

The Right to Stay Put

CHESTER HARTMAN

Residential stability engenders a host of personal and social benefits. Long-term residence brings safety of person and property ("eyes on the street," people looking out for each other and each other's homes), helpful and satisfying social ties to neighbors and local commercial establishments, greater care for public and private space, and lower housing costs (Fried, 1973; Gans, 1962). This is not to say that mobility is to be avoided. Change of residence may be necessary and advisable to meet changing space needs and preferences, to take advantage of employment opportunities, to satisfy shifting personal consumption preferences, to escape what is perceived to be a confining social or physical environment, to secure change for change's sake, or for other reasons. The distinction between involuntary and voluntary change of residence is, however, crucial. Shifts of residence that are sought—for which people are financially and socially prepared—clearly are nondetrimental to society. But changes of residence which are hoisted on people, which they did not seek out or propose, for which they may lack the social and economic coping resources—these are detrimental to the individuals and families involved, and produce social costs as well.

In theory, the economic, political, and social forces that trigger these involuntary moves may be associated with societal benefits that outweigh the costs to those forced to move (a point that will be explored in greater detail below). But, aside from those rare instances in which the person forcibly displaced winds up retrospectively grateful for what was initially perceived as a catastrophe, we can safely say that from the displacee's perspective forced displacement is most often a severely damaging experience.

Quantitatively, the problem of forced displacement is substantial and probably growing. A recent study by the Legal Services Anti-Displacement Project concludes that "2.5 million persons a year in the

United States is a conservative estimate of the magnitude of displacement at the present time" (LeGates and Hartman, 1981). The proximate cause of most displacement is private-sector rather than public-sector action. This has been true for the last decade and represents a shift from the 1950s and 1960s, when government programs, particularly urban renewal and construction of the interstate highway system, were the primary displacing forces.

Government still has a substantial role in the displacement process today. Some direct government-initiated displacement still occurs for a wide variety of public-works projects—highways and roads, dams, public buildings, airports. And a great deal of ostensibly private-sector displacement is supported by or the indirect result of government policies, programs, or action. Examples are private-market ripple effects caused by government investment in downtown redevelopment, public transit, or housing rehabilitation; tax policies that foster home ownership and thus encourage conversion of rental units into condominiums, or that encourage luxury renovation of historic properties; policies of federal financial-institution regulatory bodies that permit and encourage a shift from fixed-to variable-rate interest mortgages; and state and local landlord-tenant laws that permit easy evictions (Roisman, 1981). But in the vast proportion of cases today, the direct displacing agent is in the private sector.

Forced displacement produced by the private sector may be divided roughly into that related to *revitalization* forces in the private market and that related to *disinvestment* forces in the private market.

DISPLACEMENT GENERATED BY REVITALIZATION

Home owners as well as renters (although overwhelmingly the latter) may be forced out by actions associated with increasing investment in and attractiveness of an area—what has commonly been referred to by the British term "gentrification." Older structures may be rehabilitated by new or existing owners in order to take advantage of an area's new market attractiveness, due in turn to location, inherent structural or historic qualities, taste and fad, or other factors.

Where the work is done by an investor/developer, such rehabilitation often requires removal of the current residents in order to allow the work to be done efficiently. The rehab work itself may result in higher rental costs which current residents cannot afford or do not choose to bear. A change in unit sizes following rehab—conversion of large units into smaller ones, or vice versa—may make unworkable the former fit between space and occupants. Or a desired change in the social character of the area may make the rehabber unwilling to allow former residents to continue living in the renovated unit. New owner-occupants, whether or not they undertake renovation work, will displace the existing residents of the units they wish to occupy.

Gentrification probably will lead to overall rent increases in an area, even if no or only cosmetic improvements are made in a building located there; and these increases, too, will cause existing residents to move. Property tax increases can also be expected as an area is upgraded, and these also cause rent increases, as well as increased tax bills for home owners, who then may be forced to move. Such "house-rich" but otherwise lower-income persons can reap the windfall benefits of increased property values when they sell, of course, but the social and personal disruption in their lives caused by their inability to pay sharply increased tax bills may be severe, especially since their "windfall" may have to be used to pay higher housing costs elsewhere. Gentrification also is associated with speculative buying and selling of properties, conversion of housing into office and other commercial use, and condominium conversion, all of which are leading causes of displacement.

