

# Michigan Law Review

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Volume 66 | Issue 3

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1968

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### Recommended Citation

Walter J. Blum & Allison Dunham, *Slumlordism as a Tort--A Dissenting View*, 66 MICH. L. REV. 451 (1968).  
Available at: <https://repository.law.umich.edu/mlr/vol66/iss3/3>

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## SLUMLORDISM AS A TORT— A DISSENTING VIEW

*Walter J. Blum\** and *Allison Dunham\*\**

THE persistence of substandard housing in urban centers stands as a challenge to law. There is a pressing need to re-examine whether prevailing legal doctrines are adequate for dealing with the problem and to suggest new doctrines where the old are found wanting.<sup>1</sup> To their great credit, Joseph L. Sax and Fred J. Hiestand in their article "Slumlordism as a Tort"<sup>2</sup> face up to these tasks boldly and vigorously. They conclude that, under existing conditions, it is imprudent to rely on public authorities to enforce housing codes and it is unlikely that legislatures will place sufficient enforcement powers in private hands. Therefore they seek to locate an avenue by which the courts can put private parties in a position to serve as enforcement agencies. Their solution, as indicated by the title given the article, is to make slumlordism into tortious conduct vis-à-vis tenants.

The heart of their proposal is to expand what they regard as the "traditional" category of intentionally inflicted indignities so as to include leasing of housing units which are considerably below prescribed standards. A low income tenant would be allowed to recover substantial tort damages from his landlord on the ground that, in renting out accommodations which, through no fault of the tenant, are far short of housing code standards, the landlord imposes on the occupant a serious indignity while advancing his own economic gain. The main goal of the proposal is to rid our cities of dilapidated tenements by threatening the owner with the prospect of a heavy penalty in the form of tort damages. In addition, the proponents have designed their plan to serve two subsidiary objectives: (1) to encourage tenants of slum buildings to do something themselves to improve their living conditions; (2) to provide an apparatus through which tenants can vent their indignation against landlords in court instead of on the streets.

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1. See TENANTS' RIGHTS: LEGAL TOOLS FOR BETTER HOUSING, REPORT ON A NAT'L CONFERENCE ON LEGAL RIGHTS OF TENANTS (1967) (sponsored by the Dep't of Housing & Urban Development, the Dep't of Justice, and the Office of Economic Opportunity).

2. 65 MICH. L. REV. 869 (1967).

We share the authors' enthusiasm for creative legal thinking in this area. Moreover, we concur in their views that private enforcement of housing standards needs to be developed and strengthened, that increasing the severity of criminal sanctions for violations is only a sterile response, and that the role of government administrators should be de-emphasized. We believe, however, that making a tort of slumlordism by the route recommended will not be a step in the right direction.

## I

At the outset it is worth considering how much of a change in our rules of law the proposal requires. The plan might be viewed congenially if it involves no more than a slight extension of an existing tort category, whereas it might meet a different reception if a significant change in the law is demanded.

Not all authorities concur in the view that courts recognize a separate category of tort liability for intentional infliction of an indignity.<sup>3</sup> But if such a generic tort has now become established, several ingredients seem to be required for obtaining redress under it: (1) there must be a deliberate act by the defendant which is unwelcomed and unsolicited by the particular plaintiff; (2) the act must be of such a nature that a reasonable man in the plaintiff's circumstances would be justified in feeling humiliated, shamed, or outraged by it; and (3) the conduct must cause severe emotional distress to the plaintiff.<sup>4</sup> Sax and Hiestand, of course, recognize that renting substandard accommodations to a tenant does not on its face appear to embody those elements. First, the landlord has no real desire to humiliate any particular person in accepting tenants; if he is an absentee owner, he probably neither has knowledge of any particular tenants nor is in contact with them. Furthermore, in occupying a slum dwelling, while the typical tenant may or may not feel humiliated, he certainly does not display the usual signs of severe emotional distress, and it should be recalled that he is an active and voluntary party to the transaction. In the face of these con-

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3. See C. GREGORY & H. KALVEN, *CASES ON TORTS* ch. 12 (1959).

