

Multnomah County Right to Counsel Ballot Initiative

A Case Study of the Application of Holistic Systems Approaches

Adrian Low, Elizabeth McCune, Cameran Murphy

Executive Summary

This project is a detailed case study of the Multnomah County right to counsel ballot initiative. The purpose of the ballot initiative is to provide right to legal counsel for tenants who are facing eviction. In this case study, we define the system as one by which tenants remain housed, avoiding outcomes related to housing instability, through community organizing and voting to approve the ballot initiative, ultimately receiving the right to counsel in Multnomah County Circuit Court despite competing interests from conglomerate landlord groups and a volatile housing market. We represent this system visually through causal loop diagrams, providing an understanding of the impact that right to counsel has on housing retention. Based on our analysis, we conclude this case study with three recommendations for the coalition to consider; mediation services between tenants and landlords, educational outreach to tenants focused on tenant rights, and mental health services for tenants facing eviction.

Author Perspectives

Cameran is part of the coalition that is working to get the right to counsel initiative on the November ballot for Multnomah County. Cameran served as a kind of subject matter expert for this project, drawing on their knowledge and experience from their role in the coalition, their training in social work, and their social justice knowledge and activism. Adrian's knowledge and skills in mathematics, statistics, and systems science bring an analytical perspective to the construction of the system. With no domain expertise in the subject of the right to counsel initiative and its relevant background fields, Adrian hopes to integrate System's methodologies into the group's knowledge bases. Elizabeth's training in psychology and applied work in analytics in the corporate world tend to bias her toward empiricist and rationalist perspectives, but she is working to build her awareness and increase her application of decolonized epistemology.

Approach

Our selection of this project stemmed from our goal of applying the course content to a real-world subject in which we all had interest. As renters and landlords ourselves, this project represented an opportunity to learn more about a system in which we all actively engage. The purpose of our work was to understand the system dynamics involved in the Multnomah County Right to Counsel ballot initiative. We wanted to understand how right to counsel serves as a leverage point toward improving housing stability, other systems factors that might limit the impact of right to counsel, and ultimately wanted to be able to offer recommendations for the coalition to consider.

Our first step was to ground ourselves in the system's issues in homelessness.¹ A review by Fowler and colleagues² proved helpful context and a compelling case for the importance of preventive action given the high and ongoing investment needed to reduce population-level homelessness.

With this grounding, we continued to build a level of shared understanding, a kind of mental model, regarding the right to counsel and its impact in areas where it has been implemented. We consulted the National Coalition for a Civil Right to Counsel³ to build an understanding of the concept and areas in the United States where it has been implemented. While there are multiple perspectives on the right to counsel, we aligned around a mental model⁴ supporting the importance of right to counsel as a relevant and useful leverage point for increasing housing stability.

We then leveraged one of Hieronymi's⁵ syntheses of systems constructs to help us anchor our work. This visual was extremely helpful for preliminary identification of the systems lenses we might bring to this project. We used it to identify systems concepts we were already encountering, and it also served as an awareness and insight tool in that it provided ideas for concepts for us to attend to as the project progressed.