DISPLACEMENT GENERATED BY DISINVESTMENT

The disinvestment process sets in motion an opposite set of forces, for the most part similarly rooted in the profit considerations of those who own and control property. At the extreme, owners simply abandon, or walk away from, properties they no longer regard as profitable or potentially profitable, leaving unpaid mortgages, property taxes, and utility bills in their wake. A final touch may be "selling out to the insurance company" — that is, arson. A less extreme version of this response is under-maintenance, investing little or nothing in upkeep and repairs, in an effort to keep up profits. "Disinvestment" of this type often is followed shortly by abandonment.

Obviously, such processes cause displacement, when a building is made unfit for habitation or so dangerous and unpleasant that seeking out another place is preferable to staying. A public version of the disinvestment process is withdrawal of municipal services, such as fire stations, street cleaning and repairs, hospitals and clinics, and police protection. Sometimes the disinvestment is a result of inadequate local political power to compel the city to serve the area properly; at other times it may represent a city's conscious policy of "planned shrinkage" or "triage" to induce people to move as a way of preparing the area for some form of redevelopment without the necessity of eminent domain and formal relocation services. As with the revitalization phenomenon, owners as well as renters may be forced out, although the latter predominate. The concept of a "forced" move means not just the legally enforceable decision by someone who owns and controls the property to evict those living there as tenants; it also involves a decision by an occupant to sell or depart because external forces have made continued residence undesirable or impossible.

IS DISPLACEMENT EVER IN THE PUBLIC INTEREST?

Given the undeniable magnitude of the nation's displacement problem (U.S. Dept. of Housing and Urban Development, 1981) and the severity

of its impacts on those displaced, what can be said about the competing claims of the public- and private-sector actors involved? At present, an entire legal, political, and economic structure undergirds the displacement process. Generally speaking, those who own property have the legal right, within some broad constraints, to decide how and by whom that property will be used. Those who own property obviously tend to be persons and institutions with wealth and political power. As the data below on housing tenure by income show (see table 17.1), far fewer lower-income residents than upper-income residents live in their own homes. Lower-income home owners tend to be the elderly, who are most vulnerable to the rising costs of home ownership in revitalizing areas. They are therefore most likely to have to take their equity and run when the inevitable reassessments occur.

No national data exist on who owns the rental properties that tenants occupy, but it is unlikely that a substantial proportion of renters have incomes or wealth positions higher than their landlords'. Also, owners of rental property have in recent years been able to organize themselves into effective local and state trade associations, lobbying groups, and political action committees. These owners have exercised their influence over politicians and the political process by electing candidates, affecting legislation, and defeating local housing-reform initiatives (Hartman, 1979).

Virtually every case study of displacement (see the summaries of existing studies in Hartman, 1964; Hartman, 1971; LeGates and Hartman, 1982) arrives at a similar conclusion: those displaced are poor, with disproportionate numbers of nonwhites, elderly, and large households among them. In seeking a new place to live, the displaced tend to move as short a distance as possible, in an effort to retain existing personal, commercial, and institutional ties and because of the economically and racially biased housing-market constraints they face. What they find

TABLE 17.1. HOME OWNERSHIP RATES AND INCOME (1980)

Annual Income	Percent	
	Home Owner Households	Tenant tk
Under \$7,000	45%	55%
\$7,000-9,999	53%	47%
\$10,000-14,999	56%	44%
\$15,000-24,999	70%	30%
\$25,000-49,999	86%	14%
Over \$50,000	92%	8%

Source: Census Bureau/HUD, Annual Housing Survey for 1980

usually costs more, has less adequate space, and is of inferior quality. Involuntary residential changes also produce a considerable amount of psychosocial stress, which in its more extreme form has been found analogous to the clinical description of grief (Fried, 1963).

Some variations from these patterns have been found in particular types of displacement—condominium conversions to date have affected mainly moderate- and middle-income whites, and the gentrification process up to this point seems to have hit fewer nonwhite neighborhoods than were affected by earlier public displacement programs. Yet the overall pattern described above has been remarkably persistent for several decades, regardless of who was displaced or displacing and for what reasons the displacement occurred.

The motivations of the displacers almost invariably are tied to their profit calculations, or at times to their own class-based residential needs and preferences. For instance, when a gentrifying family returns from the suburbs with the resources and desire to restore an older Victorian house to its original middle-class single-family use, it may empty the house of the several low-income households currently occupying the units that the house was cut up into years back. In the less frequent instances when a government agency is doing the displacing, some version of the "public interest" may be involved. But when subjected to scrutiny, it usually emerges that the public interest to be served is class-biased toward the same interests that undertake private displacement.

