert 1). The designated blocks were the only places in St. Louis where realtors were allowed to sell to African American people without fear of losing their license. Restrictive covenants across the country created physical racial segregation that persists even today in cities nationwide, despite the fact that the NCR stayed in effect only until 1949. Yet in few places was the segregation so clear and unapologetically explicit as in Chicago. The conditions that led to *Gautreaux* were being solidified decades before the Supreme Court would order forced desegregation of Chicago’s public housing. In contrast to its original intended purpose, by the years immediately before the 1966 *Gautreaux* case, public housing construction in Chicago took place disproportionately in African American neighborhoods, many of which were also impoverished and devoid of amenities like transportation (Pattillo 216). Residents of

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Chicago public housing in the early 1960s were about 90 percent African American (Lazin 264).

The problems with public housing in Chicago before the Gautreaux case run deeper than just disproportionately building public housing in African American neighborhoods. There were some public housing sites built in predominantly white areas (Trumbull Park Homes Race Riots 1). However, even this small amount of housing outside of African American neighborhoods remained inaccessible to African American public housing residents. Because of the Neighborhood Composition Rule, the CHA had maintained a policy to house only white people at housing projects that were located in primarily white neighborhoods (Blueprint for Disaster 54). Even in the period after 1949 when the NCR was no longer legally in effect, the practice of segregation had been entrenched in the minds of those with political power in Chicago. Many CHA housing developments remained deeply segregated. Trumbull Park Homes, located at 105th Street and Yates Avenue, was an example of one such project. However, in 1953, because fair-skinned African American Betty Howard was perceived by the CHA as white, Trumbull Park accidentally became home to its first African American public housing residents (Trumbull Park Homes Race Riots 1). Race riots broke out less than a week after Betty and her husband Donald moved in, and the things thrown at the couple included not just racial slurs, but fireworks and rocks (Hirsch 80). This racial tension in Trumbull Park periodically erupted into violence throughout the 1950s. It would seem that white public housing residents, as well as many of the people in power who abstained from swiftly squelching the Trumbull Park Riots, were disinterested in the CHA promoting racial integration in its housing policies.
It would be easy to vilify the CHA for not fighting harder to integrate its properties, but it is important to remember also that the complicated political workings of the city of Chicago played a role in deciding where public housing was ultimately built. Facing pushback from civil rights advocates, the CHA did submit plans to build public housing on vacant land scattered throughout the city, not just in African American neighborhoods. However, “since the City Council had a veto over CHA site proposals, the CHA had to comply with City Council demands if it wanted to build public housing” (Lazin 264). Ultimately, powerful aldermen representing white communities thwarted every attempt to build public housing in white neighborhoods between 1950 and 1966 (Polikoff 61; Hirsch 214). To be sure, these actions negatively affected the small percentage of public housing residents in Chicago who were white. But in a society plagued not only by race based discrimination but by class based discrimination, the voices of Chicago’s impoverished white public housing residents were drowned out by the powerful political actors advancing a racially segregationist agenda (Hirsch 214).

The Gautreaux Ruling and How It Was Received:

Because of its long lasting effects, Gautreaux is written into the historical record as a landmark case that is often cited as the turning point for concrete action toward racial integration in public housing nationwide. However, in order to understand the Gautreaux ruling, it is important to first establish what specific allegations the case made -- namely, that the CHA had engaged in racial discrimination in its tenant assignment processes and site selection process for deciding where to build new public housing (296 F. Supp. 907 at 909-913). In response to this, the Northern Illinois District court held that the CHA’s policies were in violation of the Constitution, stating that the "plaintiffs… have the right
under the Fourteenth Amendment to have sites selected for public housing projects
without regard to the racial composition of either the surrounding neighborhood or of the
projects themselves” (265 F. Supp. 582 at 913). In effect, the ruling was a condemnation
of the CHA and its racially segregationist practices for over three decades.

