1951

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Housing

A Cursory Analysis of Available Remedies With Particular Reference to the Anti-Trust Laws

By G. E. Hale*

INTRODUCTION

Few subjects of legislative policy have attracted dispassionate discussion. On most issues legislators must act upon little but the deafening clamor of interested parties. Even on topics of importance detached reports are rarely available. And many of those which have been prepared evidence more emotional enthusiasm than penetrating analysis.

Housing is no exception to the foregoing statements. The bulk of the literature consists of special pleading. And partisans use language loosely. Thus it is common to assert that rents claim an "excessive" share of tenants' incomes. On principle it is difficult to prove what precise proportion "ought" to be spent on shelter. Politicians do not blush to advocate rent control and encouragement to builders in the same breath. And "speculators" are favorite whipping boys when

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For factual information the authors are under obligation to Messrs. Graham Aldis and Franklin Hardinge, Jr., of Chicago. The authors have had the benefit of examining certain unpublished studies prepared by and under the supervision of Professor Edward H. Levi of the University of Chicago.

Our primary obligation, however, is to Clay Judson, Esq., of the Chicago Bar, without whose active interest and encouragement this (and other) work could not have been accomplished.

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blame for unsatisfactory conditions is apportioned. 3 Slums are said to be the cause of delinquency, disease and despair. 4 But not a single unbiased report tends to prove such assertions. 5 And even careful comments are often so ill-considered that the whole subject bogs down in muddlement. 6

Amid so much confusion it is not unreasonable to inquire whether housing is a real problem. Perhaps it is all just a matter of demand. Beer, tobacco and now, even television, 7 find a ready market in slum areas. Maybe the inhabitants simply will not spend enough money and energy to acquire and retain “decent” housing. And no one knows what quality of dwelling is acceptable. Thus attempts to estimate housing “needs”, based upon arbitrary standards of quality, can be shown to mean little. Statistics by the ream attempt to measure those “needs” 8 but actual demand—what consumers are willing to take at various prices—remains unknown. 9 Nevertheless the existence of dis-

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8 Stone & Denton, Toward More Housing at 116 (T.N.E.C. Monograph No. 8, 76th Cong. 3d Sess. 1940).
9 E.g., Joint Committee on Housing, Housing in America at 111 (House Doc. No. 629, 80th Cong. 2d Sess. 1948).
10 Dean, The Myths of Housing Reform, 14 Am. Sociol. Rev. 281 at 286 (April 1949). “Bias” is used in its technical sense. Nothing in the foregoing discussion is intended to suggest that slums are desirable or that nothing should be done about them. Indeed, the whole purpose of this study is to find a sound program which can contribute to eradication of unsavory housing conditions.
11 For example, a scholarly contributor has stated that with the coming of the industrial revolution a great influx of workers from the farms crowded into the British cities. The result was overcrowding; “landlords exploited the situation by endeavoring to house as many people as possible in the smallest area.” Pri-
12 Mabley, “Temporary” Homes To Stay For Years, Chicago Daily News, p. 50 (Wednesday 15 March 1950) - an on-the-spot survey showed that eight out of eight apartments in a temporary housing project for veterans, renting for $34.00 (a month), were equipped with television sets.
13 E.g., Blanford, Wanted; 12 Million New Houses, 34 Natl. Mun. Rev. 376 at 378 (1945), speaking of housing being “deficient” and “substandard.” Some students have attempted to estimate how much various income groups can “afford” to pay. Such computations are often based on a “rule” that tenants “should” pay no more than ¼ of their income out as rent. E.g., Stone and Den-
14 E.g., Colean, Our Housing Improvement Since 1940, 5 at 7 (Construction Industry Information Committee, February 1949).
gusting housing conditions is a reality. And whether the problem be “real” or fancied, its presence in the political arena cannot be denied.

No political problem exists in a vacuum. Legislators cannot consider one proposal apart from the framework of institutions as a whole. Housing legislation, for instance, has been saddled with schemes to benefit particular voting blocs or to promote economic recovery. Such burdens often tend to defeat the major purpose of the legislation. Granting that single purpose measures are likely to succeed better than multifarious acts, we must nevertheless fashion programs consistent with our policies in other fields. We cannot, for example, permit a passion for good housing to undermine civil liberties.

It would be logical to start with a description of existing housing conditions and an analysis of the cause of the obvious shortcomings. But a good diagnosis has already been prepared and most citizens are aware of the situation in general terms. Analysis of the devices available to carry out government policy seems more appropriate at the present time. Accordingly this study will jump into the middle of the subject and immediately examine various forms of government action tried and proposed to improve housing conditions. In many instances, we shall find, existing data are not sufficiently full to permit the drawing of extensive conclusions. Field investigation and experimentation are required, for example, to determine how much can be done by the rigid enforcement of existing safety and sanitation statutes. Other possible modes of action can, it is believed, be examined satisfactorily in the light of recorded experience and theoretical analysis.

This study proceeds upon three assumptions. (1) That there is a "shortage" of dwelling units. Whether real or statute-made, there is a widespread political demand for a greater quantity of housing. (2)

Holden, *Housing Dictatorship and Soft Socialism* at 7 (Commerce and Industry Assn. of N. Y., Inc. 1949). In other words, there is a failure to distinguish between the economic concept of demand and vague ethical norms, often expressed as "needs." Handler, *Housing Needs and Housing Standards*, 25 *Land Econ.* 117 at 118ff (1949). Apparently nothing is now known concerning housing demand in the economic sense, although some measurement has been attempted of cross-elasticity of demand for housing as against other commodities. Weimer, *Measuring Effective Demand in the Housing Market*, 25 *Land Econ.* 111 at 113 (1949).