The philosophical and political question then becomes: whose rights are paramount, those of the displacer or those of the displacee? Under current conditions the answer is clear. Almost any owner of residential property in the United States can force out a nonowning resident, even though on occasion some trouble and time are required. There are some exceptions, to be discussed below. But the "right to displace" is an overwhelming fact of life, which is why over 1 percent of the population is kicked out of their homes each year (LeGates and Hartman, 1981) and several times that number live under the very real threat that displacement is only a short time off.

In opposition to this "right to displace," I would like to put forth a "right to stay put," a kind of tenure guarantee for those who do not own their own homes. This right would allow them to stay as long as they want, so long as they meet certain fundamental obligations as tenants. While there are some legal underpinnings for such a right, which will be discussed, the fundamental arena for creating it—as with the assertion of new rights generally—is political, in the course of, or following, the political struggle to achieve such a right, the appropriate legal theories and mechanisms will be fashioned and accepted.

DEVELOPING A "RIGHT TO STAY PUT"

In establishing the concept of a "right to stay put," it is useful to itemize the many ways in which the absolute right of the owner of a piece of property

to do with it as he/she sees fit already has been breached. Many of these are relatively new developments in law and public acceptance; others have a long history:

- Zoning regulations put considerable limits on an owner's free use of property. Type, intensity, timing, and many other elements of use are controlled in the public interest, even when these regulations limit the owner's profit and freedom.
 - Housing and building codes setting minimum construction, rehabilitation, and occupancy standards must be met, even though they are quite costly for the owner. These minimum legal standards have been strengthened by court decisions and state legislation establishing a "warranty of habitability"—consumer protection that someone holding out residential property for rent guarantees it to be habitable. Breach of this warranty becomes a legal basis for withholding rent, resisting eviction, and bringing damage claims. Legalized rent withholding and court appointment of receivers to make needed repairs that landlords refuse to perform have provided tenants with self-help remedies to facilitate compliance with these codes (Blumberg and Robbins, 1976).
 - Eminent-domain laws give governments the power to appropriate land and buildings altogether for public purposes, with compensation that may not meet the owner's expectations or claims.
 - A wide variety of uses may be prohibited via restrictive covenants.
 - Uses of property that are illegal or that create a nuisance can be banned.
 - The owner's freedom to set rents and evict occupants is subject to legal limits in many localities.
 - Short-term buying and selling of housing is discouraged by antispeculation ordinances or high capital-gains taxes.
 - Conversion of residential units to nonresidential uses, removal of units from the market, and conversion of rental units to condominiums all are limited or banned in some localities.
 - Property owners who do displace occupants are required in some areas to provide home-finding assistance and monetary compensation to those they move out.
- Some of these restrictions on the absolute rights of property owners relate solely to the owner and his/her use of the property: eminent-domain and nuisance laws, sales-profit limits, conversion restrictions, and use restrictions based on covenants. Others restrict the owners' rights with respect to nonowning users of the property, who thereby are invested with a set of rights. Rent and eviction controls and required relocation compensation and aids, for example, give to those who by choice or necessity do not own the place they live in a shield against self-interested or arbitrary behavior by the legal owners. The controls may properly be described as a form of property or tenure right.

We need to begin to distinguish between ownership of property that is someone's home and ownership of other kinds of property. The property

someone lives in but does not own engenders a special relationship between user and property, consisting of ties built up around that residency. Breaking these ties — destroying the bonds built up through usage (often long-term usage) — produces large individual and social costs. An extreme (but by no means unheard of) example: although a family may have lived in a rental unit for thirty years, a decision by the legal owner to end that tenancy or sell the property can often require the family to move out in thirty days, or at the end of the lease period, should there be a lease. The financial and psychological costs of such a move, as well as the difficulties of obtaining alternative accommodations, are in most cases deemed legally irrelevant.

Is it not reasonable to assert that such costs are a concern for public policy? The importance of property as residence and the realities of the housing market warrant legal protection for nonowners. Such considerations are often more socially meritorious than the legal owner's right to maximize profits, ignoring all other considerations and rights.

The arguments for the right to stay put in part derive from a concept of the public interest. (Additionally, Paul Davidoff has recently put forth the notion that a legal argument for a right not to be displaced might be fashioned based on the right to travel that the Supreme Court has found implicit in the Constitution [Davidoff, 1983].) More stable communities are likely to produce greater care of property and a lower incidence of crime. There will be fewer antisocial acts related to the anger and impotence experienced by those who are forcibly displaced. The rate at which housing costs are inflating will be reduced. Individual misery will decrease. But the underlying motivation for asserting and supporting such a right is primarily an interest in securing greater equity: more rights and benefits for those in the society who fall at the lower end of the spectrum of resources and power.