Judge Richard Austin’s finding of culpability for the CHA in perpetuating racial
discrimination in their site selection rested on the fact that, “no criterion, other than race,
can plausibly explain the veto of over 99½ percent of the housing units located on the
White sites which were initially selected on the basis of CHA's expert judgment and at
the same time the rejection of only 10% or so of the units on Negro sites” (265 F. Supp.
582 at 912). One might question whether the CHA could be excused for its behavior on
the grounds of city council voting that it could not control. The answer from the courts
was a resounding no. Judge Richard Austin clearly stated that such intra-governmental
dynamics and the pressures of public opinion did not exonerate the CHA from
responsibility for correcting its 14th Amendment violation: “In fact, even if CHA had not
participated in the elimination of White sites, its officials were bound by the Constitution
not to exercise CHA's discretion to decide to build upon sites which were chosen by some
other agency on the basis of race” (265 F. Supp. 582 at 914). Ultimately, somebody had
to be held responsible for the constitutional violations that had been acknowledged in the
Gautreaux ruling, and the burden fell squarely on the shoulders of the CHA and HUD,
whose conviction rested on the judge’s determination that they had knowingly funded the
CHA’s discriminatory practices.

The wording of Austin’s Gautreaux ruling came to be increasingly important in
the years after it was originally released. One reason the ruling was important was
because it set a precedent of guilt specifically as a consequence of racially motivated intent. Under this ruling, while government agencies could not explicitly wield their programs to promote residential segregation, they were not explicitly barred from inaction in the face of racial segregation furthered by others (Wilen and Stasell 162). In this way, the Gautreaux ruling did not sufficiently address either the historic role of racially motivated government policies in creating the existing patterns of residential segregation or what was at stake in contemporary government inaction in the face of those patterns of racial segregation. The Austin ruling was also problematic because it cultivated a dynamic that disincentivised entities of local government from accessing federally funded development programs. In the years after Gautreaux, the funds were attached to federally mandated integration connected with the Civil Rights Act of 1964 (Harvard Law Review 687). In response, the task of undertaking desegregation lay disproportionately with poorer municipalities, which could not afford to forgo federal funding. This, in Chicago and in other places across the United States, often meant center cities. After losing much of the tax base to suburbia during the era of white flight, the city of Chicago could not afford to opt out of federal funding (Polikoff 149-152). The result was the continued evolution of a decentralized, federally-supported housing policy in which “the basic direction … has been the concentration of the poor in the central city and the dispersal of the affluent to the suburbs” (Jackson 230). One might think that the movement of affluent white voters to the suburbs would lessen the local political tension that pitted aldermen representing white neighborhoods against the CHA. However, the response to the Gautreaux case was not uniformly accepting, and there were still plenty
of adversaries left in the city to complicate the practice of implementing the changes that had been laid out by the Austin ruling.

Some of those opposing parties came together to form an organization that would eventually challenge Austin’s ruling in a case decided by the Seventh Circuit courts. They called themselves Nucleus of Chicago Homeowners, and they brought a suit against the CHA’s first set of proposed sites for scattered site public housing in the city (Hirsch 56). The proposal for scattered site public housing would effectively disperse public housing throughout the city of Chicago by building single family homes and other housing options that actively resisted concentrating public housing residents in a limited number of geographic spaces (as large public housing developments, high rises or not, inevitably do). Seeking a legal angle that would allow urban communities to assert boundaries of social distinction within the city, the Nucleus plaintiffs latched onto the wording of “the human environment” in the National Environmental Protection Act (NEPA) (Polikoff 162). Their goal was to convince the courts that, in the wake of Gautreaux, concerns other than remedying racial discrimination ought to be central to the location of public housing.

In the pursuit of this goal, the plaintiffs “alleged that low-income housing tenants as a group… possess a higher propensity toward criminal behavior,... a disregard for... maintenance of personal property, and a lower commitment to hard work” (524 F. 2d 225 at 228). Considering that the overwhelming majority of public housing residents in Chicago are African American (75% in 2013), Nucleus’ scathing account of the character of public housing residents takes on a new meaning (Badger 1). The account can
essentially be understood as a racist diatribe that employed status as a public housing resident as a barely disguised proxy for race. The plaintiffs went on to assert that

“the proposed construction of CHA scattered-site housing [would] have a direct adverse impact upon the physical safety of those plaintiffs residing in close proximity to the sites, as well as a direct adverse effect upon the aesthetic and economic quality of their lives so as to significantly affect the quality of the human environment” (524 F. 2d 225 at 228).

