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A CLASH OF CULTURES: IMMIGRATION AND HOUSING CODE ENFORCEMENT ON LONG ISLAND

*Stefan H. Krieger**

I. INTRODUCTION

For the past several years, students in the Hofstra Housing Rights Clinic and I have represented tenants in an apartment building in the Village of Farmingdale, New York, whom we allege were targeted for eviction by the Village because they are Latinos.¹ Farmingdale is a predominantly white, middle-class Long Island community, approximately thirty-five miles from mid-town Manhattan, with a small Latino enclave centered in the vicinity of our clients' home, 150 Secatogue Avenue.² Around the corner from the building there is a bodega at which people from the community gather to unwind and relax. Our clients view the bodega as a community center, a place where people, especially men in the community, can gather at the end of the day. In warm weather, they gather outside the establishment.

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1. *Rivera v. Inc. Village of Farmingdale*, No. 06-CV-2613, 2008 WL 3367585 (E.D.N.Y. July 8, 2008).

2. The history of Farmingdale has been summed up as follows:

Farmingdale has been a destination for migrant workers since the 1940's, but the latest wave of Mexican and Central American day laborers started coming in the middle 1980's. According to census data, the Hispanic population just about doubled between 1990 and 2000, from 545 to 1,073, and as of the last census, made up more than an eighth of the village population. Many of them are [undocumented].

Campbell Robertson, *Immigrant Policies Take a More Aggressive Turn*, N.Y. TIMES, Nov. 14, 2004, § 14 at 1. The area around 150 Secatogue Ave. has been dubbed, "Farmingdale's 'Little Latin America.'" Bart Jones, *Village Accused of Bias*, NEWSDAY, May 26, 2006, at A8.

After the Clinic filed a housing discrimination case against the Village and the developer who planned to evict the tenants, we received a letter from a Farmingdale resident. It read in part:

I live in Farmingdale and I am an attorney. I grew up in Farmingdale. It used to be a lovely town, but now it's unfortunately on the decline. People like your clients have a lot to do with its deterioration.

I would be very glad to see the Secatogue Ave. apartments demolished. Would you like to know why? It has nothing whatsoever to do with the ethnicity or race of the inhabitants of the apartments. Rather, it is the conduct of the tenants of 150 Secatogue Avenue . . .

There is a "Spanish-American" deli on the south side of the building. It is constantly frequented by large groups of Secatogue Latino men, who purchase items and then hang out for hours on the street. I was a patron of that deli twice, but I don't plan to return. Each time I went in, there were about 10 men sitting at a table, apparently stinking drunk. They leer and ogle every female who goes within 20 feet of them, and make sexually suggestive remarks. On dozens of occasions, I have observed Latino males drinking beer and alcohol milling about on the street outside this deli, also sitting on the sidewalk drinking, at times in a prone position and literally sprawled out on the sidewalk, or sprawled out in the street, apparently intoxicated. . . . Their behavior is pathetic and offensive. And—I'll bet 99% of them are in the United States illegally. . . .

So that's why when they knock Secatogue Ave. down, I'll throw a party. These people add nothing to the neighborhood (or the US), they just drag Farmingdale down. If the tenants at Secatogue behaved respectfully, were law-abiding, did not act offensively toward women, populate gangs, and were sober in public, neither I nor the residents of Farmingdale would give them a second thought. It's their own behavior that brings about the negative regard for them.³

The letter was not signed with the author's name.

This contrast between the tenants' view of the bodega as a warm, harmless community center and the letter writer's perception of this small grocery store as a crime center is a stark reflection of what I would call a clash of cultures created by the increase in immigrant populations on Long Island over the past decades. Since 1990, the Hispanic population on Long Island has increased by more than seventy percent,

3. Letter from Anonymous, to Stefan H. Krieger, Professor of Law, Hofstra University School of Law (May 28, 2006) (on file with author).

from 165,237 to 282,693 persons, and in Farmingdale, it more than doubled.⁴ For the very same conditions, each group—the immigrants and the long-time residents—have created different narratives.