Let us look at what this right might mean in detail, how it could be instituted, and what specific instances there have been of such a right in action. The issue breaks down differently depending on whether the persons being protected against forced displacement own or rent their homes.

Protecting Home Owners

The case of home owners is easier to handle (and unfortunately involves far fewer people), since it does not require intervening in the rights and expectations of another actor — the owner of the property — but merely altering those external conditions that are forcing the home owner to sell and move.

These changed external conditions usually involve one of several situations. Property-tax assessments and bills may increase beyond the household's ability to pay. Mortgage-payment costs may increase due to general inflation that in turn triggers an increase in the interest rate under the new variable-rate mortgage instruments now being widely introduced. The

quality of public services may deteriorate so as to make the neighborhood less desirable or less suited to the household's needs. The owner's home may deteriorate due to inadequate resources to maintain and repair the building. Mortgage funds to undertake needed rehabilitation may be unavailable. Illegal practices or "scams" related to mortgage financing and home repairs may be perpetrated that deprive home owners of their property. Ways of protecting home owners against each of these threats are suggested below.

Property-tax increases. To handle the problem of increased property taxes in an area that is experiencing rapid gentrification, enactment of a version of some of the more progressive features of California's Proposition 13 would be a relatively simple and effective reform. That is, assessment increases could be limited—in California the cap is 2 percent annually—so long as there is no transfer of property ownership. Only when ownership is transferred can reassessment take place. The reform would effectively insulate existing home owners who wish to remain in an area from the economic forces swirling around them.

A variation of this Proposition 13 feature might be to postpone collection of increased property taxes until title is transferred, rather than having the city entirely forgo the revenue increases. This variation would perhaps better balance the public's and the home owner's interests. The city would recapture the tax based on the increased value upon sale, or it would acquire a lien on the home owner's estate upon death. Eventual repayment of the increased tax obligation thus would be required, without interfering with the owner's current status or plans. Another possibility would be some form of full or partial purchase of the home by the city in exchange for reduction, elimination, or forgiving of property-tax payments.

Mortgage-payment increases. The displacement effects of the new inflation-sensitive mortgage instruments are yet to be felt, but it is inevitable that the mortgages will turn into a major source of displacement. They have indisputably been introduced as an attempt to solve the problems of savings institutions rather than those of housing consumers. Under the traditional level-payment mortgage, the home owner was assured that for the length of the mortgage (usually twenty-five to thirty years), principal and interest payments — the central element in housing costs — were fixed and predictable. Under some of the new mortgage forms — the graduated-payment mortgage, for example — payments rise over the course of the mortgage, but at rates and to levels that are laid out in advance. Under others — the variable-rate mortgage, for instance — the rate and level of increase are not known in advance; they rise (and in theory can fall as well) according to some inflation index, usually with a built-in ceiling.

Consumers desperate to become home owners or to trade up enter into these arrangements; they hope their payment capacities will rise at least as fast as inflation. Many of these owners seem unrealistically optimistic, and some will default as their monthly payments rise. These effects are not

neighborhood-specific, but society-wide. The only way to prevent this type of displacement—other than expensive "gap" subsidies to individual households—is to reverse the trend away from fixed-interest-rate mortgages. Possibilities range from consumer and political demands to retain the traditional mortgage instrument to more radical proposals to eliminate mortgage costs entirely in favor of outright housing construction and rehabilitation grants (Hartman and Stone, 1980).

Deterioration in public services. Public disinvestment in basic services, a problem that leads to displacement of owners and renters alike, is an issue that must be aggressively exposed and fought politically, as it was by a community group in the Northside section of Brooklyn, New York. This neighborhood of 12,000 people, an area the city wanted for new industrial development, began to see its sanitation, police, and health services gradually cut back during the mid-1970s. When the city announced it was closing Engine Company #212, located for 114 years in Northside, the neighborhood knew it had to act. The dense wood-frame tenements, nearby paint and chemical factories, and other combustibles made good fire services a must—to close the station was to sign the neighborhood's death warrant. The day before the scheduled closing, hundreds of neighborhood residents surrounded the firehouse and held it hostage. For sixteen months they ran it as "People's Firehouse #1," collecting information to back their claim for reopening the station, researching shortcomings in the area's fire protection system, and running community programs from the building. They also mounted a series of dramatic public protests, including a rush-hour sit-in on the Brooklyn-Queens Expressway following a destructive fire that would have been far less damaging had equipment from Engine Company #212 been able to respond.