This description cast public housing residents in the role of an infectious disease; mere proximity to them would result in calamity for personality safety and property values alike. Scattered site housing, so Nucleus argued, would disperse public housing residents into neighborhoods where no public housing had previously existed, essentially exposing more market rate renters and homeowners in the city of Chicago to the detrimental effects of residing near public housing residents.

A belief that living near public housing residents is detrimental is closely tied to the prevailing stigma against CHA residents in contemporary culture. In public policy, class is increasingly used as a proxy for race. However, a system that emphasizes class has the potential to actually increase stigma associated with being low income. Status as a public housing resident can be easily interpreted by others as a marker of being low income; in a system of policies based on class, the distinctions between those who have the financial resources to pay market rate for their housing and those who do not become even more stark. It is my belief that as class becomes a larger part of our system of public policy, a feeling of categorical inequality between people labeled as different limits the extent to which people from diverse socioeconomic backgrounds can identify with each
other. Without this connection between people of different classes, the stigma against CHA residents will always and everywhere persist.

*Nucleus*’ argument was not sufficiently persuasive. Both the Northern Illinois District court and the Seventh Circuit Court of Appeals rejected their definition of “human environment.” The lower court wrote, “at the outset, it must be noted that although human beings may be polluters (i.e., may create pollution), they are not themselves pollution (i.e., constitute pollution)” (372 F. Supp. 147 at 149). Based on this assertion, the district court defined the question before them as “whether acts or actions resulting from the social and economic characteristics will affect the environment” (372 F. Supp. 147 at 149). *Nucleus*’ formal justification for invoking the NEPA had been HUD’s failure to prepare an environmental impact statement when proposing the scattered-site housing (Polikoff 162). However, the rulings dismissed this complaint once and for all when they asserted that “it is clear that HUD chose to consider the impact of the scattered-site housing on the social fabric of the recipient communities” (524 F. 2d 225 at 231). The opinion goes on to assert the validity of HUD’s calculation that the nature of the scattered site construction meant that it would not upset the general social fabric of the neighborhoods where it was located, relying on the fact that “the CHA’s tenant selection and eviction policies further diminish the possibility that prospective CHA tenants will pose a danger to the health, safety, or morals of their neighbors” (524 F. 2d 225 at 231). This ruling effectively dismissed the concerns brought forward by Nucleus of Chicago Homeowners. However, the ruling did not establish the court’s position on the validity of future suits that assert claims to urban space based on exclusionary definitions of the public.
Dispersion, Housing Choice Vouchers, and Neoliberalism:

Interestingly, the same ideas that Nucleus of Chicago Homeowners used about public housing residents as being equivalent to a disease were later employed in support of almost the exact opposite conclusion about scattered site housing. Instead of thinking of public housing residents as the kind of disease that was infectious and capable of overpowering new environments, this new ideology considered public housing residents an infirmity best overcome by dispersing its concentration throughout the “body” -- here understood instead as the entirety of the city of Chicago (Goetz 1). Under the logic of dispersion, public housing residents were an ill best mitigated by integrating them in small quantities into communities of market rate renters and homeowners. The idea of poverty as a disease so thoroughly overtook public perception that a 1974 article in the Journal of the National Medical Association claimed poverty as the cause for physical infirmities from “mental retardation” to “heart disease” (Cobb 522). Although the clinical language of the journal stopped far short of the accusations Nucleus made about the flawed character of public housing residents, the otherizing effect of associating public housing residents with disease and poor morals remained constant.

In 2000, the CHA embarked on the Plan for Transformation. This plan, in the words of the CHA itself, “was the largest, most ambitious redevelopment effort of public housing in the United States, with the goal of rehabilitating or redeveloping the entire stock of public housing in Chicago” (“Plan for Transformation”). The Plan for Transformation’s method of rehabilitation and redevelopment included an aggressive program of high rise demolition, citing physically unsafe living conditions in the apartments and the difficulty to law enforcement of effectively policing the space. One
should not imagine that the impetus for demolitions came entirely from the CHA’s desire to improve housing conditions. A provision of the 1966 annual spending bill for HUD “mandated public housing authorities to do… viability studies for all the housing developments that had a vacancy rate of 10% and at least 300 units” (Bennett et al. 156). A stunning 17,859 units in Chicago failed the test (Venkatesh 265). Instead of simply complying with the resulting federally mandated demolition orders, the CHA incorporated the demolitions into its strategic planning in the form of the Plan for Transformation.