This clash of cultures permeates housing code enforcement on Long Island in two particular ways. First, many local governments selectively enforce housing code standards in their jurisdictions based on cultural biases. They focus on matters such as over-occupancy in immigrant housing and overlook other issues endangering the health and safety of residents in buildings owned or managed by more affluent non-immigrants. Second, motivated by cultural bias, local governments often attach a stigma to apartment buildings inhabited by new immigrants. These buildings are deemed “blighted” precisely because immigrants live there. Some local governments do not prosecute owners aggressively for code violations, and instead simply seek to condemn these properties and have them sold for redevelopment as more upscale housing for non-immigrant occupants.

In this Article, I will first review some of the literature on anti-immigrant biases in housing code enforcement in the United States. Then, I will describe issues of selective enforcement of housing codes in present-day Long Island using cases from the Hofstra Housing Rights Clinic as concrete illustrations. Finally, I will discuss ways that local governments both on Long Island and elsewhere can reconsider priorities in enforcing their housing codes to address the problems of cultural biases.

II. A BRIEF HISTORY OF SELECTIVE ENFORCEMENT OF HOUSING CODES IN THE UNITED STATES

Anti-immigrant bias in housing code enforcement is nothing new. Ellen Pader, an anthropologist at the University of Massachusetts Amherst, has written several articles illustrating how the development and enforcement of Housing Code occupancy standards in America reflect cultural norms more than scientific truth.⁵ Specifically, she

4. Harvard School of Public Health, diversitydata.org, *Nassau-Suffolk, N.Y.: Summary Profile*, <http://diversitydata.sph.harvard.edu/profiles.jsp?ma=5380> (last visited Apr. 29, 2008); Robertson, *supra* note 2, at 1.

5. See generally Ellen J. Pader, *Space of Hate: Ethnicity, Architecture and Housing Discrimination*, 54 RUTGERS L. REV. 881 (2002) [hereinafter Pader, *Space of Hate*] (discussing how occupancy standards are often inappropriate for minority communities because they do not take into account cultural and social differences); Ellen Pader, *Housing Occupancy Standards: Inscribing Ethnicity and Family Relations on the Land*, 19 J. ARCHITECTURAL & PLAN. RES. 300 (2002) [hereinafter Pader, *Housing Occupancy Standards*] (same); Ellen J. Pader, *Spatial Relations and*

argues: “The history of occupancy standards follows the prevailing social, cultural, economic, and health rationales of particular eras and particular sectors of society; they are the product of socially constructed personal feelings and opinions.”⁶ Some of those same cultural biases remain with us today.

In the late nineteenth and early twentieth century, urban life in America was undergoing many pressures, including a large influx of primarily non-English speaking, moneyless immigrants: Eastern European Jews, Polish, Italians, and Irish.⁷ These new immigrants lived in miserable urban tenements. In response, housing reformers, who came primarily from the Northern European middle and upper class establishment, sought to improve not only the physical health of tenants in tenements, but also their moral health.⁸

The science underlying the reformers’ physical health recommendations was for the most part bogus. The scientific wisdom at the time warned of a dire condition called “miasma”: impure air caused by insufficient circulation in a room and resulting in people literally drowning in their own breath.⁹ As Pader notes, “Th[e] cutting edge scientific knowledge of the late nineteenth century proved, without doubt, that . . . ‘40 or even 50 percent’ of deaths in New York City were directly caused by breathing one’s own, self-inflicted noxious air”¹⁰

But bogus science was only part of the picture. As Harvard sociologist James Ford, Chair of the American Public Health Association’s Subcommittee on Standards of Occupancy, observed in 1940, standards of overcrowding adopted in the previous decades were based not only on health concerns but also on moral considerations.¹¹ Reformers were concerned, for instance, about the possibility of promiscuity in overcrowded tenements. Charles Loring Brace, founder of the Charity Organization Society, asserted in 1880:

If a female child be born and brought up in a room in one of these tenement-houses, she loses very early her modesty which is the great shield of purity. Personal delicacy becomes almost unknown to her. Living, sleeping, and doing her work in the same apartment with men and boys of various ages, it is well-nigh impossible for her to retain

Housing Policy: Regulations that Discriminate Against Mexican-origin Households, 13 J. PLAN. EDUC. & RES. 119 (1994) (same).