In the end, the city finally gave in, restoring services in two stages. The various residential and commercial revitalization projects begun by the residents in People's Firehouse #1 have started to reverse the trend of decline and population loss. Recent firehouse closings in Massachusetts mandated by Proposition 2 J4 have led to establishment of parallel "people's firehouses" in four communities there, the first of which was aided by "how-to-do-it" lessons given by their Brooklyn predecessors.¹

Redlining. Unavailability of rehabilitation loans in a given area—a practice termed "redlining"—is a problem Congress addressed when it passed the Home Mortgage Disclosure Act (HMDA) of 1975 and the Community Reinvestment Act (CRA) of 1977. In effect, the HMDA provides a data base to ascertain whether a particular lending institution in fact is redlining, while the CRA provides a tool for community groups to use in fighting this practice. The CRA adds to a lending institution's service obligation the obligation to provide credit within its service area, and permits community groups to present negative information to the federal financial regulatory bodies when lending institutions seek permission to expand, merge, acquire, or close branches.

While few instances exist of actual denial of permission to lending insti-

tutions based on their redlining practices, the few cases that do exist are sufficiently frightening to the institutions that they are willing to go to considerable lengths to avoid the possibility of highly lucrative moves being barred. Community groups have found that the main utility of the CRA has been as a threat to induce lenders to negotiate concessions (Center for Community Change, 1979, 1981; National Training and Information Center, 1979). In order to be a truly effective antidisplacement tool, the CRA needs to be strengthened, and community groups need clear antidisplacement demands to bring to the negotiating table.²

Criminal practices. Home owners may be displaced by shady practitioners who prey on ill-informed persons needing help with mortgage-loan management or home repairs. Often they use a device known as a "lien sale contract," under which home owners who fail to meet payments can lose their homes. Such practices are rife where owner-occupied single-family homes in stable, moderate-income neighborhoods are rapidly appreciating in value. In Los Angeles, where such scams have been notorious, they were effectively countered by a combination of good investigative reporting by the *Los Angeles Times*, subsequent prosecution by state and local agencies, establishment of home owner fraud-prevention projects by city and county governments, and passage of new state laws.

Protecting Renters

As noted, the problem of tenant displacement is far more complex than that of home owner displacement, since it springs from the competing rights of owner and user of a given property. To the extent a landlord is denied the traditional prerogatives and expectations of property ownership, the owner may withdraw. Fewer persons may be willing to own residential rental property. Thus the assertion of a tenure right for renters necessarily means developing alternatives to the present mode of owning and managing property.

More precisely, if tenants are to avoid displacement, they need protection from eviction, from rent increases beyond their ability to pay, and from removal of their units through demolition or conversion. Yet the concept that the landlord has a right to evict tenants for virtually any reason, with but thirty days' notice or upon termination of the lease period, still dominates relations between the vast majority of American tenants and landlords. Federal, state, and local antidiscrimination laws can on occasion alter this dominance, but discrimination is terribly hard to prove, particularly in a tight housing market where there may be many competitors for any available unit. Landlords rarely are foolish enough to announce—in the presence of witnesses—that illegal prejudices have motivated a decision to evict a tenant or reject an applicant for a vacancy. Eviction in retaliation for assertion of legal rights—particularly the right to have the housing code enforced or to otherwise ensure habitable conditions—also is barred in many jurisdictions. But again motivation is

hard to prove. Given the wide range of legally acceptable reasons for eviction—including the absence of a requirement that a reason be offered at all—it is the equally rare landlord who will announce in public a motive of spiteful retaliation when presenting an eviction notice.

"Just-cause" eviction. So-called "just-cause" or "good-cause" eviction statutes may represent a fundamental change in the one-sided landlord-tenant relationship. Such statutes now apply to most federally assisted housing, to every tenant in the state of New Jersey and the District of Columbia, and to certain segments of the renter population in many other states and cities. Residents of mobile homes—usually owners of their home but renters of the lot on which the home stands, and therefore particularly vulnerable to eviction threats—are protected by "just-cause" eviction statutes in Florida, and to some extent in California. Similar protection is offered as part of rent-control laws—to prevent circumvention by means of eviction—in New York City, Los Angeles, San Francisco, San Jose, and over a dozen other municipalities in Connecticut, Massachusetts, California, Virginia, Maryland, and the Virgin Islands. In theory, "just-cause" eviction statutes reverse the tenant-landlord relationship; instead of a landlord having a right to kick a tenant out for virtually any (or no) stated reason, a set of allowable reasons for eviction is stipulated in the law. Only these reasons may be the basis for a court-ordered eviction. A tenant has a secure right of tenure so long as one or more of these conditions is not violated. If the tenant challenges the eviction notice, the burden of proof falls on the landlord to demonstrate that the cause for eviction is one permitted by the statute.