The idea behind the Plan was to “promote the integration of public housing residents into less poor, more economically diverse neighborhoods in the city” (Chaskin and Joseph 9). Unfortunately, the result was often a fracturing of community bonds that had existed for generations in Chicago’s high rise public housing developments. Take for example the demolition of the Cabrini Green high rises. From the demolition of the first tower in 1995 to the razing of the final high rise in 2011, the destruction of Cabrini Green brought with it a collapse of social support structures predicated on the community atmosphere that prevailed in what was known to outsiders as one of America’s most dangerous examples of public housing (Seventy Acres in Chicago). Despite the negative perception of the housing perpetuated by the media, the residents there formed a community with bonds strong enough that they continued to socialize together at a weekly reunion called Old School Mondays (Seventy Acres in Chicago). It is impressive that these social bonds have thus far prevailed for Cabrini Green, and some of the residents have even been able to return to the new mixed-income development built on the site where Cabrini Green once stood. However, it is important to remember that for
thousands of other public housing residents, moving out of their high rises meant a permanent separation from those social support structures (Venkatesh and Celimli 1).

Of course, the topic of high rise demolition raises the question of where the CHA residents who occupied those units actually went. As Chaskin and Joseph recount, “the federal government turned to two main strategies to deconcentrate poverty from public housing developments: [Housing Choice Vouchers] and mixed-income developments” (Chaskin and Joseph 55). Both of these policy shifts away from high rises align with the ideology of poverty as an illness that should be dispersed for best chances of mitigation. Of course, in this case the CHA residents being mitigated are not diseased cells, but human beings. In 1995, the federal government rescinded a rule that required one-for-one replacement of any public-housing units demolished (Petty 222). Since then, HUD has awarded billions of dollars to cities nationwide to topple housing projects and build in their stead mixed-income developments (Brophy and Smith 4). Of course, even if mixed-income developments had as many units as the high rise sites they are meant to replace, which they inevitably do not because the individual units are larger and the buildings include more amenities, the mixed-income sites would still not have as many units for public housing residents as the high rises that preceded them. This is because the mixed-income sites, by definition, include units allocated for market rate and affordable housing renters. The unsurprising result is a surplus of CHA residents for whom there is no availability in CHA properties.

For CHA residents unable to be housed in buildings owned by the CHA (as well as those CHA residents who chose vouchers at the time of the high rise demolitions), the agency’s solution has increasingly been to issue Housing Choice Vouchers. Not only are
HCV vouchers less expensive than building a public housing units in CHA owned buildings, they also have a comparatively stable source of federal funding from Section 8 of the Housing Act of 1937. In 2016 the CHA managed 46,826 clients in the Housing Choice Voucher program, which marks a notable increase from even one year earlier, when 44,773 CHA residents held vouchers (“CHA Quarterly Report: 4th Quarter 2016” 19; “CHA Quarterly Report: 4th Quarter 2015” 20). Housing Choice Vouchers are advertised as functioning such that the “families can use their vouchers to rent a house or apartment in the private market throughout the city of Chicago, and the CHA pays a portion of eligible families’ rent each month directly to the landlord” (“Housing Choice Voucher (HCV) Program”). The decrease in housing available in CHA properties combined with the lower cost and stable funding source for the HCV program has been the legal impetus for Housing Choice Vouchers becoming so prevalent, but what are the ideological currents that also contributed to this change?

In order to understand how the shift to Housing Choice Vouchers echoes an undertone of neoliberalism that has thrived in the United States for decades now, it is necessary to first explore how the experience of Housing Choice Voucher holders diverges from the experience of other CHA residents (Prasad 99). Housing Choice Voucher program participants, like other CHA residents, are subject to a review process by the CHA (“Housing Choice Voucher (HCV) Program”). However, unlike other CHA public housing residents, Housing Choice Voucher recipients are also responsible for finding their own apartments on the private market -- a task which is further complicated by illegal discriminatory renting practices and stringent CHA housing inspections (Jackson 205). To make matters more difficult, if residents are unable to find housing by
a set deadline, usually 90 days after receiving the voucher, then they forfeit their voucher to the next person on the depressingly long waiting list – which currently has 42,506 people on it (“CHA Quarterly Report: 4th Quarter 2016” 20). Although it is possible and fairly common to apply for extensions, HCV participants still lament the relatively short amount time they have to find a new unit (Bowean 1).