National Housing Act 27 June 1934; 48 Stat. 1246; 12 USCA §§1715c $212; (prevailing wage to be paid on projects where mortgage is insured). See also §16(3) of the United States Housing Act of 1937; 1 Sept. 1937, 50 Stat. 899; 42 U.S.C.A. §§1401ff; New York, Public Housing Law; Laws 1939, c. 808; Consolidated Laws c. 44-A; §152. Note also §6(c) of the Housing Act of 1937, *supra*, creating a preference for the use of domestic building materials. Compare Joint Committee on Housing, *Housing in America* at 19 (House Doc. No. 629, 80th Cong. 2d Sess. 1948).


Twentieth Century Fund (Colean, Miles L.), *American Housing* (1944).
That much existing housing is of poor, if not revolting, quality. Within
the framework of our free institutions, something positive should be
done about it. (8) That the basic causes of the housing “problem”
are two, cost and contamination. High building costs deter construction of new dwellings. Deterioration of neighboring property discourages maintenance of existing homes.

I. DIRECT CONTROLS

A. Police Power

One set of tools available to a government anxious to improve housing conditions consists of direct controls over tangible property. Prominent among such measures are those statutes enacted under the police power and designed to protect public health and safety. Since we are concerned with the quality of housing as well as its quantity, police power legislation is obviously a possible instrument for the eradication of slums.

Exercise of the police power is, in our polity a function of state government. But frequently the states delegate their authority to subordinate municipal corporations. The City of Chicago, for example, has enacted comprehensive ordinances controlling the erection and maintenance of dwellings. It has prescribed sizes of rooms, requirements of light and air, and detailed rules for installation of plumbing. Maintenance has not been neglected. Every building maintained in violation of an ordinance is declared a nuisance and public officers are authorized to abate it. Many unsanitary conditions are specifically forbidden: every building, for example, must be kept in a rat-free condition. Certainly such measures invest public officers with ample powers. The question is whether they can be enforced.

Use of the police power is a direct and honest approach to the slum problem. It compels those who live in unwholesome surroundings to spend money or effort to improve them. And it appears that the city of Baltimore, proceeding sensibly against one small area at a

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13 Id. at 325.
16 In the short run the burden of maintaining residences in a sanitary condition could be thrust upon landlords. Over the long term, however, it would seem inevitable that the burdens would fall on tenants. During a period of rent control, of course, it would be almost impossible to compel landlords to make substantial improvements to their property.
time (so as to protect those who have cleaned up from re-contamination) has achieved a measure of success in this manner.\textsuperscript{17}

Some citizens no doubt object to the compulsory nature of the police power method. But a more serious defect is its seeming ineffectiveness. Such ordinances have been on the books for years and slums still stand. In times of depression, apparently enforcement of safety and sanitation measures raises costs to a point above demand, compelling landlords to close down.\textsuperscript{18} Widespread demolition of unfit dwellings may, in the short run, increase an already high population density (\textit{i.e.} aggravate the "shortage").\textsuperscript{19}

Whether police power enforcement is possible may depend on one's attitude toward slum dwellers. Many writers of humanitarian bent insist that the tenants of such areas are not to blame for conditions. They assert that slum dwellers would rapidly move to better quarters if they could afford to do so.\textsuperscript{20} Hard hearted observers point to the television antennae in blighted areas. Whether people or property cause slums is a debate which can probably never be resolved any more than one can prove that heredity or environment gives rise to juvenile delinquency. Thus we may never know a fact fundamental to rational policy making.

\textsuperscript{17} Beardsley, \textit{Baltimore Cleanup Effort Near Showdown}, Chicago Daily News, p. 24 col. 1 (Wed. 23 Nov. 1949); p. 12 col. 1 (Fri. 25 Nov. 1949). According to Mr. Beardsley's descriptions the Baltimore plan required the setting up of a special court to handle housing cases. Creation of such a tribunal may suggest (somewhat ominously) that something less than full justice is contemplated. Compare Yakus v. United States, 321 U. S. 414 at 483, 445 (1944).


\textsuperscript{19} One observer has said:

Housing legislation intended to bring the lower-cost housing within the regulatory control of law-enforcing bodies so as to insure better standards has produced (149) only limited improvements in the new buildings, and has acted on the whole as a deterrent in the construction of low-rental housing, while encouraging the continued use of obsolete dwellings in existence prior to the enactment of the new dwellings law. Wholesale slum clearance without immediate or even pre-demolition replacement at all times threatened a housing shortage which kept the authorities from enforcing even the moderate regulations on old dwellings for fear that too much pressure would result in higher rents and greater congestion.

Aronovici, \textit{Housing the Poor}, 1 Law & C. P. 148 at 148f (1939). Compare Siegel, \textit{Real Property Law and Mass Housing Needs}, 12 Law & C. P. 30 at 42 (1947). It has been recommended that a study be made of housing conditions in order to determine how burdensome maintenance actually is. Twentieth Century Fund, \textit{American Housing} at 340f (1944).