6. Pader, *Housing Occupancy Standards*, *supra* note 5, at 306.

7. *Id.*

8. *Id.*

9. Pader, *Space of Hate*, *supra* note 5, at 885.

10. *Id.*

11. Pader, *Housing Occupancy Standards*, *supra* note 5, at 310.

any feminine reserve, and she passes almost unconsciously the line of purity at a very early age.

In these dens of crowded humanity, too, other and more unnatural crimes are committed among those of the same blood and family.¹²

Moreover, housing standards advocates expressed great fear of the “lodger evil”: the presence in the household of persons who were not part of the nuclear family.¹³ Reflecting the sentiment of the times, Ellen H. Richards, Instructor of Sanitary Chemistry at the Massachusetts Institute of Technology, wrote in 1905: “In the sociological sense, shelter may mean protection from noise, from too close contact with other human beings, enemies only in the sense of depriving us of valuable nerve-force. It should mean sheltering the children from contact with degrading influences.”¹⁴ Richards goes on to quote Charles P. Neill, then the United States Commissioner of Labor:

In my own estimation home, above all things, means privacy. It means the possibility of keeping your family off from other families. There must be a separate house, and as far as possible separate rooms, so that at an early period of life the idea of rights to property, the right to things, to privacy, may be instilled.¹⁵

As a result of this questionable science and purported moral scruples, local urban governments adopted occupancy requirements with arbitrary cubic foot per person requirements to limit the number of persons in a housing unit. The first such ordinance was adopted in San Francisco in 1870 at the request of the Anti-Coolie Association and required a minimum of 500 cubic feet of air space per person.¹⁶ New York followed suit in 1879 with an occupancy standard that required 600 cubic feet of air space per person.¹⁷ By 1901, this standard was decreased to 400 cubic feet for each adult and 200 for each child.¹⁸

12. CHARLES LORING BRACE, *THE DANGEROUS CLASSES OF NEW YORK AND TWENTY YEARS' WORK AMONG THEM* 55 (1967) (reprinted 1967 ed., from 3d ed. 1880).

13. Pader, *Housing Occupancy Standards*, *supra* note 5, at 307.

14. ELLEN H. RICHARDS, *THE COST OF SHELTER* 6-7 (1905).

15. *Id.* at 7 (quoting Charles P. Neill, United States Commissioner of Labor, Address to the New York School of Philanthropy (July 16, 1905)).

16. Pader, *Housing Occupancy Standards*, *supra* note 5, at 308. As Pader notes, this ordinance was disproportionately enforced in Chinatown where low-income, single Chinese workers shared rooms. *Id.*

17. *Id.*

18. *Id.*

III. ENFORCEMENT OF OCCUPANCY STANDARDS IN PRESENT-DAY LONG ISLAND

Fast-forward one hundred years to Long Island. Many local governments are using occupancy standards—some adapted from those of the early twentieth century—to attack alleged overcrowding in homes rented or owned by new immigrants. Like the immigrants in the late nineteenth century, many of the current new immigrants have large families, have limited incomes, cannot afford most rental housing, and have members of their extended families—especially newly-arrived relatives—living with them.¹⁹ As a result, many of these large families live in small one or two-bedroom apartments. These living arrangements threaten the suburban cultural ideal of one small nuclear family living in a single dwelling. And to many long-term residents this danger becomes even more serious when these tenants share their homes with new arrivals or have jobs as day laborers.

A good example of a Long Island community's reaction to the living arrangements of new immigrants is the Village of Freeport's use of section 128-20(A) of its Code. This ordinance provides:

No dwelling unit shall be occupied by more persons than twice the number of living rooms in the dwelling unit less one (1) except that two (2) persons may occupy a dwelling unit containing one (1) room. No living or sleeping room shall be so overcrowded that there shall be afforded less than six hundred (600) cubic feet of air for each occupant and three hundred (300) cubic feet of air for each additional occupant of such room.²⁰

As a quick reading of this provision makes readily apparent, these requirements are very similar to those of the original occupancy codes adopted over a century ago. The cubic air requirement, for instance, is just a tad more liberal than the cubic-feet-per-person requirements of the

19. According to United States Census Bureau data for Long Island in 2000, the overcrowding rate (defined as the share of occupied housing units with more than one person per room) by race/ethnicity for renters was 38.3% for Hispanic, 13.9% for Non-Hispanic Black, and 3.0% for Non-Hispanic White. The average household size was 4.2 persons for Hispanic, 3.5 for Non-Hispanic Black, and 2.8 for Non-Hispanic White. Harvard School of Public Health, *supra* note 4.