4. The *Restatement* definition of the intentional infliction tort "requires the defendant to have intended that emotional harm be the consequences of his act." *RESTATEMENT (SECOND) OF TORTS* § 47, comment *a*, at 80 (1965). The authors argue, however, that an act can be outrageous in the absence of such a motive. Even if they are correct, it does not follow that any deliberate act which is outrageous fits within the usual conception of an intentionally inflicted indignity. Consider, for example, a deliberate act which arises from a noble motive, but which causes the person acted upon to feel outraged.

siderations, the proponents urge that courts should dispense with the requirement of severe emotional distress and should recognize that the realities of life in the slums differ from impressions formed by outsiders. They insist that the downtrodden poor are not genuinely voluntary parties to the transaction, inasmuch as only substandard accommodations are available at rentals they are able to pay;<sup>5</sup> that the poor in the slums do feel indignation over their conditions; and that a slumlord by his very act of marketing dilapidated quarters contributes to the humiliation felt by those trapped in the slum communities. This is an ingenious effort to cut the pieces to fill the die. When examined more closely, however, one sees that the slumlordism situation does not contain the traditional elements associated with the tort of indignity, but rather consists of other ingredients which at best are only faintly analogous. The fact is that there is a world of difference between the classic indignity of deliberately spitting into somebody's eye in order to humiliate him<sup>6</sup> and renting him substandard housing accommodations. If slumlordism is to be made a tort, we should recognize that it is a wholly new breed and not a mere variant of the dignitary category.

## II

The proposal to make slumlordism a tort rests heavily on the proposition that occupants of slums feel humiliated and outraged by having to occupy dreadfully bad housing. This assertion has the ring of an obvious truth, but further inspection of it suggests some serious doubts.

Suppose that a particular slum was today occupied by groups comparable to those living in urban slums several generations ago—say, for example, Italians or Irish who had recently migrated to the United States. How likely is it that anyone would argue that these immigrants are humiliated by their landlords to such an extent that they should be allowed to recover punitive tort damages from them? We doubt that this position would have much appeal even if the newcomers were temporarily unable to afford better

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5. The authors' position is that the poor do not enter into a tenancy "voluntarily and knowingly" because their "range of choice is exceedingly narrow." 65 MICH. L. REV. 869, 893-94 (1967). It is worth noting, however, that many slum occupants made the choice to move from rural to urban areas. Also, many of the slum dwellers "chose" to have large families. Perhaps the authors would say that in this connection, too, the poor do not act "voluntarily and knowingly"?

6. *Alcorn v. Mitchell*, 63 Ill. 553 (1872).

living conditions. It would have even less attraction if, in fact, the immigrants had previously been living in distinctly worse quarters.

It may well be that in many respects the pattern of life in the contemporary Negro or Puerto Rican slum is not comparable to the pattern found in the earlier Western European ethnic slum. Whatever the differences, the conduct and role of the slumlords in the two situations appear to be essentially similar. To say that slumlordism would be a tort in the present setting but not in the earlier is thus very troublesome.

There are certain similarities between the two settings which should not go unnoticed. Many of the current inhabitants of the worst urban slums are recent internal migrants who have fled rural slums. These hovels are often far worse than their urban counterparts. Where a citizen actually improves his living conditions by moving to an urban slum, is it realistic to regard him as suffering an indignity, any more so than in the case of the European immigrant? Further, city slums today are for many inhabitants a temporary staging area from which they move as soon as their finances permit. Is a relatively short stay in a substandard structure a terribly humiliating experience for those who pass through the slum on their way up the ladder? Is it enough of an outrage as to call for severe penalties? And is it a great outrage even where the landlord himself succeeded only a short while ago in getting out of the slums?

These observations might be taken as suggesting that substandard housing visits serious humiliation only on those who have been mired down in an urban slum for a long period. Perhaps this is an accurate view of slum life, although it is sometimes said that the old timers are the most resigned to their condition and the least sensitive in reacting to it. But even if the view is realistic, there would be good reason for refusing to accept the notion that renting to long-time slum residents is a tort whereas renting to new arrivals and temporary inhabitants of a slum community is not. Were this the case, the former would probably appear to the landlord to be less attractive tenants than the newly arrived. The veterans of the slums already have enough of a handicap working against them, without being subjected to a further burden in finding living accommodations.