\textsuperscript{20} Compare Taylor, \textit{Federal Handouts Can't Solve Slum Problem} 29 Barron's No. 23 at 13 (6 June 1949) where it is suggested that the defeated and hopeless persons who constitute permanent slum dwellers cannot afford even subsidized rents. They must live on the very lowest level and hence only the police power can affect them.
It will probably always be necessary and possible, however, to make some use of police power measures. How far a health and safety program could be pushed, particularly if coupled with a cost-reduction plan, remains to be seen. Cities other than Baltimore might well experiment with it.

B. ZONING AND PLANNING

Zoning is a type of police power legislation deserving special mention. A typical zoning ordinance will divide an urban community into residential, commercial and industrial areas. Perhaps each of those classifications will be subdivided: thus there may be both "class A" and "class B" residential zones. Then (new) use of land is forbidden except in conformity to the zoning of its area. The procedure constitutes an attempt to preserve property values by insulating neighborhoods against contamination. If values are thus maintained it should follow that property owners will maintain existing structures to protect their investments. Hence the zoned area will not deteriorate into a slum. In contrast to "planning", whereby land use is positively prescribed, zoning is negative: non-conforming uses are forbidden but the property owner is under no compulsion to improve his land in a particular manner or at all.

Many cities have enacted zoning ordinances. Continuance of unsatisfactory housing conditions, however, suggests that zoning is less effective than might be hoped. Complaints have been registered against the administration of zoning laws, the courts observing so many permissive deviations from basic designations that they lose confidence in the fairness of the program. Another important difficulty is that zoning allocates land resources within arbitrary limits. It is often asserted, for example, that too great an area is zoned for commercial purposes.23

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22 Anon., Amortization of Property Uses Not Conforming to Zoning Regulations, 9 U. of Chi. L. Rev. 447 at 487, 490, 491, 494 (1942). Compare Anon., Public Land Ownership, 52 Yale L. Journ. 634 at 636 (1943). It has been suggested that a system of time zoning be created whereby non-conforming buildings can be amortized and eventually demolished. Twentieth Century Fund, American Housing at 326 (1944). That recommendation, if enforceable, might overcome some of the foregoing objections.
23 E.g., Lasch, Breaking the Building Blockade at 246f (1946); Anon., Public Housing in Illinois, 8 U. of Chi. L. Rev. 296 at 313 (1941); Twentieth Century Fund, American Housing at 326 (1944). It has also been suggested that zoning ordinances which prohibit improvement of non-conforming uses promote slums because they compel deterioration. Brown, Urban Redevelopment, 29 Boston U. L. Rev. 318 at 319f (1949).
Even the most limited types of zoning must, in some degree, result in a different allocation of resources than that which would obtain under free market conditions. To that extent it is uneconomic in nature. But a fair case can be made for zoning which merely rounds out a pre-existing land use. Such protection from contamination may be of considerable benefit and only burden the fringes of each area. Zoning has not solved the housing problem but it has probably been helpful as an intermediate term device.

Dissatisfaction with the results achieved by zoning has led to a demand for “planning.” As indicated above, planning is more positive in character. If compulsion on individual landowners is not contemplated at least public works will be affirmatively provided for in the plan. As in the case of zoning, “planning” seeks to avoid the contamination of residential areas by intrusion of unattractive land uses. But it goes much further. Indicating profound dissatisfaction with free market allocations—often denounced as the “unrestrained excesses of selfishness and greed”—the planners propose complete renovation of the environment for greater efficiency, convenience and comfort.

In the United States the sweeping legislation required to effect such a program still awaits enactment. Statutes often provide for the creation of planning commissions but their functions are chiefly advisory. In Britain, however, a socialist regime has procured the

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24 Compare Twentieth Century Fund, American Housing at 125 (1944) (zoning may hamper large scale planning at later date).
26 E.g., Twentieth Century Fund, American Housing at 326f (1944).
27 E.g., Lasch, Breaking the Building Blockade at 144 (1946). It nevertheless appears that greater efficiency might result from some aspects of land planning. Thus it might be possible to place through traffic on a few arterial streets and to arrange housing in courts so as to reduce the length of water and gas mains, etc. Twentieth Century Fund, American Housing at 27 (1944). It is interesting to note that many advocates of planning and zoning urge those measures in order to preserve land values, while at the same time denouncing the free market as favoring speculators. The two positions would not seem to be wholly consistent.
passage of the comprehensive Town & Country Planning Act, 1947. That measure freezes existing land uses except as changes may be authorized by administrative officers of government. What amounts to a tax is laid upon improvements, the purpose of which is to make land development unattractive to private citizens. Hence the initiative for change has passed into government hands.

"Planning" is itself one of the controversial and important public issues of the day. This brief study of the housing problem cannot pause to inquire into its manifold ramifications. It is believed appropriate, however, to suggest some of the principal perplexities involved in city and regional planning.

One of the basic issues which must be resolved in preparation of such a plan is how large the community should be. Another is whether the city should encompass all types of activity (including, for example, industry) or whether it should exclude unattractive land uses and prescribe exclusively residential towns. How dense population should be in the community is another fundamental problem.

On all three questions there appear to be almost as many views as planners. And there is much muddlement. One "city" planner insists that each family be allotted an acre of ground. Another, also insisting that city dwellers live in rural splendor, apparently finds nothing inconsistent in his demand that work places be within walking distances of homes.