Yet in practice the range of stipulated just causes for eviction is so broad—with many lying outside the tenant's control—that no meaningful right of tenure is created. Nonpayment of rent, violating lease conditions, creating a nuisance, or destroying property—all just causes for eviction in most of these ordinances—can be avoided by most tenants. But the landlord's desire to recover possession for his/her own use or use by a close relative, or to remodel or demolish the property, are matters over which the tenant has no control; most ordinances consider these reasons just causes for eviction.

The greater the number of just causes, the larger the loopholes. If the owner is permitted eviction to allow a relative to move in, how does one protect against the fraudulent use of this reason? The law can include penalties to deter this behavior. But once the tenant is gone, follow-up to ascertain whether the relative actually moved in is unlikely. Even if the relative does not move in, how can one distinguish a genuine change of plans from intentional, collusive misuse of the just cause?

If just-cause eviction statutes are to grant tenants effective security of tenure, they must be written so as to apply to tenant behavior only. This means depriving the property owner of the freedom to evict because he or she wants the unit for personal use or use by a relative, or because the owner wants to remodel the unit, or because the owner wants to remove

the unit from the market. Such use or occupancy changes would not necessarily be barred, but they would have to take place only between tenancies, after a truly voluntary move-out of the current occupant.

These are not radical concepts. A unanimous Massachusetts Supreme Court decision recently upheld a Cambridge ordinance that gives the city discretion to grant or withhold eviction permits when the purchaser of a condominium unit wants to evict the current occupant so a new purchaser can move into the unit. The court held that the right to own property did not automatically grant the right to occupy it, that there was a legitimate public interest to be served in government regulation of evictions.³

If such rights can be invoked against would-be owner-occupants, obviously they can be invoked against owners whose personal interest is more remote. Controls over removal of units from the rental stock through demolition or conversion to condominiums already appear in several local rent-control ordinances, such as those of Santa Monica and Berkeley, California, and New York City. These cities regard preservation of the rental-housing stock as in the public interest, given the shortage of such housing, the threats to it from profit-seeking developers, the low rates of new construction, and the low incomes and limited choice that renters have.

Thus an important step in guaranteeing a right to stay put is to enact a "just-cause" eviction statute that permits eviction only for a very few tenant-caused reasons—that is, nonpayment of rent, persistent disorderly conduct that neighbors regard as a nuisance, willful or grossly negligent behavior that is destructive of property, or persistent breach of reasonable written rules. It should be noted that in some instances evictions, even for just cause, are now forbidden during extremely cold weather, because of the health consequences of putting families out in such weather. A recent amendment to the District of Columbia Landlord-Tenant Act stipulates that "no landlord shall evict a tenant on any day when the National Weather Service predicts at 8 a.m. that the temperature at the National Airport Weather Station will not exceed twenty degrees Fahrenheit within the next twenty-four hours."⁴ Relatedly, the Secretary of Housing and Urban Development issued a telegram in February of 1977 ("Subject: Weather/Fuel Shortage Problems") to all HUD regional and area offices enunciating a policy that "no persons will be evicted from HUD-owned property unless you are certain that the persons evicted are able to move into decent, safe, sanitary and satisfactorily heated housing. Absent such assurances, no occupants will be evicted" (National Housing Law Project, 1977).