### III

It is implicit in the Sax and Hiestand article that their proposal is limited to slumlordism in urban slums. The rationale on which

they build, however, seems to take in a much larger section of life. It therefore appears advisable to speculate on how far the new theory might reach in enlarging the area protected by dignitary tort redress.<sup>7</sup>

The main foundation offered for making slumlordism a tort is the assertion that occupants of dilapidated housing in urban slums suffer a humiliating outrage when they are economically not in a position to obtain better accommodations. It strikes us that this proposition has equal or greater plausibility in the case of many sharecroppers and migrant agricultural laborers. As compared to urban slumdweller, these rural workers often have smaller incomes, are less "free" in their choice of living quarters, and occupy far worse accommodations. From many points of view, the situation in which the Mississippi Delta sharecroppers and the *braceros* find themselves is more appalling than that experienced by their counterparts in urban slums. Should they too be allowed to collect punitive tort damages from their "landlords"?

Further, within the urban slum it is not only the landlords who provide poor quality goods or services which have the potential to humiliate the consumer. Many a merchant runs his little business under unsanitary, unsafe, and unaesthetic conditions, and much of the merchandise is priced higher than in nearby middle-class residential areas. Indigents who live in the slum often are "trapped" into patronizing these local merchants because they are unable to get credit elsewhere or are not competent to shop outside their own immediate neighborhood.<sup>8</sup> Under these circumstances should the submarginal storekeeper also be liable in tort for adding to the humiliation of some of his customers?

And we must not overlook the used car dealer. A good guess would be that in our motorized society, large numbers of the poor feel greater indignity in driving a junky car than in occupying a junky flat.

None of this is said to suggest that purchase or use of substandard goods has all of the undesirable consequences that now are often

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7. The proponents buttress their argument for the new tort on the basis of constitutional law precedents. These analogies are highly tenuous. Under some circumstances, a plaintiff no doubt can recover from a private party who interferes with certain of his constitutional rights, such as the right to vote. But, surely, a plaintiff would have no tort redress against a private person who refused to drive him to the polling place, or a private person who undertook to drive him there and never made it because his car, which failed to meet safety standards, broke down. Recovery in tort for outrage would not be allowed even if the private party charged for the transportation.

8. See generally D. CAPLOVITZ, *THE POOR PAY MORE* (1963).

attributed to living in substandard housing. Rather, these considerations are put forward to question whether there is any offensiveness peculiar to slummy housing as compared to slummy goods and services.<sup>9</sup>

#### IV

Although Sax and Hiestand discuss the new tort in considerable detail, they do not examine closely the nature of the question which ultimately would be in issue.<sup>10</sup> Each case is likely to be tried before a jury. We can assume that the plaintiff would have to establish that he had been a tenant of the defendant, that he had not been under-allocating resources to housing, and that the accommodations he occupied were significantly below code standards. Presumably, he would not have to show that he actually felt humiliated in occupying the quarters in question. We can also assume that the landlord would be unlikely to contest the assertion that the plaintiff was his tenant; and, to simplify, let us assume that the landlord would not dispute the assertion that a proper share of the tenant's resources was allocated to paying rent. Remaining at issue, then—unless the landlord defends by blaming the condition of the premises on the tenant—would be the question whether the building was so grossly below standard as to be an "outrage."

If the jury is to decide whether the proved violations of the housing code constitute an indignity, the defendant is at the mercy of the social conventions of randomly selected citizens in the community and of their judgment as to whether the plaintiff is "entitled" to claim he was insulted. The experience of one of us in drafting the

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9. It is misleading on the part of the authors to analogize the slumlord to the doctor who gives inadequate treatment. See 65 MICH. L. REV. 869, 891 (1967). The law puts a higher duty of care on the doctor because he holds himself out as a trained professional and because the patient is not likely to be in a position to evaluate the care he is getting. The slumlord is not a member of a learned profession; and the slum tenants know as much about slum housing conditions as does the landlord.