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29 Great Britain, Town and Country Planning Act, §12 1947, 10 & 11 Geo. VI c. 51. §§5 and 26 of that statute seem to contemplate that all land will be used pursuant to administrative directive and only in accordance therewith. See Anon., Control and Development of Land Under the Proposed British Town and Country Planning Bill, 60 Harv. L. Rev. 800 at 801f (1947). The statute contains elaborate provisions (§§50, 51) to reduce the amount of compensation otherwise payable to the land owners. Monson, Development and Practice of British Planning Law, 44 Ill. L. Rev. 779 at 785f (1950).

30 Monson Development and Practice of British Planning Law, 44 Ill. L. Rev. 779 at 796 (1950). Characteristically, the statute says nothing in regard to state absorption of losses in land values. Nor do advocates of such legislation consider who shall bear such burdens. All the emphasis is laid upon state expropriation of increments in land values.

There is some ground for the belief that the British statute is not working well in practice. See Fed. Reserve System, Planning in Practice, Weekly Review of Periodicals No. 1270, 5 at 5f (31 January 1950).


33 Lasch, Breaking the Building Blockade at 79f (1946). Query whether high population density is necessarily evil. Intensive land use may be efficient if balanced against the difficulties of commuting. It is often pointed out that some of the most wealthy sections of cities are improved with lofty skyscraper
Most city planners envision residential areas of "neighborhood" size. But difficulties are encountered in fixing the size and composition of such units. Again, it is recognized that the logic of planning requires universal controls. The city cannot plan except as part of its region and if the region is not regimented the city's program may be set to naught. Similarly the region must control activity beyond its borders; if New England erects a steel mill its hearths may be darkened by a more efficiently located plant built across the Sound on Long Island. To curb waste and unemployment, therefore, New England must be able to prevent erection of the rival establishment. And thus we return to the difficult problem of allocating resources when government control supplants the free market.

Even more disturbing are the implications of such sweeping regulation to the maintenance of free institutions. It is no accident that its advocates constantly add the adjective "democratic" to the word "planning." For the whole concept involves the substitution of those goods which the planners think citizens should want for those which citizens are willing voluntarily to pay for. Art galleries are to replace hot-dog stands. Admiring glances are cast at the British "legal mechanisms to relocate population". In other words, citizens should no longer choose their own homes. Granted that a measure of planning is both necessary and desirable, those who believe in free markets shun its mechanisms.

apartment houses and thus show a high population density. Some observers go so far as to complain in one breath of high population densities and in the next of extending services to outlying areas. McGoldrick, City Building and Renewal, 242 ANNALS 96 at 99f (1945).

Bauer, Good Neighborhoods, 242 ANNALS 104 at 104 (1945); Isaacs, The Neighborhood Concept in Theory and Application, 25 LAND ECON. 73 at 75 (1949). It has been said that so called neighborhood planning leads to social stratification and segregation. Bauer, supra at 106f. Past practice in city planning has encouraged one class dormitory projects with a monotonous economic level. Id. at 105. Such problems have lead students to cast doubts on the whole "neighborhood" concept. It has been said that there is no proof of the benefits of casting cities in such form. Riemer, The Neighborhood Concept in Theory and Application, 25 LAND ECONOMICS 69 at 71f (1949).

McDougal, Municipal Land Policy and Control, 242 ANNALS 88 at 94 (1945); Anon., Public Land Ownership, 52 YALE L. JOUR. 334 at 654 (1943); Twenties Century Fund, American Housing at 827 (1944). Note that many persons have moved to suburbs specially to avoid the low standards of municipal administration common to large cities. Enlargement of municipal jurisdiction might thus inure suburbanites in the same measure that it benefitted the city dwellers.

Compare Jewkes, ORDEAL by PLANNING, c. 7 (1948).

Lasch, Breaking the Building Blockade at 261 (1946).

Weintraub & Tough, Redevelopment Without Plan, 37 NATIONAL MUNICIPAL REVIEW 364 at 370 (1948).

Whether "planning" can be democratic is a hotly debated point in the modern controversy concerning its virtues. Compare Hayek, The Road to SERFDOM, c. V (1944).
Municipal ownership of land is often advocated as a means of assuring complete control of land used in government hands. Perhaps that device would be more efficient than regulation. But ownership does not solve the basic problems of land use suggested above. Perhaps even the hasty summary of its problems just presented exaggerates the importance of planning as a tool for the improvement of housing. It is doubtful whether any degree of planning short of full socialism would actually build new dwellings. Planning, however, can play some role in the prevention of deterioration. And to the extent that it performs the limited function of zoning it may be worthy of employment. For reasons indicated above, on the other hand, we may well hesitate to approve comprehensive planning.

C. RENT CONTROL

In the period following World War II price fixing has constituted one of the most conspicuous forms of governmental action in the housing field. Oddly enough, no legislation has attempted to control prices on the conveyance of a fee: controls only affect leasehold tenure. And perhaps that fact illustrates a theory that rental accommodations should be made available to the citizenry on a public utility basis.

Rent control may have fulfilled a desirable function when many

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40 Lasch, Breaking the Building Blockade at 295 (1946). Again the argument often runs to the effect that government should secure to itself any increments in land values. Nothing is said concerning losses which experience has shown occur periodically in the real estate market.

It has often been suggested that governments acquire title to municipal real estate by tax foreclosure. Whatever the merits of that plan of acquisition, the method is probably faulty in that it would only bring scattered parcels into government hands. Anon., Public Land Ownership, 52 Yale L. Journ. 694 at 638 (1943).