In regard to median household income in 1999, the census data show \$54,742 for Hispanic, \$58,506 for Non-Hispanic Black, and \$70,551 for Non-Hispanic White. *Id.* And the poverty rate in 1999 was 12.6% for Hispanic, 12.2% for Black, and 3.9% for Non-Hispanic White. *Id.* While obviously not all of the Hispanic population on Long Island are immigrants, 45.9% of the Hispanic population is foreign born compared to 6.4% of the Non-Hispanic White population. *Id.*

20. VILLAGE OF FREEPORT, N.Y., CODE § 128-20(A) (1973).

original New York City occupancy codes.²¹ And the only support for that Code was the pseudo-scientific miasma theory and the cultural bias of housing reformers from the early twentieth century who wanted to allow only a nuclear family to live in a dwelling.²² Indeed, the fact that the Freeport Code only allows three persons in a one-bedroom apartment—whatever the actual size of the apartment—reflects a bias for the small nuclear family much more than any safety or health concern.

Despite the questionable basis for the Freeport Code, Freeport has aggressively enforced it, especially against Latino tenants. Over the past ten years, the Hofstra Housing Rights Clinic has represented numerous tenants who live in apartment buildings in Freeport who have received violation notices for over-occupancy under this Code. When the Clinic appears in these cases, the Assistant Village Attorneys solemnly express concerns about the health and safety of the affected family, but the actual basis for these violations became very clear in one of our cases.

In that case, the agents of the landlord complained to the Village²³ that the Latina tenant's one-bedroom apartment was occupied by five children and two adults.²⁴ Inspectors from the Village then visited the tenant's apartment to serve an appearance ticket for alleged violation of section 128-20(A).²⁵ At that time, the tenant complained about different health and safety problems in the apartment (including a leaking sink, a sagging ceiling, and peeling paint), and the inspectors told her that they would send a letter to the landlord explaining all the repairs needed.²⁶ A little more than a month later, the inspectors returned to the apartment and asked the tenant if the repairs had been made.²⁷ She denied the inspectors' requests to enter, but they persisted, entered the apartment, took pictures, and told her that they would fine the landlord if the repairs were not made.²⁸

Despite the inspectors' assurances to the tenant, after these inspections the Village took no action whatsoever against the landlord

21. See *supra* notes 17-18 and accompanying text.

22. Pader, *Housing Occupancy Standards*, *supra* note 5, at 885-86.

23. *People v. Landaverde*, No. Bz 044031 (Freeport, N.Y. Village Ct. Apr. 19, 2002). The landlord's motivation for this complaint to the Village apparently was most likely to evict the tenant and raise the rent. See *infra* notes 32-33 and accompanying text.

24. Deposition of Christopher Dolan, *Landaverde*, No. Bz 044031.

25. See Defendant's Motion to Dismiss at 1-2, *Landaverde*, No. Bz 044031.

26. *Id.* at Affidavit of Ana Landaverde.

27. *Id.*

28. *Id.*

for the health and safety problems in the apartment.²⁹ Instead, it focused its attention solely on the proceeding against the tenant for alleged violation of the occupancy requirements of section 128-20(A) and indeed threatened the tenant with a \$250 fine and/or fifteen days incarceration.³⁰ Accordingly, the Village made a conscious decision to give priority to enforcement of its occupancy code rather than the prosecution of the landlord for genuine health and safety violations. The Village's purported concern for health and safety, then, reflected more concern for the nature of the inhabitants in the apartment than the condition of the structure in which they lived.

But in the cases handled by the Clinic, another motivation for this type of code enforcement appears to exist: the "Evil Lodger" theory a century later. In several cases in Freeport, the Clinic has been able to have the charges dismissed even when the Code was technically violated if the only occupants of the apartment were the members of a nuclear family. When some of the occupants, however, are members of the extended family (an uncle, nephew, or brother of the tenant), the Village invariably assumes that they are illegally subletting the apartment and strictly enforces the occupancy requirements. The importance of this factor is highlighted in plea bargaining negotiations in over-occupancy cases when the Assistant Village Attorneys' initial questioning usually focuses on the precise relationship of the occupants. While the "Evil Lodger" reformers of a century ago sought to restrict occupancy in tenements to protect youth from promiscuity, the present enforcers of these requirements have their own cultural biases. Their focus is on preserving the suburban ideal of a single nuclear family in each dwelling.