10. The authors' precise formulation of the proposal is as follows:

[O]ne who undertakes to perform a service for his own economic benefit, but who performs it in a way both inconsistent with those standards which represent minimum social goals as to decent treatment and in a manner that itself is violative of law, under circumstances where the victim had no meaningful alternative but to deal with him, commits a tort for which substantial damages ought to lie. 65 MICH. L. REV. 869, 890 (1967).

We wonder about the relevance of the fact that the manner of performance "itself is violative of law." For purposes of tort law, should it make a difference whether a motorist was speeding negligently on a road not covered by a speed limit or was speeding negligently on a road that was subject to such a regulation? Again, why should tort law distinguish between outrageous housing that violates a housing code and outrageous housing not subject to such a code? And further, why is it any less an outrage to rent slum quarters than it is to make them available free, as a gift?

housing code for Chicago is especially illuminating in this connection. The representatives of a very large ethnic group in the city, with whom the draftsman consulted, not only saw nothing wrong with community kitchens instead of a separate kitchen contained within each dwelling unit, but argued that community kitchens were an actual positive force in eliminating loneliness and inducing friendships and mutual adjustments. Would a jurymen from such a group be likely to find that a community kitchen produces the indignity which Sax and Hiestand obviously believe is the case? Consider also the reaction of the judge. From the sanctuary of his middle income status he might well reach the same conclusion as the jurymen, although for somewhat different reasons: either that this condition is an inevitable step in upward mobility (he experienced it and got out), or that it is all the poor are entitled to and for the plaintiff to claim otherwise is to mark him as an eccentric or overly sensitive person and not the "average Englishman" in similar circumstances—which is the standard of the historic common law.

## V

While the proponents of the new tort understandingly have not attempted to work out all its possible intricacies, we sense that the logic of their position leads to a number of strange, if not paradoxical, results. Perhaps no one of them alone detracts very much from the proposal; taken together, however, they give us considerable added ground for skepticism.

Have Sax and Hiestand really provided the tenants with a remedy? While they admit that there is a problem of the culpable tenant and propose to give the landlord a defense, they are less than clear as to the nature of this defense. For example, suppose that the claim of indignity is based essentially on the "absence of rudimentary sanitary services," the facts being that the building is infested with vermin and does not have adequate facilities for the disposal of trash and garbage. Under these circumstances, who is the culpable tenant they talk about? Is there a defense only if the landlord establishes to the satisfaction of the court that the plaintiff's family brought the vermin into the building and used the garbage can covers as props for a game or the cans as drums for a dance? Or has the landlord met his burden if he establishes that some tenants in the building brought the vermin in and misused the disposal facilities? The context in which the authors speak of "tenant conduct"

and of proof that the "tenants continue to misuse the facilities" suggests that they refer to other tenants and not to the particular plaintiff.<sup>11</sup> If this reading is correct, then with the possible exception of the complete "absence" of basic facilities, the landlord may well have a defense in almost every case. If the proponents refer only to conduct of the particular tenant who brings suit, then landlords may be pushed into using a spy system more pervasive than any of the imaginative writing about "1984."

In any event, it would seem that the landlord could minimize his risk under the new tort by selecting the least disciplined set of tenants. Such a policy would maximize his chances of demonstrating that the complaining tenant, or perhaps other tenants, contributed to the housing defects at issue. Moreover, since liability under the proposed tort could also be avoided if the complainant was able to pay higher rentals, slum landlords might seek to protect themselves by renting only to those who were not, or who represented that they were not, at the bottom of the income scale. These moves likewise would be undesirable. They would make it more difficult for the most poverty stricken families to find accommodations and would further induce landlords to probe into the private lives of tenants.