42 Perhaps we can say of "planning" that it is like enterprise in being more efficient in the middle ranges. Too small a plan is not worth the trouble and accomplishes little. Too large a plan is unduly complex and involves an undesirable measure of control. A careful study has recently concluded that "piecemeal" planning is both necessary and desirable but that "total" planning is neither. Stone, The Myths of Planning and Laissez Faire: a Re-orientation, 18 Geo. Wash. L. R. 1 at 47f (1949). Thus perhaps it would be best to confine city-wide planning to minimum matters and permit thorough planning of pooled parcels.

43 E.g., U. S. Housing and Rent Act of 1949; 30 March 1949, §203(b) (1); 63 Stat. 21, 50 U.S.C.A. App. §1894. It should be noted that housing completed after 1 February 1947 has been released from controls by §202(c) (3) (a) (A) of the Housing and Rent Act of 1947; 30 June 1947; 61 Stat. 193; 50 U.S.C.A. App. §1883.

44 By §203(b) (1) of the 1949 measure landlords were to receive "fair net operating income." Many writers have urged that housing be converted into a public utility status. E.g., Post, The Challenge of Housing at 277ff (1938). It is difficult to understand, however, why housing should be likened to railroad, gas and electric companies, because there is little monopoly element in the housing field. Indeed, many landlords vigorously recall a period a few years ago in which rents dropped precipitously and tenants were gone with the wind.
commodities were subject to war-time price ceilings. It is difficult, however, to justify its continuance. A strong case can be made for the contention that rent controls are responsible for the housing “shortage.” Since rentals do not reflect inflated incomes, tenants are able to obtain more space than the free market would allocate them. All space thus becomes “scarce” and the family reduced in size through marriage, death and the like can find no new quarters. Hence it retains excessive space, aggravating the shortage.

Holding prices below free market levels automatically causes a “scarcity” Accordingly it is necessary to ration the commodity in question. If government fails to perform that function, landlords must do so: if they do not indulge in “black market” operations they have no alternative but to make a choice among applicants. Private rationing of a commodity as important as housing is indeed an odd phenomenon.

Again, the existence of rent control, even though it does not presently affect new dwellings, undoubtedly deters would-be builders. They cannot compete with the controlled apartments. A man who might otherwise construct an apartment house thinks twice: in a depression he will sustain losses similar to those of vivid recent memory; during inflation he may be allowed but a meager return on his investment.

As a consequence savings may be directed into the pro-

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44 The president of the American Economic Association recently commented: If educated people can’t or won’t see that fixing a price below the market level inevitably creates a “shortage” (and one above it a “surplus”) it is hard to believe in the usefulness of telling them anything whatever Knight, Truth and Relevance at Bay, 39 AM. ECON. REV. 1273 at 1274 (Dec. 1949). See also Friedman & Stigler, Roofs or Ceilings? at 16 (Foundation for Economic Education 1946); Schofield & Usher, Housing Shortage—by Statute, 30 CHICAGO BAR RECORD No. 4, 169 at 170ff (February 1949).

45 Friedman & Stigler, Roofs or Ceilings? at 18ff (Foundation for Economic Education 1946). It is difficult to imagine upon what principles a system of rationing dwelling space could be operated. Compare Blum & Bursler, Tax Subsidies for Rental Housing, 15 U. OF CHI. L. REV. 255 at 279f (1948).

46 Schofield & Usher, Housing Shortage—by Statute, 30 CHICAGO BAR RECORD No. 4, 169 at 174 (February 1945). In a discussion of the processes of fixing rents in war-time housing projects one of the administrators admitted that such rents are: necessarily the result of common sense and compromise quite as much as that of research.” Redlich, Rental Analysis in Wartime, 55 Jnl. Pol. Econ. 245 at 253 (1947). It would not be difficult to read a hint of political pressure into the foregoing statement.

47 Friedman & Stigler, Roofs or Ceilings? at 10, 19 (Foundation for Economic Education 1946); Pribram, Housing, 7 ENCyc. Soc. SCI. 496 at 502 (1932); Abramis, The Future of Housing at 60 (1946). It has also been said that the priority program pursued by the federal government in 1946 and 1947 reduced the ability of enterprise to construct private dwellings without corresponding bene-
vision of capital for the cosmetics industry or some other enterprise far less "essential" than housing.\(^4\)

In addition, rent controls encourage "mining" of existing structures. Landlords are likely to skimp maintenance when space can easily be rented anyway and returns are frozen. Thus quality deteriorates. Such has been the effect of rent fixing in Europe.\(^4\)

Possibly the concept of housing as a public utility is preferable to full socialization. For a time, at least, landlords might insulate their sector of the economy from the deterioration of complete political control. And political pressures for rent control may be nearly overpowering. That fact, however, bears on the tactical problem of securing sound legislation. It cannot justify price fixing.

II. SUBSIDIES

Helpful as some may be, controls have not conquered the housing problem and show little promise of doing so by themselves. Accordingly governments have attempted positive means of promoting the construction of dwellings. A number of those devices have taken the form of subsidies.

A. DIRECT SUBSIDIES TO BUILDERS

Great Britain once tested direct subsidization of entrepreneurs constructing houses for sale.\(^5\) The scheme took the form of lump sum payments to builders who actually completed new construction. Considerable success was obtained in the experiment but observers thought the results wasteful and the program was not extended.\(^5\) If subsidies are to be employed at all, there is something to be said for the directness of the foregoing method. On the other hand, the mere payment of money to builders does not reach the problem of cost. Accordingly it is not surprising that the device proved wasteful:
practically assured of profits, the contractors failed to curb expenditures and secure efficient output.