Not only have immigrants faced prosecution under these dubious occupancy restrictions, but they have also been subjected to harassment by some landlords who have tried to exploit these codes for their financial benefit. Many new immigrants live in areas subject to the Emergency Tenant Protection Act of 1974 ("ETPA"),³¹ such as the Village of Freeport and the Village of Hempstead. The ETPA is a rent stabilization statute that severely limits the ability of a landlord to raise

29. Letter from Village of Freeport in response to Defendant's Oct. 23, 2003 Application for Access to Records (Nov. 6, 2003) (on file with author) (indicating that the Village inspector sent one letter to the tenant's landlord two months after initially inspecting the apartment in response to these inspections of the tenant's apartment and then took no further action).

30. Affirmation in Opposition to Defendant's Motion to Dismiss, at 10-11, *Landeverde*, No. Bz 044031.

31. N.Y. UNCONSOL. LAW §§ 8621-34 (McKinney 2007).

rents as long as the tenant remains in compliance with the lease.³² Under that statute, however, if a tenant vacates an apartment for any reason (voluntarily or after an eviction action), the landlord is allowed an approximately twenty percent increase in rent.³³ To take advantage of this provision, some landlords have brought eviction actions against Latino ETPA tenants based on alleged violations of the occupancy codes to force them out of their apartments by court order.

These occupancy statutes, then, are not quaint relics that remain on the books but go unenforced. Like their predecessors a century ago, today's local governments can use these codes—despite their questionable scientific basis—to enforce their cultural bias in favor of small nuclear families. Such enforcement is considered most beneficial when the large, extended families are non-English speaking immigrants to the community.³⁴ And at times, these governments are assisted in these efforts by landlords who take advantage of these codes for their own financial advantage.

IV. NONENFORCEMENT OF HOUSING CODES IN PRESENT-DAY LONG ISLAND AND THE ISSUE OF BLIGHT

While the cultural bias of some Long Island local governments is reflected in their aggressive enforcement of occupancy standards, it is also evidenced by deliberate decisions of some of these governments not to enforce other aspects of their housing codes, to rid so-called blighted buildings of new immigrants. Because of the limited incomes of many new immigrants,³⁵ they live in substandard housing, deteriorating apartment buildings which have low rents. The approach local governments take in addressing problems in these buildings demonstrates the cultural attitudes of these communities.

When faced with the problems of substandard buildings, a local government has two options. The first alternative is the use of the police power through the remedy of nuisance abatement.³⁶ The municipal government can serve owners with notices or orders to abate the dangerous conditions, and, should they fail to comply with the orders, the government can seek fines against them or abate the problems and

32. See *Id.* § 8626.

33. *Id.* § 8630(a)(1).

34. See Pader, *Housing Occupancy Standards*, *supra* note 5, at 308-09.

35. See *supra* note 19 and accompanying text.

36. See Steven J. Eagle, *Does Blight Really Justify Condemnation?*, 39 URB. LAW. 833, 838 (2007).

assess the owners for the expenses of any repairs.³⁷ If the assessments are not paid, the government can foreclose on the property.³⁸ In other words, local governments can enforce housing codes aggressively under their police powers to force owners to repair deteriorated buildings. The second option for addressing the problems of substandard housing is the use by the local government of its eminent domain power.³⁹ It can condemn the property and compensate the owner.⁴⁰

In a recently-published provocative article, Professor Steven Eagle argues that a local government, confronted with a building that poses a threat to public health or safety, should be required to use its police power to order the landowner to comply with the relevant codes, rather than be allowed to exercise its eminent domain authority to condemn the purported blighted property.⁴¹ While much of the article focuses on the question whether, as a constitutional matter, local governments should be required to use their police power in these situations rather than their condemnation authority, he also addresses the issue of the practical consequences of the use of each of these remedies in dealing with so-called blighted properties.⁴² For purposes of this Article, the latter discussion is most relevant to understanding the effect of the use of these two remedies on the immigrant families living in substandard buildings.