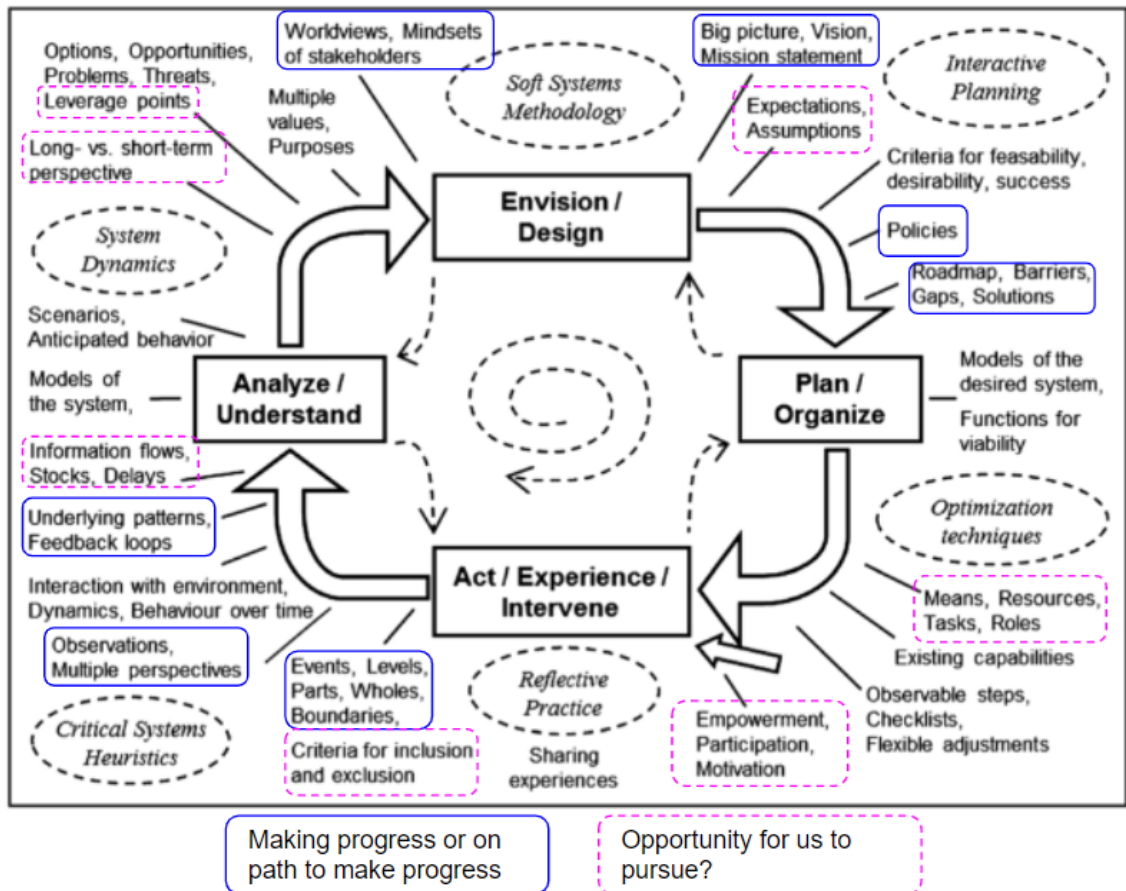
¹ Language in this domain continues to evolve with some individuals and communities preferring the term "houseless" or "un-housed." [What is the difference between houseless and homeless? | kgw.com](https://kgw.com/news/2019/04/10/what-is-the-difference-between-houseless-and-homeless/) In this report we align our terminology with that of the coalition.

² Fowler, Hovmand, Marcal, & Das (2019). Solving Homelessness from a Complex Systems Perspective : Insights for Prevention Responses. *Annu. Rev. Public Health* 2019.40:465-486. Downloaded from www.annualreviews.org

³ [National Coalition for a Civil Right to Counsel | NCCRC](https://nccrc.org/)

⁴ Senge, P. M. (2006). *The Fifth Discipline: The art and practice of the learning organization*: Revised Edition. Doubleday.

⁵ Hieronymi, A. (2013). Understanding Systems Science: A Visual and Integrative Approach. *Systems Research and Behavioral Science*, 30, 580-595.



Soft Systems Principles

Soft systems approach is often useful in the beginning stages of defining human activity systems problems while also bringing together the various viewpoints within the system itself including how the problem is viewed by those in the system. As we came together as a group, we discussed our perspectives and experiences as renters and/or landlords, any pertinent history or relationship to housing instability, and understandings of our local housing and houseless crises. We discussed right to counsel as it relates to the various housing systems in our local area, which led us towards using Checkland's⁶ CATWOE to quality check what we had been discussing as

⁶ Burge, S. (2015). An Overview of the Soft Systems Methodology. Systems Thinking: Approaches and Methodologies. Burge Hughes Walsh: Published online: www.burgehugheswalsh.co.uk

our root definition going forward: a system by which tenants remain housed, avoiding outcomes related to housing instability, through community organizing and voting to approve the ballot initiative, ultimately receiving the right to counsel in Multnomah County Circuit Court despite competing interests from conglomerate landlord groups and a volatile housing market. One observation we made in the process of developing the root definition, is the adaptability of Checkland's "customer" to "stakeholders." Once we made this substitution, the process of writing the CATWOE seemed much more appropriate.

Additionally, following soft systems methodology, it would seem that our group became the operational subsystem, comprised of individuals all moving towards our system goal - an analysis of the forthcoming right to counsel movement in Multnomah County. We monitored our own activities and research processes, and took corrective action as needed. With Cameran as an active member of the campaign to bring right to counsel to a vote in November, they monitored the actions of the campaign itself and brought that information to our group for Adrian and Elizabeth to adjust their research accordingly. These are just some of the actions necessary to achieve the purpose of our operational subsystem.

Defining the Focal System

The focal system in our project centers around the tenant experience of being served an eviction notice, their subsequent options, and their retention of housing or eviction. We chose this focus because we wanted to ensure that our project centered on the experience of the tenants the proposed ballot initiative is meant to support.