B. Rent Certificates

Although apparently never adopted in the United States, it has often been proposed that government directly subsidize rents. A form of poor relief in kind, the proposal is that certificates be doled out to needy persons for presentation to landlords in part payment of rents. Its purpose is, of course, to enable low income tenants to live in better housing. And it is claimed that such a subsidy would cost less than other forms of government underwriting.

Rent certificates would constitute a direct and honest subsidy. Taxpayers would find them as a distinct item in the budget. The proposal is based, of course, on the theory that poverty is a fundamental cause of poor housing conditions. Certainly there is a large measure of truth in that belief and, if coupled with enforcement of safety and sanitation ordinances, rent certificates might prove an effective device. Over the intermediate term the proposal may merit extensive experiments.

C. Subsidized Credit

Another type of subsidy, the creation of artificially low interest rates, has already been the subject of extensive experimentation. Indeed, government's chief efforts in the housing field have centered in the field of credit.

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52 Stewart, Homes for America at 45 f (National Assn. of Real Estate Boards 1948); Procedures Council, Inc., Toward a Postwar Housing Program at 53ff (Washington 1944). It has been suggested that a "direct relief subsidy" be granted to tenants so as to avoid them becoming advocates of socialized housing in order to justify their favored status. Joint Committee on Housing, Housing in America at 115 (House Doc. No. 629 80th Cong. 2d Sess. 1948). In Sweden direct subsidies have been granted in proportion to the number of children in the family. Silk, Sweden Plans for Better Housing at 45f, 86 (1948). Such a subsidy would appear to encourage the growth of families as much as the improvement of housing conditions.

53 Holden, Housing, Dictatorship and Soft Socialism at 14 (Commerce and Industry Assn. of N. Y., Inc., 1949). It is said that the T.V.A.'s navigation projects have cost the taxpayers three times as much as full payment of railroad freight costs of all shippers in the favored region. Russell, The TVA Idea at 25 (Foundation for Economic Education 1949). That assertion forms an interesting comparison with the proposal here considered.

54 The rent certificate proposal raises one of the fundamental questions involved in any subsidy or relief program. It compels the beneficiary to allocate the charity to a specific purpose. Such detailed supervision of the life of the indigent has been attacked as undemocratic. Smith, Public Assistance as a Social Obligation, 63 Harv. L. Rev. 266 at 276f (1949). The opposing argument, of course, is that the taxpayers are entitled to make sure that relief funds are spent for worthy purposes and particularly for those which the taxpayers have approved.
Federal action commenced in the bottom of the depression. At first the primary purpose was to protect individual home owners from the imminent threat of foreclosure. Later the program took on a more permanent character. A Home Loan Bank System was developed to provide a secondary market for mortgages, thus enabling mortgagees to expand lending activities. A parallel system, known as F.H.A., engaged in the business of insuring housing mortgages. Low interest rates and long term loans were prescribed. It is safe to conclude that considerable credit was thus attracted to the housing industry.

Whether government should intervene directly to salvage home-owners equities during periods of business depression is a question we need not answer. It relates to the immense problems of business cycles and monetary policy. On the other hand it is important to consider whether subsidized credit should play a permanent role in government housing policy.

A reason often advanced for credit subsidies is that interest rates are “too high.” Since most purchasers of dwellings require substantial credit, it is easy to prepare computations to show that lower

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50 Loevinger, Handicraft and Handcuffs—the Anatomy of an Industry, 12 Law & C. P 47 at 70f (1947); Lasch, Breaking The Building Blockade at 292 (1946). But compare Twentieth Century Fund, American Housing at 251 (1944). Of course there has been legislation against usury for generations. But such statutes are based upon an ethical rather than an economic concept. Salin, Usury, 15 Encyc. Soc. Sci. 193 at 194ff (1934). Certainly some types of statutes have discouraged the creation of new housing. Such appears to be the case in respect to mortgage moratoria statutes. Brandewell, The Effects of Defective Mortgage Laws on Home Financing, 5 Law & C. P 545 at 545, 560 (1938).
interest rates will produce lower costs to the homeowner. Accordingly, it is argued, reduction of interest rates will reduce building costs. The difficulty with the foregoing argument is that credit was one of the few costs in the housing field in which free market principles were operative. As we shall see, costs of building materials and labor were seriously affected by restraints of trade. Yet government action in regard to costs has been limited almost exclusively to credit. Devices to improve the free working of the credit system, of which the Home Loan Bank System may be an example, can easily be justified. It is more difficult to understand why credit should be held to artificially low prices while other housing costs are permitted to remain at artificially high levels.

In one sense credit subsidies do reduce costs to the purchaser of a house. But lengthy loans and slow amortization only conceal high construction costs: if housing is too expensive, it is hardly helpful merely to extend the period of payment. Some purchasers with slender equities may find themselves shelter-less in depression times and many may have been induced to place a larger proportion of their savings in real estate than wisdom would suggest. It is more than a possibility, too, that the success of credit subsidies has been reflected in higher prices: low down payments and long amortization periods increase the number of potential purchasers and thus cause inflationary movements. During a period of rent control (said to be an anti-inflation device) house-hungry citizens had little choice but to buy and the flood of government credit helped them push the market up at the very time that official policy was deflationary. It is thus apparent that credit subsidies for housing were poorly coordinated with over-all monetary programs.