Eagle argues that when using eminent domain power to condemn a building, the government treats the nuisance conditions as inherent to the land itself; it is as if the land has a disease which the government must take to protect the public.⁴³ If the problems are perceived as intrinsic to the deteriorated building itself, then no solution exists except condemnation and redevelopment to change its very nature. As Eagle correctly shows, however, the nuisance conditions in a blighted building are not attributable to the land itself but result from the owner's acts of commission or omission on the land.⁴⁴ If the substandard conditions are perceived as the result of the landowner's negligence, not something that is inherent in the land or the occupants who live on it, the nuisance abatement approach is the proper remedy for forcing compliance with the applicable housing codes.

37. *Id.*

38. *Id.*; *see, e.g.*, N.Y. MULT. RESID. § 305(2) (McKinney 1992).

39. Eagle, *supra* note 36, at 834-35.

40. *Id.* at 836.

41. *Id.* at 833.

42. *Id.* at 836.

43. *Id.* at 843-44.

44. *Id.* at 845.

Moreover, as Eagle demonstrates, the penchant of local governments to use the eminent domain power to address blighted conditions, rather than aggressive code enforcement, creates perverse incentives for both the owner and the local government. He observes, “[w]hile it is conventional to state that the presence of blight results in condemnation, it is more likely that the availability of condemnation results in ‘blight.’”⁴⁵ Once owners of deteriorated buildings know that a local government is considering blight condemnation, they have a decreased incentive to remedy the conditions in the building.⁴⁶ Since they know they will be compensated in eminent domain proceedings for the taking of their properties, no inducement exists for the owner to invest in repairing the building. Unlike the use of the nuisance abatement approach, under which the owner is subject to fines and ultimately the payment of repairs made by the local government, the eminent domain option actually compensates derelict owners for their neglect.

Furthermore, Eagle argues, local governments’ use of eminent domain to address the problems of deteriorated buildings allows them to seek out private developers for their own political interests to implement their own ideal vision for their community.⁴⁷ Such an approach is much different from the use of the nuisance abatement remedy. Instead of the goal of refashioning the parcel to meet the government’s vision for the building, the objective of abatement is to encourage negotiation and litigation with the offending landowner, with the primary purpose of alleviating the problems in the building. And if those efforts are ultimately unsuccessful, an abatement foreclosure allows for private efforts to revitalize the property.⁴⁸ Lenders and buyers specializing in distressed properties, including not-for-profit developers of affordable housing, have an incentive to arrange a transfer of property to facilitate private remediation.⁴⁹ Nuisance abatement, then, allows for a more open process and decreases the political influences that are prevalent with the use of the eminent domain option.

Eagle’s insights are quite helpful in understanding the approach of some Long Island local governments in addressing substandard housing

45. *Id.* at 840.

46. *Id.* at 846.

47. *Id.* at 849.

48. Under the nuisance abatement approach, if the owner does not remove the dangerous conditions, the government, after notice and hearing, can take corrective actions to remedy the situation. The government has a lien on the property for such expenses, which can be enforced through foreclosure. *See id.* at 838; *see, e.g.*, N.Y. MULT. RESID. § 305(4)(2) (McKinney 1992).

49. *See Eagle, supra* note 36, at 851.

occupied by new immigrants on Long Island. The ability to use eminent domain power to address so-called blighted conditions gives local governments a useful tool for trying to rid their communities of the unwanted new arrivals. Instead of aggressively enforcing housing codes in deteriorated housing (as they often have done in regard to alleged over-occupancy by new immigrants), these governments make the political decision to condemn the property to refashion it to replace the present tenants with a different, non-immigrant population.