The supra-systems involved provide important context for understanding the focal system. The Multnomah County circuit court is one supra-system. The court defines what landlords can do (e.g., caps on rental increases, legal grounds for eviction), and is also the

decision maker on the legal viability of the proposed ballot initiative. Another key supra-system is the local housing market. Factors such as high rents and high demand for rentals influence landlord behavior and availability of alternative housing for tenants being evicted. Because nonpayment of rent is the most common cause of eviction, the local labor market is another important supra-system, as are the systems that provide other forms of financial assistance to individuals.

There are multiple perspectives at play in our focal system. Tenants, landlords, Multnomah County voters and taxpayers (particularly business owners) who would be affected by the proposed ballot initiative, and civil rights groups all bring unique perspectives to understanding this system. Tenants bring their own lived experiences and the desire to maintain stable housing, and their interests are being represented by the coalition group proposing the ballot initiative. Landlords have a financial investment at stake, so in general they have motivation to evict non-paying tenants and are not supportive of right to counsel laws, arguing that they are simply a “band aid” that does not address the root cause.⁷ Local business owners are, in general, not in favor of the tax increases needed to fund the right to counsel.⁸ Finally, right to counsel is a core tenant of many civil rights issues, so both regional and national civil rights groups have strong interests and motivations in supporting eviction right to counsel.⁹

Causal Loop Diagram

⁷ [Right to Counsel Should Not Be a Housing Stability Solution | National Apartment Association \(naahq.org\)](https://naahq.org)

⁸ [The Portland Business Alliance Files Ballot Title Challenge on Proposed Multnomah County Capital Gains Tax \(www.oregonlive.com\)](https://www.oregonlive.com/news/politics/elections/portland-business-alliance-files-ballot-title-challenge-on-proposed-multnomah-county-capital-gains-tax-2021-07-15/)

⁹ [Tenants' Right to Counsel is Critical to Fight Mass Evictions and Advance Race Equity During the Pandemic and Beyond | News & Commentary | American Civil Liberties Union \(aclu.org\)](https://www.aclu.org/news/civil-liberties/tenants-right-to-counsel-is-critical-to-fight-mass-evictions-and-advance-race-equity-during-the-pandemic-and-beyond/)

The causal loop diagram (CLD) was developed over multiple iterations through group discussion in the format introduced by Sterman¹⁰. The initial structure of the CLD was defined by referencing the Eviction Representation for All's¹¹ description of the impact of right to counsel upon the current state of tenant eviction. After doing so, it was decided that the variables of interest for the group would be those that play into the timeline of a tenant being evicted by a landlord and its repercussions (table 1). It should be noted that the variables and relationships were identified through speculation with group consensus drawing on the group's individual knowledge of the issue with one member being involved directly with the coalition. The group then identified the supra-systems that were unnecessary to unpack to see the effects of right to counsel but still affect the system in focus denoted by a hexagon border. To understand the basic dynamics of the current state of the system without right to counsel, the system in the figure below was created. The group wanted to focus on how the dynamics of the system contribute to the greater houseless problem and identified that the tenant's ability to find new housing is the direct variable that impacts houselessness. The ability to find new housing is determined by the tenant's financial state and costs associated with the current housing market system. In this situation, in order to prevent the tenant from contributing to the houseless problem, there needed to be leverage introduced into the system to reduce landlords from unlawfully evicting tenants.

¹⁰ Sterman, J. D. (2000). *Business dynamics: Systems thinking and modeling for a complex world* (Ch 5: Causal Loop Diagrams). Boston, MA: McGraw Hill.

¹¹ FAQs. Eviction Representation for All. (n.d.). Retrieved June 7, 2022, from <https://www.eratenants.org/faq>

court results	The court decision in favor of either the landlord or the tenant	<ul style="list-style-type: none"> · T ability to provide attorney · tenant choice to go to court 	<ul style="list-style-type: none"> · tenant finding new housing (losing removes the ability to choose and how case plays out may introduce tension) · T financial state (winner in court pays fees of loser) · landlord system
tenant finding new housing	The decision of the tenant to find a new place for housing or staying at current landlord's space	<ul style="list-style-type: none"> · tenant system (personal choice) · T ability to find new housing · court results 	landlord system
T ability to find new housing	The tenant's ability to afford to find new housing	<ul style="list-style-type: none"> · T financial state · median rent for new renters 	<ul style="list-style-type: none"> · tenant choice to go to court · tenant finding new housing
T financial state	The financial state of the tenant	<ul style="list-style-type: none"> · tenant system · court results 	<ul style="list-style-type: none"> · T ability to provide attorney · T ability to find new housing
median rent for new renters	The median rent for new renters in Multnomah County	housing market system	T ability to find new housing
T mental and physical health	Evictions worsen health and increase emergency room utilization	Court results	T financial state