Political pressures reflected in credit guarantees may have had goals beyond the improvement of housing conditions. Perhaps one

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French, The Contest for a National System of Home-mortgage Finance, 35 Am. Pol. Sci. Rev. 53 at 68 (1941). It is possible, however, that the lending program might so increase the volume of housing construction as to reduce costs thereby. On the other hand, so long as the construction industry operates on a handcraft basis there will be no factory-type products and hence costs are not likely to be reduced.


Grebler, Stabilizing Residential Construction, 34 Am. Econ. Rev. 808 at 904 (1949). In addition, it is said that government extension of credit has contributed to the sharp increase in building costs and to the price of new and old housing. Id. at 909; Joint Committee on Housing, Housing in America at 50 House Doc. No. 629, 80th Cong. 2d Sess. (1948). Compare Twentieth Century Fund, American Housing at 333f (1944). See also Price, Waterhouse & Company, Activities and Organization of Lending Agencies of the Government (report prepared for [Hoover] commission on organization of the Executive Branch of the Government) at xif (13 January 1949).
such aim was the discouragement of rental housing as opposed to home-ownership. Coupled with rent control, the subsidies may well have had that effect. Whether it is desirable to compel citizens to become owners rather than tenants seems doubtful. And complaints have been registered that the credit program is administered in such a way as to effect partisan goals, such as redistribution of property.

As suggested above, schemes to make credit flow freely into housing (and other fields) are scarcely open to objection. To the extent that government action induces better knowledge of the market, standardizes terms (and thus widens acceptability of obligations) and brings borrowers and lenders together, it is performing a helpful function. But it is difficult to show that maintenance of artificially low interest rates is sound. If subsidies are desirable, more direct means should be used. And although federal credit policies have undoubtedly encouraged building, they have not succeeded in bringing the rate of construction up to pre-depression levels. Perhaps the reason is simple: they do not deal with those building costs which are really too high.

D. Tax Exemptions

Another type of subsidy which has been subjected to considerable trial is the granting of exemptions from taxation. Both federal and state statutes relieve public housing authorities from the burden of general property taxes. In lieu of taxes, provision usually is made for the payment of fees representing the value of services rendered by local governments. In a typical area the difference between such

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Under the new dispensation, the free individual ownership of property is of less importance than the just use of property, as defined by government.
As the policy has evolved, regulation of property for social ends has been greatly extended through both state and federal instrumentalities.
Credit devises were found to offer an almost unimpeded freeway to the goal.
And (at 27):
Thus from a purely financial instrumentality, FHA has found itself more a device for directing and policing house construction and for making houses available on the basis of need rather than strictly within the limits of ability to pay. In the process the traditional concepts of credit tended to be lost.
64 Conklin, Legislative Program for Postwar Housing Expansion, 3 Jnl. Legal & Political Sociology 134 at 135 (1944). It has been urged that government action be directed to the end of reducing costs and encouraging more efficient industrial operation. Twentieth Century Fund, American Housing at 335 (1944).
65 E.g., U. S. Housing Act of 1937, 1 Sept. 1937, 50 Stat. 899; 42 U.S.C.A. §1401ff at §13(c); compare New York, Public Housing Law, Laws 1939, c. 808;
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payments and the taxes otherwise payable has been computed at $150 per tenant per year.66

Limited dividend and redevelopment statutes sometimes grant partial exemptions from general taxes. They provide that the value of the improvements added by the redeveloper shall not be assessed;67 in other words, new housing is encouraged by taxing only the value of the land with its former improvements (or as vacant property). In the well known Stuyvesant Town housing project a subsidy of that type is estimated as amounting to $5 per room per month.68

Another form of exemption from local property tax is to exclude "homesteads" from the assessment rolls. A "homestead" for this purpose is an owner-occupied residence. At least thirteen states have enacted such legislation.69 Its obvious purpose is to encourage individual home ownership.

In the post war period federal taxes, particularly those upon incomes, have been levied at such high rates that recent tax exemption proposals have largely focused upon them. It has been suggested, for example, that a corporation owning and operating rental housing projects should be exempt from the federal tax otherwise payable on incomes.70 Other suggestions have involved reducing the impact of the tax upon capital appreciation and accelerating depreciation for housing improvements.71 No exemptions from federal taxes seem yet to have become law.

Consolidated Laws c. 44-A, §52; Illinois, Act of 17 May, 8 June, 4 August 1939; Laws 1939, pp. 886, 1007, 1011; Ill. Rev. Stat., c. 120 §500(12) (1949); Illinois, Housing Authorities Act, 19 March 1934, 12 July 1938, 3 Aug. 1949; Laws 1933-34, p. 159, Laws 1935, p. 83, Laws 1949, p. 1012; Ill. Rev. Stat. Ch. 67 §1 at §27b (1949). It is interesting to note that the device thus prescribed suggests that the ordinary taxpayer is paying more than the services he receives from the government are worth. Exemptions have not been made available for housing acquired pursuant to the lending program. National Housing Act, 27 June 1934, 48 Stat. 1246, 12 U.S.C.A.§1701ff at §208.

Anon., Public Housing in Illinois, 8 U. of Chi. L. Rev. 296 at 308 (1941).

7 Blum & Bursler, Tax Subsidies for Rental Housing, 15 U. of Chi. L. Rev. 255 at 268 (1948); New York, Public Housing Law, Laws 1939, c. 808; Consolidated Laws c. 44-A §190.