A good illustration of this phenomenon is the Village of Farmingdale's approach to the deteriorated conditions in the 150 Secatogue building mentioned at the beginning of this Article.⁵⁰ That building was home to approximately fifty predominantly Latino families, many of whom identified themselves as day laborers.⁵¹ As reflected in the letter excerpted at the beginning of this Article, community consternation developed about the people living in the building and Latino immigrants in general.⁵² Indeed, beginning in at least 2001, area residents demonstrated anti-Latino sentiment on a community forum website:

Message posters . . . bemoaned the presence of day laborers within the Village; . . . stated that residents will have to start carrying guns like they do in Texas; . . . stated that white people do not commit crimes in this country and that Farmingdale will soon be as dark as Amityville; complained that the day laborers attract gangs to Farmingdale; . . . asserted that day laborers have brought the image of Farmingdale down so low that Farmingdale is now being equated with the worst towns on Long Island and that there are signs that the community is heading down a path towards being the next Wyandanch or Hempstead [communities with large populations of people of color]; . . . argued that the economy of the Village is heading downhill because of day laborers; and . . . demanded a Village administration which will deal with the migrant worker problem; and . . . demanded increased code enforcement.⁵³

In this context, Farmingdale mayoral candidate George Graf pledged in his campaign literature to "get these day laborers off our streets," while accusing the incumbent of "embrac[ing] day laborers."⁵⁴

50. See *supra* notes 1-2 and accompanying text.

51. Robertson, *supra* note 2, at 8.

52. See *supra* note 3 and accompanying text.

53. Amended Complaint at 11, *Rivera v. Inc. Village of Farmingdale*, No. CV 06-2613, 2007 WL 3047089 (E.D.N.Y. Oct. 17, 2007) [hereinafter Amended Complaint].

54. Robertson, *supra* note 2, at 8.

The owner of 150 Secatogue neglected maintenance of those units, resulting in numerous housing code violations, “including wall and ceiling damage, roof holes, vermin, and mold.”⁵⁵ Instead of aggressively enforcing the housing code and seeking abatement of these problems, in 2004, the Village announced that it was considering the eminent domain route for the building and formed a committee to consider redeveloping the building and the surrounding area.⁵⁶ Newly-elected Mayor Graf asserted, “By replacing dilapidated housing with new businesses and residential housing we will put valuable property back on the tax rolls.”⁵⁷

While the Village issued summonses for some of the violations at 150 Secatogue, it treated the cases nonchalantly, allowing the proceedings to be repeatedly adjourned.⁵⁸ Even when an inspection by an engineering firm found serious structural problems with the property caused by the owner’s violation of the state’s Property Maintenance Code, the Village took no action to remedy these conditions.⁵⁹ Instead, the Village continued to seek the redevelopment of the building through eminent domain.

Consistent with Eagle’s theory, the Village, for its own political purposes, treated the 150 Secatogue building—and the people in it—as blight. It simply ignored the cause of the blight: the neglect by the landlord. Within the context of cultural bias against Latinos and day laborers in particular, the Village did not exercise its police powers aggressively to enforce the code but instead opted for the condemnation route. As the Village Attorney told the *New York Times*, “I think the [V]illage wants to see the entire area get redeveloped, through the process of eminent domain or something else. . . . We want to revitalize this area.”⁶⁰ To the Village, revitalization meant eliminating from the community a building occupied by a large immigrant population rather than ridding the building of the substandard conditions within it.

And just as Eagle predicts, instead of addressing a real problem of blight, the threat of condemnation actually exacerbated blight. The Village’s study of the option of eminent domain created a significant disincentive for the owner to make major improvements at 150 Secatogue. As the owner told the *New York Times*, while he had

55. *Id.*

56. *Id.*

57. *Id.*

58. Amended Complaint, *supra* note 53, at 23.

59. *Id.*

60. Robertson, *supra* note 2, at 8.

installed new boilers, he was generally not investing in improvements to the building because he was waiting to see what the Village was going to do.⁶¹ He stated, “It wouldn’t make sense for me to do the capital improvements if the buildings are not going to be there.”⁶²

Ultimately, while the Village did not follow the traditional eminent domain route as to 150 Secatogue, it adopted a similar process with the same results. Instead of condemning the building outright and selling it to a private developer of its choosing to redevelop the property, it recruited a developer for a direct sale from the owner to the developer.⁶³ Specifically, it created a Smart Growth Committee to identify a private developer to redevelop 150 Secatogue and the surrounding area. Eventually, that Committee recruited a private developer to purchase 150 Secatogue from the owner, terminate the leases of the tenants in the building, and renovate it into more upscale apartments.⁶⁴ By December 2006, the Village had achieved its goal of removing all the tenants from the building.⁶⁵