Rent controls- Control over arbitrary and inflationary rent increases is another key element of a tenant's right to stay put. In a situation where the demand for decent rental housing far exceeds the supply—the case in nearly every part of the U.S. today—the free market system works to the detriment of consumers. Unlike most other commodities, an excess of demand over supply in housing does not quickly result in increased pro-

duction to meet the demand or to restore market equilibrium. The shortage and high cost of construction financing and permanent financing, the fear and reality of regulation, high land costs and restrictive land-use regulations, difficulties in managing rental property, and greater available profits from other forms of real-estate development and manipulation — these all combine to retard the market response, which at a minimum occurs over several years. If renters—a disproportionate number of whom are low-income, elderly, nonwhite, or large households—are to be protected from injurious market forces, government regulation of landlords' profit drives is mandatory. Difficulties have appeared in some rent-control ordinances: partial circumvention through black-market practices; the cost of establishing the necessary regulatory mechanisms; reduced attractiveness of owning, maintaining, and improving rental property. But these defects often result from passing weak, compromised legislation designed to minimize offense to property-owning interests, or from neglecting to fashion the needed array of mechanisms that will produce a combination of controlled rents, adequate property maintenance, and protection and expansion of the rental-housing supply.

A well-designed rent-control ordinance must:

- Keep rent increases to a level that reflects only real and unavoidable cost increases to the landlord.
- Forbid landlords from escaping controls by converting housing to uncontrolled uses (condominiums, commercial activities, new construction).
- Cover as much of the rental-housing stock as possible.
- Regulate rents for the unit regardless of continuity of a specific tenancy.
- Have adequate enforcement mechanisms.

No rent-control ordinance currently in force in the U.S. adequately meets all these criteria. (For an example of the specific provisions such an ordinance might contain, see Hartman, Keating, and LeGates, 1982). But such an ordinance, along with the strong "just-cause" eviction statute outlined above (which also does not currently exist in the United States), would go a long way towards creating truly secure tenure for those who cannot afford or do not wish to own their homes. It cannot, of course, make housing affordable for those who have extremely low incomes. Nor will the ordinance be much help to those with incomes that are not keeping up with inflation. Nor will it help with the housing costs that landlords can legitimately pass on to tenants even under a strong rent-control ordinance—for instance, increases in property taxes, utility costs where those are paid by the landlord, maintenance costs, and mortgage-interest costs where the landlord does not have a fixed-interest-rate mortgage. Rent control can at best only help keep housing affordable. It cannot create universally affordable housing.

To create truly secure tenure, a well-crafted rent-control ordinance would have to be supplemented by a program of housing subsidies to those

who need them. If, even under rent control, a tenant household cannot afford the allowable rent increase, or cannot afford the rent level altogether without paying an unacceptable portion of its income, then adequate government subsidies must be forthcoming. This is a crucial element of any meaningful right to stay put.

THE RIGHT TO DECENT HOUSING

The right to stay put is but a short step from a right to be decently housed. Effective antidisplacement measures are an integral part of a comprehensive housing-reform program. A right not to be displaced implies a right to have been housed satisfactorily in the first place. The same social, political, and moral considerations that condemn the displacement of 2.4 million Americans each year so that landlords and developers can make profits also apply to the tens of millions of Americans who are inadequately housed today.

Existing constitutional theories and statutes do not offer a strong basis for asserting that there is a "right to housing" (Michelman, 1970). None of our housing programs has been regarded as vesting an "entitlement" to receive benefits on the entire class of persons eligible for these benefits. (Ironically, the home owners' deduction, although not commonly regarded as a housing program *per se*, grants to all owners who itemize their deductions an entitlement to deduct from their taxable income base all mortgage-interest and property-tax payments. This set of benefits — estimated by the Congressional Budget Office to be \$48 billion in fiscal 1983, \$57 billion in fiscal 1984 — accrues overwhelmingly to upper-income taxpayers.) But the policies and rights — and above all, political action — outlined above can move us toward some more solid legal underpinnings. Aggressive, carefully designed litigation can advance the day when such a right will be upheld in the courts.

Recent developments around the problem of "homelessness" suggest some promising precedents. A class-action suit brought against the City and State of New York on behalf of men without shelter led to a court-ordered consent judgment in August 1981. Under the consent decree, the city guarantees to provide a shelter, with minimum standards, for any homeless man requesting it (*New York Times*, 1981). The agreement has subsequently been extended to include homeless women (*New York Times*, 1983b). The men's case relied on a provision of the New York State Constitution that made the state responsible for providing "aid, care, and support of the needy," as well as for other statutory obligations to the indigent. The government's acknowledgment of a statutory obligation to house its homeless, at least to a minimum standard, may be regarded as establishing a limited right to housing.