Table 1: Causal loop diagram variables

With the introduction of right to counsel as a point of leverage in the system, multiple effects were traced and the new variables are recorded in table 2 and the new CLD is shown below. The Tenant Resource Office system introduces educational outreach and rental assistance if a tenant was evicted due to unpaid rent. In addition, the main purpose of the right to counsel to provide free legal representation for tenants impacts the ability to provide an attorney, so tenants will always be able to be represented in court. These two factors positively impact the decision to go to court leading to more successful cases for tenants. These successes will reduce the

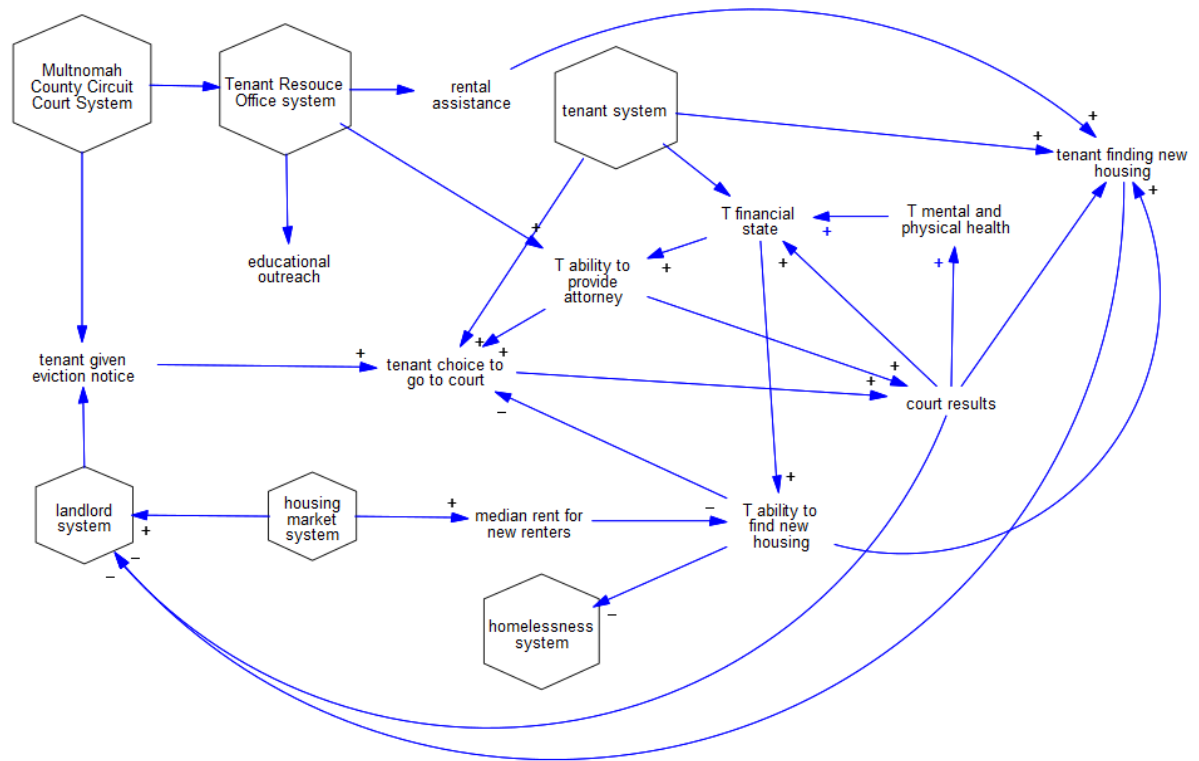
burden due to fees and potential decline in health¹².

Figure 2: Causal loop diagram with added dynamics from right to counsel initiative

Variables added/changed	Description	Affected By	Affects
educational outreach	Not defined	Tenant Resource Office system	Not defined
rental assistance	Funds for helping tenants pay rent	Tenant Resource Office system	tenant finding new housing
T ability to provide attorney	The Tenant Resource Office will provide free legal representation for all tenants	*See table 1	*See table 1

¹² Collinson, Robert, and David Reed. *The Effects of Evictions on Low-Income Households*. Dec. 2018, https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf.