Another question is whether every day of a tortious landlord-tenant relationship constitutes a new and separate tort.<sup>12</sup> If each day (or week or month) brings another actionable outrage, penalties would mount to unconscionable heights. If, however, the relationship between a particular landlord and a particular tenant constitutes at most a single redressable humiliation, it would follow that

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11. The article is confusing on this important point. At 873 the authors urge "that there be recognized a private tort action for the awarding of substantial damages to the tenant who is not himself culpable." (Emphasis added.) At 904 they state:

Where the conditions upon which a finding of indecency is predicated are attributable to tenant conduct, rather than merely to landlord neglect, we believe a defense should be available. For example, if, despite the landlord's effort to make repairs in the plumbing, tenants continue to misuse the facilities, causing repeated breakdowns after such repairs, we would not hold the landlord liable for finally giving up the effort. Similarly, if . . . tenants continue to throw garbage in hallways and alleys . . . [Emphasis added.]

At 910 the authors remark: "[I]t is only the imposition of these conditions by the landlord which is to be redressed, and an appropriate showing of non-culpability by the plaintiff tenants will be required." (Emphasis added.)

12. On the one hand, the authors state that "it is the act of renting or of maintaining indecent housing which gives rise to the right of redress." 65 MICH. L. REV. 869, 911 (1967). Thus a short tenancy apparently will suffice; people can "buy themselves a lawsuit for the price of a month's rent." *Id.* On the other hand, the authors note that "tenant recovery depends upon a showing of adequate knowledge and notice, and that recovery may be had only when the tenants have not caused the harm. To get to this stage will sometimes require the passage of a period of time after the start of the tenancy." *Id.* at 911 n.170.

the more a slumdweller changes his address, the more he might be able to collect in damages from slumlords.<sup>13</sup> It is hard to see why the quantum of actionable outrage should turn on whether the plaintiff spends a given amount of time in the slums under one roof or many.

A further question is whether the courts would permit a landlord to purchase the advance consent of his tenants to suffer indignities.<sup>14</sup> Whatever the current status of intentionally inflicted indignities as a generic tort, recovery has not been forthcoming where the claimant freely agreed to undergo a humiliation which otherwise would be redressable. Perhaps courts today would reason that a slumdweller is under such strong coercion of circumstances that he is not in a position to consent freely. It is not obvious, however, that this result would be reached, especially where the landlord takes the precaution of paying some compensation to his tenants for their consent. And even though such a payment might simply be offset by higher rents, this relationship would not be easy to prove.

There is also the old problem of a retroactive law. If slumlordism is to be made a tort, it would on the one hand seem unfair to assess damages on the basis of conditions which existed long before the new tort was given official recognition. Without retroactive application, on the other hand, a great many years would elapse before the courts could hammer out its contours.

These reflections suggest that the new tort would better emerge from legislation and not from adjudication. As a legislative proposal, however, it would have to compete with many other plans for dealing with the urban slum problem. In that competition, slumlordism as a tort would not in our judgment rate very high.

## VI

If those who own urban slum property come to believe that the courts will sooner or later recognize the proposed tort of slumlordism, what is likely to be the impact on the operation of highly

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13. The proponents take the position that "the possibility of multiple lawsuits, far from being an obstacle, is perfectly consistent with the underlying theory of this article." *Id.* at 911. But they think that this phenomenon is "hardly likely to be a problem of significant proportion in the light of the organizational demands imposed by our view of the tenant culpability defense." *Id.*

14. It is argued by the authors that "[a] lease with a clause exculpating the landlord from tort liability also would be of no avail to the defendant" inasmuch as "exculpation from liability for intentional torts is prohibited." *Id.* at 914. Note, however, that the usual rule may not be applicable in the case of infliction of a humiliation. What public policy weighs against purchasing from someone the right to spit in his face—so long as others are not harmed?

substandard properties? Will the response of slum owners to the new tort be consonant with improvement of living conditions for the poor? Several aspects of this question might be distinguished.

Although Sax and Hiestand do not say so explicitly, the tort action apparently would run against the owner rather than the manager or other person in possession or control of the property.<sup>15</sup> Either way, however, the penalty would be an added cost of owning a building operated in substandard condition. Inasmuch as any qualifying tenant might sue for a substantial amount of damages, the overhanging dollar threat to the owner would be indeed very great. How are owners likely to meet this threat?