In addition, the District of Columbia government was recently enjoined from closing its men's shelters. The decision was based on a set of rights deriving from the city's policy on homelessness, its past practice of provid-

ing these shelters, and its failure to observe due process in arbitrarily attempting to close the shelters without sufficient notice or the opportunity of the shelter residents to challenge the proposed closing.⁵

The homelessness problem, and the nation's awareness of it, are likely to grow. Cuts in federal and state social-welfare programs, decreasing vacancy rates, skyrocketing rents and utility rates, rising unemployment, deinstitutionalization of people with mental disabilities, and the weakening of central-city welfare agencies because of fiscal pressures are likely to lead to increased homelessness (*New York Times*, 1982; *San Francisco Examiner*, 1982; *Washington Post*, 1982). The obligation of government to provide decent housing for the homeless may be extended to other populations, including those who are inadequately housed and those who can find housing only by paying proportions of their income that make impossible the provision of other household necessities.

The recent rise in organized "squating" also warrants mention here. In Philadelphia, Tulsa, Atlanta, St. Louis, Houston, and other cities, successful campaigns have been organized to move people without adequate housing into empty, often abandoned buildings. Much of this activity has been led by ACORN (the Association of Community Organizations for Reform Now), a nationwide community-organizing group.

Such actions provide housing for those who need it, build strong popular organizations and movements, and bring to light the contradiction of having empty houses at a time when people need housing. Some of these campaigns are aimed at publicly owned properties, in particular housing that has come into HUD's possession as mortgage insurer when the owner/developer abandoned a property or defaulted; others are aimed at privately owned buildings.

While these campaigns have not housed great numbers of people, they highlight the issue of housing/human rights vs. property rights. The response from the public and media has been extraordinarily supportive. A major "Walk-In Urban Homesteading" campaign in Philadelphia, organized by Milton Street, now a state senator, forced HUD to turn over title to 150 homes occupied by "do-it-yourself homesteaders. While government officials railed against "violation of property rights" and "anarchy," the major Philadelphia newspapers supported the squatters. For example, a *Philadelphia Daily News* (August 8, 1977) editorial, headed "Squatters' Rights," stated:

Milton Street seems to be an expert at what no other government agency — city or federal — is very good at. And he is doing it without miles of red tape, bureaucratic forms, administrators, inspectors, lawyers and all the other things that make bureaucracy the monster it is. He is putting people who need homes into houses that have stood vacant for far too long. . . Rather than doing battle with Street, the [Mayor] Rizzo administration and HUD should get behind the man and help him.

AGORN's dozen recent squatting campaigns have received similar media support, with sympathetic "human-interest" news accounts, editori-

als (*St. Louis Post-Dispatch*, 1982; Brashar, 1982), and columns. Neal Peirce's column in the May 15, 1982, *Washington Post*, "Squatter Housing Is Sign of Times," concluded:

Oddly enough, housing squatters may be doing a big favor for Europe and North America. Though their actions are technically illegal, they are occupying only long-deserted buildings. In a colorful, compelling way they underscore the blindness of governments that fail — by defective national economic policies and by sluggish local housing bureaucracies — to provide affordable housing and protect the treasure that a nation's old housing stock represents.

This encouraging sign — that common sense and common decency about meeting people's housing needs may transcend formal, legal precepts regarding ownership of property — suggests that carefully prepared publicity and organizing campaigns can be important building blocks toward political and legal acceptance of a "right to housing."

Additionally, litigation over exclusionary zoning is moving toward establishment of a set of housing rights. In the most recent and far-reaching in this line of cases, the New Jersey Supreme Court, in its unanimous "Mt. Laurel II" decision, ordered all of the state's municipalities to take steps to insure housing opportunities for low- and moderate-income households — a decision the state's public advocate characterized as "the most dramatic opinion handed down by any court anywhere in the United States since the one-man, one-vote decision" (*New York Times*, 1983a).

We are increasingly seeing that the profit system is incompatible with the national housing goal of "a decent home and suitable living environment for every American family" that Congress first promulgated in the 1949 Housing Act and reasserted in the 1968 Housing Act. This goal is impossible if people have to pay more than they can afford to reach it or if people constantly are faced with the threat and reality of forced uprooting. For American society the displacement problem raises land reform issues of the profoundest sort.

NOTES

1. A detailed account of this and other specific antidisplacement strategies actually undertaken by community groups can be found in Hartman, Keating, and LeGates (1982).
2. Further information on proposals for strengthening the HMDA and CRA can be obtained through National People's Action, 954 West Washington Blvd., Chicago, IL 60607.
3. *See Flynn v. City of Cambridge*, 418 N.E. 2d 335 (1981).
4. See 2, D.C. Act 4-143, new Sec. 501a.
5. See *Williams v. Barry*, 490 F. Supp. 941 (1980).

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