Table 2: Changes and additions to variables in causal loop diagram by adding right to counsel

Realist Evaluation Principles

Considering that the right to counsel movement is an intervention (program) of the current Multnomah County Circuit Court system for landlords and tenants, realist evaluation would state that right to counsel is a theory of change, active and embedded within an open social system¹³. The concepts of realist evaluation can be applied to right to counsel as well, using the context-mechanism-outcome configuration. One application of this configuration places tenants as the context, the right to counsel as the mechanism, with the right to remain housed as the intended outcome. Mechanism can be further broken down into the combination of resource and response. In keeping with this particular application, the resource is the Tenant Resource Office, a proposal of the Multnomah County ballot initiative, and the response, which is legal representation for all tenants. An illustrative example of this would be:

Tenants + Right to Counsel (Tenant Resource Office + legal representation) = prevention of housing instability/houselessness

The right to counsel mechanism is a policy intervention, to be voted on by Multnomah County registered voters, and implemented by Multnomah County's Department of Human Services. As this intervention hasn't been implemented in Multnomah County yet, we are unable to evaluate this iteration of right to counsel. However, as this is part of a larger national movement, we can consider how this intervention has worked, for whom, and under what

¹³ Pawson, R., Tilley, N. (1997). *Realistic Evaluation*. London: Sage Publications, Ltd.

circumstances from the locations in which right to counsel has been implemented. In New York City, where right to counsel passed in 2017, there has been a 37% increase in representation, evictions have dropped 41%, and eviction filings have decreased by 30%¹⁴. Right to counsel benefits tenants by improving their housing outcomes by 84%, ultimately remaining housed and preventing numerous negative consequences of evictions.

Leverage Points as Recommendations

By examining the constructed CLD after the right to counsel component was added, there are additional points identified that could be influenced. This section describes each point as a form of leverage described in Meadow's¹⁵ and recommendations for the right to counsel initiative to utilize.

One recommendation regarding Multnomah County's upcoming ballot initiative is, upon implementation, to include the role of mediation services for tenants and their landlords. Oftentimes, court proceedings can be avoided through intentionally opening dialogues between the two parties and identifying positions each party has. While right to counsel alleviates the cost of representation for tenants, court proceedings still have a cost associated with them. By using mediators, legal counsel can have increased availability for those cases in which mediation did not resolve the conflicts between tenant and landlord. If the dispute does proceed through the court process, mediation services can also step in after a court decision to address any residual disputes between tenant and landlord.

Currently, the right to counsel initiative defines that the creation of the Tenant Resource Office has to include an education outreach program. However, there are no guidelines of what

¹⁴ [Right to Counsel - The National Movement | Right to Counsel Los Angeles \(rtcla.org/the-national-movement/\)](https://rtcla.org/the-national-movement/)

¹⁵ Meadows, D. (1999). *Leverage points: Places to intervene*

the program must include. The educational outreach component could be a potential for leverage in the system if used effectively. If the component was able to inform and educate tenants on their rights as a tenant and the right to an attorney, it would make a positive influence on the tenants deciding to fight the eviction process in court. With that influence spreading throughout the system, it will potentially lead to reducing the impact on houselessness. Another influence that the educational outreach could have is upon the landlords. If the landlords are well informed on the rights of tenants and the guidelines landlords must abide by, it has the potential to reduce the amount of wrongful evictions and similarly the houselessness impact.

A study by Collinson and Reed¹⁶ show that the aftermath of eviction cases brought to court have a statistically significant effect on adult physical and mental health. Through analysis they found that evictions increase the probability of hospitalizations for mental health conditions and in turn play a role in poverty. In the system, if the tenant's health worsens, the tenant's financial state is affected, worsening their ability to find new housing. In order to alleviate the impact of the tenant's health variable declining, the right to counsel initiative should include mental health counseling services for the aftermath of court cases. By including the service, the positive change in the system has the potential to reduce the impact on houselessness.

Team Member Contributions

Cameran brought forward their familiarity of resources regarding the national right to counsel movement, and first hand knowledge of the Multnomah County ballot initiative campaign. They used this background to inform the use of soft systems methodology to write the C(S)ATWOE. They also used their familiarity of the various contexts, mechanisms and outcomes

¹⁶ Collinson, Robert, and David Reed. *The Effects of Evictions on Low-Income Households*. Dec. 2018, https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf.

related to right to counsel both locally and nationally. Adrian used knowledge of system dynamics to focus on developing the causal loop diagram iterations with input from the team. After the causal loop diagrams were constructed, three potential leverage points were identified and used as recommendations. Elizabeth created structure in the early stages of the project by drafting the project scope and goals, leveraging the Lendaris and Hieronymi readings, and was responsible for the executive summary, project approach, and focal system sections.

All team members worked well both collaboratively and independently, following through on their commitments and asking for help when needed. All team members met regularly and contributed to the development of the project's ideas and deliverables.