Farmingdale’s framing of the issue as one of “revitalization” of a blighted building, rather than one of the enforcement of applicable housing codes against a negligent landlord, reflects cultural bias. There was nothing in the building that made it inherently blighted. But because of the sentiment of some in the community against the immigrant population, especially Latino day laborers, the Village chose to focus on elimination of the building’s occupants rather than remedying the conditions in it. Faced with the threat of eminent domain instead of aggressive code enforcement, the owner continued his neglect. As a result, in a closed political process, the Village accomplished its goal of finding a private developer to eliminate the building’s occupants and redevelop the building for a more affluent tenant population. As a consequence, the owner was compensated for the building and his neglect of the building. As Eagle predicts, the least blameworthy parties in this process—the tenants in the building—were the only real parties

61. *Id.*

62. *Id.*

63. Amended Complaint, *supra* note 53, at 16-17.

64. *Id.* at 16-17, 29.

65. *Id.* at 17. The then-tenants of the building sued the Village, developer, and former owner for violation of the Fair Housing Act, 42 U.S.C. §§ 3601-19 (2000). *Id.* at 2. In November, 2006, the plaintiffs settled with the developer and agreed to leave the building but have continued their case against the Village and the former owner. See Stipulation of Settlement & Order, *Rivera v. Inc. Village of Farmingdale*, No. CV 06-2613, at 6, 13, 15 (E.D.N.Y. Nov. 3, 2006).

harmed in this process, losing their homes, their neighbors, and their social networks.⁶⁶

V. CONCLUSION

As this Article has demonstrated, enforcement of housing codes on Long Island for properties occupied by new immigrants is not always based on genuine concerns about the health and safety of the public but instead often is a reflection of the cultural bias of local government officials. Like the anti-immigrant reformers of a century ago, local officials today frame the issue of code enforcement in these buildings in high-sounding language about concern for the protection of the public. Oftentimes, however, this rhetoric conceals an animus toward the new immigrants, who are perceived as disruptive to a particular vision of suburban life.

The enforcement of occupancy standards, for example, frequently entails the use of housing codes to target new immigrants whose living arrangements do not fit the model of a dwelling occupied by a small nuclear family. In those situations, officials would rather expend their limited resources to enforce occupancy standards against a large, extended immigrant family than focus on actual violations of powerful landlords that endanger the health and safety of tenants. Likewise, in the case of so-called blighted housing, some local governments have chosen lax enforcement of clear violations of property maintenance codes to address problems in buildings occupied by immigrants and instead decided to use the remedy of eminent domain to “revitalize” properties and eliminate residents, like day laborers, who do not conform to the community’s image of itself. And in other contexts not addressed in this Article—for example, crackdowns on illegal apartments in single-family homes—the focus of enforcement at times has been on the maintenance of the suburban ideal of homogeneous nuclear families, rather than tackling serious dangers to health and safety.

Obviously, it would be naïve to expect local officials in any community to lay aside political or cultural interests in the enforcement of housing codes. But as a first step toward addressing cultural biases in enforcement of these codes, it would be helpful if community leaders, the media, and courts would require local officials to explain fully their rationale for the particular enforcement decisions they have made. Especially when these decisions disproportionately dislocate large

66. Eagle, *supra* note 36, at 849.

numbers of immigrant families, local officials should not be allowed to hide behind conclusory claims of public protection but should be asked to identify what alternative options have been considered to remedy the particular problem that could keep the families in the community. In a case of overcrowding, for example, the question should be asked whether outdated occupancy codes based on bogus science and sociology of the nineteenth century could be replaced with ordinances that protect residents but also reflect the realities of the lives of present-day tenants with limited incomes. Or in the situation of a so-called blighted building, the question should be posed whether aggressive abatement efforts could be made to remedy problems in an apartment building without the extreme option of eminent domain. And in the cases when nuisance abatement has been unsuccessful, officials should be required to identify what alternatives have been considered to renovate the property and also maintain the availability of affordable housing for the present tenants.

While all local officials certainly do not share the blatant prejudices of the anonymous correspondent quoted at the beginning of this Article, those biases do sometimes pervade the decision-making process and need to be identified and abandoned. Housing codes should be used to advance legitimate health and safety concerns, not the cultural values of a single, insular segment of the community.