On quick impression it might seem that owners would hasten to bring their highly substandard buildings up to code standards. Surely this is a possibility, but not a very likely occurrence. Most slum buildings today are not brought up to standard because, taking account of neighborhood conditions, the necessary improvements will fail to bring sufficiently higher rentals to justify making the added investment. The imposition of the suggested tort penalty would not alter this economic relationship. Another possibility is that the owners will throw in the towel and allow those who hold the mortgages to take over the buildings. Institutional investors are unlikely to hold and operate slum properties, especially in the face of the new tort penalty threat. Thus, wholesale demolition or, even worse, wholesale boarding-up of buildings conceivably might follow.<sup>16</sup> Still another response for the owner is to attempt to minimize possible exposure to damages by avoiding personal liability. In some jurisdictions we might expect each vulnerable property to be put into a separate corporation or other legal entity that affords limitation of

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15. Often the whole process of tenant selection and building maintenance is performed by a management agent in the nature of an independent contractor. For liability of a person for the acts of an independent contractor, see *RESTATEMENT (SECOND) OF TORTS* §§ 409-29 (1965).

16. The authors note the possibility that their remedy might bring about demolition at too rapid a pace. However, they point out:

[T]he prosecution of a successful civil damage action, as we propose it, will not be easy, and it is not likely that a vast number of landlords will be attacked simultaneously or will be successfully sued in a very brief period. Thus it is to be hoped that the slumhousing market can be brought to its knees relatively gradually, so that the legislatures may have some time to act before a great many landlords are immediately threatened. Because of this, it may be anticipated that the process of breakdown will be mitigated by the entry of speculators who, hoping the worst will not happen, will to some extent buoy up the market before the worst does in fact happen.

65 *MICH. L. REV.* 869, 920-21 (1967). Perhaps this prediction is correct; but it should be observed that, unlike the receivership route, the process envisaged by the authors might result in further deterioration of slum buildings throughout a considerable time span.

liability. In the alternative, the dilapidated structures might be sold to individuals who have meagre resources and therefore would not be too worried about the risk of personal liability.

The point to be stressed here is that the proponents have omitted to think through the impact of their proposal in terms of the basic dichotomy in housing policy goals. Existing public policy is plagued by the conflict between a desire to provide a given quantity of housing and a desire to provide a given quality. While the goals of providing an element of "retribution" and an element of self-help among slum tenants may be served by tort penalties, furtherance of these new ends could result in a reduction of housing quantity without any improvement in the quality of the remaining buildings. Just as it is said that large fines levied on the slum operator have the effect of taking from the landlord the capital resources with which housing quality could be improved, so it may be argued that large tort judgments against the landlord have the same effect. A few tenants who sue may end up with more money, but other tenants in the same building will not be benefited as they would have been if the landlord could have been induced to put the judgment money (or the insurance premium) into upgrading the dilapidated housing.<sup>17</sup> Only if the existence of the remedy, rather than its actual use, so threatens owners that they are induced to improve the quality of their buildings can it be concluded that the remedy will improve the housing supply that remains on the market. We already have some evidence that this cannot be expected. In New York, for example, where physical injury resulting from a violation of the housing code has produced an actionable tort for over fifty years, there is no indication that the landlords have been induced to improve housing quality in order to remove the threat of this lawsuit.<sup>18</sup>

## VII

In summation, we would strongly advise the judiciary not to create a new tort of slumlordism. Such a tort would rest on weak historical foundations; its rationale would spread far beyond the problem with which the tort is intended to deal; it would call for putting to the jury an almost unmanageable question; it would leave us with numerous fringe problems and paradoxes; and, above all,

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17. Note that the tort judgment, taking priority from day of judgment, would in most cases be junior to any substantial real estate mortgage.

18. An early landmark case is *Altz v. Leiberson*, 233 N.Y. 16, 134 N.E. 703 (1922).

it is unlikely to move us very far, or in the right direction, in improving housing conditions in urban slums.