In essence, the Housing Choice Voucher system shifts the pressure to find and secure adequate housing from the CHA to the CHA resident. This shift is one that matches neoliberal ideology, which “involves a focus on individual responsibility rather than social structures” (Spalding 27-28). The United States increasingly stigmatizes what it interprets as free handouts. Because of the neoliberal ideology that fuels the country, “the United States leans away from cash benefit programs such as TANF and SSI, and puts greater emphasis on programs such as… the Earned Income Tax Credit (EITC), regardless of the fact that research on in-kind benefit programming has been inconclusive, contradictory, and mixed at best” (Haymes et al. 236). By pushing more of the responsibility onto CHA residents themselves, the CHA is able to subtly convince the general public that Housing Choice Voucher holders -- even though they receive subsidized rent for apartments on the private market -- are not the recipients of free handouts from the government. This argument against seeing the HCV program as a free handout is strengthened by the fact that HCV program participants still pay 30% of their income to their landlord in rent. The CHA’s attempts to destigmatize CHA residents are significant, but they fail to address the root problem, which is the presence of the stigma against CHA residents in the first place. Why, in a country that regularly admonishes international actors for human rights violations, are we so set on ignoring the fact that
housing is a human right? Instead of being thankful that we live in a place with the resources to provide assistance to those who might otherwise be homeless, public opinion has led the CHA to offput the work of securing housing to those most vulnerable -- the Housing Choice Voucher holders themselves.

Conclusion:

The *Gautreaux* court case has left a long shadow on the history of public housing. But has the case meant to improve outcomes in public housing actually been successful in doing so? At a recent Chicago Area Fair Housing Alliance (CAFHA) meeting, key professionals in the Chicago housing organization community came together to talk about Housing Choice Vouchers. A primary topic of conversation was the administrative difficulties associated with using Housing Choice Vouchers in the private renting market, including the fact that vouchers must be redeemed within a few months from the time they are issued. While some professionals at the meeting lamented the widespread discrimination against voucher holders that often goes unreported, other professionals focused instead on the difficulties associated with actually getting voucher holders into opportunity areas in the city. While in theory Housing Choice Vouchers are redeemable anywhere within Chicago’s limits, a map of where HCV participants live reveals the concentration of voucher usage on Chicago’s under resourced, predominantly African American south and west sides (Bentle “Vouchers By Community Area”).\(^2\) Fifty years after it was originally filed, considering the prevalence of discriminatory practices that still face CHA residents in Chicago, many would argue that *Gautreaux* has failed.

\(^2\) See Image 2.
Chicago’s history of public housing mirrors the same racial tensions that have been seen across the country. But Chicago, with its uniquely stringent combination of diversity and segregation, has long served as a place where tensions that simmer elsewhere actually boil over. The *Gautreaux* court cases tasked the CHA with desegregating its public housing, which many at the time imagined would involve building new high rise public housing sites in predominantly white areas. Facing backlash from racist local aldermen and citizens mad enough to file counter court cases, the CHA found implementing the reforms outlined in the *Gautreaux* case more difficult than anticipated. The general public held a deeply stigmatized view of CHA residents, and neoliberal ideology combined with the rhetoric of concentrated poverty as an illness led to the Plan for Transformation reforms involving the demolition of high rise public housing sites and the dispersal of CHA residents. Housing Choice Vouchers became an increasingly popular way for the CHA to claim it provided housing for people without actually bearing any of the burden of finding the housing or negotiating the price. Complications associated with actually redeeming Housing Choice Vouchers emphasized the responsibility that voucher holders were taking in pursuit of securing their own housing, which at least attempted to separate CHA housing from the stigma the American public attaches to resources categorized as handouts. Nonetheless, the problems that prompted the *Gautreaux* case still largely exist today as a perpetual reminder of just how difficult it is to actually eradicate institutionalized racism in Chicago’s system of providing subsidized housing.

Image 2: (Bentle "Vouchers By Community Area")
Works Cited


*Seventy Acres in Chicago: Cabrini Green*. Dir. Ronit Bezalel. 2014. Film.