We submit that wider use of receiverships for slum properties offers promise of accomplishing much more than resort to tort law. Sax and Hiestand recognize that the receivership route has the distinct advantage of taking the crucial decision of whether to repair away from the landlord and giving it to a fiduciary, the receiver, who has the single objective of abating the nuisance of substandard housing. Their proposed tort action, in contrast, would operate to improve quality only indirectly and would leave the repair decision where it was before—in the landlord or, in the case of an execution sale to satisfy the judgment, in the hands of the purchaser at that sale, whether he be the mortgagee, a judgment creditor (including a tenant), or a third person unassociated with the particular controversy. The worry, expressed by the authors, that the receivership remedy involves the financial community in a hostile relation to housing reform is quite clearly not justified in the light of extensive experience with receiverships. Making the repair costs a lien superior to an earlier real estate mortgage, as a receiver's action accomplishes even at common law, involves the lending community as a participant in slum housing to no greater extent than does the existing law in subjecting mortgage lenders to subordination for the real property tax lien.<sup>19</sup> Moreover, by giving a purchaser of a receiver's certificate priority over an earlier real estate mortgage, the receivership route might create a healthy competition for investment in slum housing. That part of the financial community now investing in short or intermediate term investments would be confronted by a new source of demand for funds. Comparing those lending institutions relying on mechanics liens and title retention security on fixtures under the Uniform Commercial Code, both of which interests are prior to the real estate mortgage, with those institutions financing real estate mortgages, indicates that the financial community is not monolithic.<sup>20</sup> Detriment to a particular mortgage lender or type of lender may be offset by the gain to other types of lenders.

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19. It is argued by the authors that if the mortgagee's claim is subordinated to the claim of the receiver arising out of repair and operation of the building, the result will be to make "the financial community the involuntary ally of the slum landlord." 65 MICH. L. REV. 869, 919 (1967). This has not been the experience in Chicago. In many receiverships, the mortgagee has supplied the receiver with the additional funds.

20. For an early description of the types of credit suppliers operating in the intermediate term credit market, see CONSUMER INSTALMENT CREDIT, FEDERAL RESERVE REPORT TO THE COUNCIL OF ECONOMIC ADVISERS 22-43 (1957).

It is worth noting that the weaknesses which Sax and Hiestand see in receivership proceedings are not a necessary product of the remedy, but turn on the particular receivership statute examined by them. There is no necessity that the receiver be a public official from the building or other executive department of the city; the court, unless a misguided statute limits its power, has inherent power to appoint as receivers qualified "experts," including management agents or not-for-profit housing groups.<sup>21</sup> There is no necessity that the source of the funds for repair be a "kitty" maintained by the city treasurer out of scarce tax revenues; the receiver can sell receiver's certificates in the commercial investment market so that public funds are not involved at all. Further, there is no necessity that the initiator of the receivership proceeding be an administrative official in city government. A slight development of judge-made law to permit the tenants of a building to initiate a receivership suit on some theory, such as that of private nuisance, would give tenants the same advantages of self-help as that seen by the proponents in their new tort, and it would have the additional advantage of securing repair of the premises on the basis of a decision made by a court-appointed person. Finally, in order to enlist the aid of lawyers in

21. Recent statistics for receiverships handled, after court appointment, by one not-for-profit organization—The Chicago Dwelling Authority—are interesting in this connection:

SCOPE OF CHICAGO DWELLING AUTHORITY  
RECEIVERSHIP PROGRAM AS OF JUNE 30, 1967

	No. of Buildings	No. of Dwelling Units
<b>PROGRAM STATUS</b>		
Receiverships Appointed	374	4112
Less Discharges	286	3353
Current Workload	88	759
<b>WORK SUMMARY</b>		
<b>1. Rehabilitation</b>		
<i>a. By Chicago Dwelling Authority</i>		
Buildings Completed	11	63
In Progress	4	22
Pending	70	1010
<i>b. By Owner with Chicago Dwelling Authority Supervision</i>		
Brought into Compliance	105	1239
In Progress	31	323
<b>2. Demolitions</b>		
Completed	53	498
Pending	30	197

the receivership remedy, the court must be able to pay the fees of the plaintiff's attorney out of the proceeds which come into the hands of the receiver.

Whether statutory authority is required for tenant commenced proceedings and for court awarded attorney's fees is admittedly in doubt. But for courts to institute those innovations would entail a far less radical change than that called for in fashioning a tort of indignity to cover slumlordism.