7 Brown, Urban Redevelopment, 29 Boston U. L. Rev. 318 at 349 (1949). For an outline of various tax exemptions and subsidy proposals with computed cost effects thereof see Joint Committee on Housing, Housing in America at 85ff (House Doc. No. 629, 80th Cong. 2d Sess. 1948).

7 Stone & Denton, Toward More Housing at 112 (T.N.E.C. Monograph No. 8, 76th Cong. 3d Sess. 1940).

7 I.R.C. §§13, 15; Joint Committee on Housing, Housing in America at 88 (House Doc. No. 629, 80th Cong. 2d Sess. 1948); Twentieth Century Fund, American Housing at 330 (1944). It has also been pointed out that the federal income tax encourages debt financing, which is not wholly desirable for housing. Blum & Bursler, Tax Subsidies for Rental Housing, 15 U. of Chi. L. Rev. 255 at 256 (1948).

71 Joint Committee on Housing, Housing in America at 84, 87ff (House Doc. No. 629, 80th Cong. 2d Sess. 1948). It has also been suggested that the capital gains tax payable by a home owner who sells one house and immediately buys
Tax exemptions are an apparently painless subsidy. Other taxpayers do not see a cash outflow to their neighbors. And the demoralization of local property taxes during the business depression of 1931-1939 was such as to suggest that tax exemption was an appropriate form of subsidy. It is also urged that the certainty and continuity of such an exemption give more encouragement to housing than other forms of benefits. And there is considerable evidence indicating that tax benefits have been successful in causing the erection of new dwellings.

Proponents of tax exemption for improvements erected by redevelopers assert that such a subsidy actually costs other taxpayers nothing. For the same tax is collected as before the dwellings were erected. Of course the argument assumes that the improvements would not have been made in the absence of the exemption: if the housing would have been built anyway, there is a loss to taxpayers. It will probably be impossible to prove whether the housing would have been forthcoming in the absence of the subsidy And values in

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another be mitigated so as to reduce the capital levy involved therein. Id. at 87f, 83ff. A proposed amendment to §124a of I.R.C. would have permitted accelerated amortization of public housing. Report No. 2340 H. R., Committee on Banking & Currency, Housing Act of 1948, at 10 (80th Cong. 2d Sess. 14 June 1948). Compare Housing in America, supra at 88f.

It has also been urged that the tax exemption saves the needless labor of collecting a tax and then paying a subsidy back to the tenant. McDougal, and Mueller, Public Purpose in Public Housing, 52 Yale L. Jour. 42 at 62 (1942).

Nelson, Urban Housing and Land Use, 1 Law & C. P. 159 at 160 (1934).

Tax Policy League, Tax Exemptions at 181 (1939). The author of the foregoing statement continued by asserting that the increase in the tax rate necessary to make up for the loss in revenue arising from the exemptions would be infinitesimal; but compare id at 183.

Fisher, Housing Legislation and Housing Policy in the United States, 31 Mich. L. Rev. 320 at 330 (1933); Wood, Housing, United States, 7 Encyc. Soc. Sci. 511 at 515 (1932). One student said:

Another proposal is to allow an exemption of $2,000 or $5,000 on each family unit, in assessing new housing for taxation; and to continue to assess at full value the land on which such housing is built. Such a plan was adopted, with a ten-year limitation of tax exemption, in New York during the housing shortage after the war, and is believed to have been partly responsible for the tremendous building activity which followed.

Buttenheim, The Relation of Housing to Taxation, 1 Law & C. P. 198 at 202 (1934); Anon., Low-cost Housing: A European Survey, 37 Ill. L. Rev. 167 at 177 (1942).

Blum and Bursler, Tax Subsidies for Rental Housing, 15 U. of Chi. L. Rev. 255 at 274 (1948). It has also been said that the loss of revenue arising from the New York exemption of 1920 did not justify the results thereby achieved. Fisher, Housing Legislation and Housing Policy in the United States, 31 Mich. L. Rev. 320 at 332 (1933).
other areas, from which tenants are drained by the benefited project, may decline and thus cause diminished assessment rolls.\textsuperscript{78}

Critics sometimes object to tax exemptions on the ground that they are discriminatory. A taxpayer may be forced to pay greater imposts so as to enable his neighbor to enjoy, without tax, better housing than he does.\textsuperscript{79} But of course any subsidy discriminates: the taxpayer, and particularly the taxpayer who is on the borderline of receiving subsidy benefits, suffers so that others may reap an unsown harvest. It is also objected that property owners secure a "windfall" when their land leaves the assessment rolls;\textsuperscript{80} but that benefit, too, is inherent in the subsidy idea.

Writers of a "welfare" bent attack exemptions on the ground that they do not assure the immediate provision of housing for the very poor. New dwellings erected on tax-free land are likely to be occupied by middle or upper income bracket tenants.\textsuperscript{81} That result is probable because, as we shall see, new housing is in the nature of a luxury. The argument wholly overlooks the fact that the upper and middle income tenants will dispose of their former quarters, making them available to poorer tenants. (We shall examine this "filtering-down" question under a subsequent heading.)

Two other objections to tax exemptions are more difficult to surmount. In the first place, the subsidy is concealed: it does not appear in appropriation statutes and thus is not subject to regular review. It is difficult for other taxpayers to understand the nature and extent of the burden they bear.\textsuperscript{82} Compare the case of the Tennessee Valley

\textsuperscript{78} Tax Policy League, \textit{Tax Exemptions} at 183 (1939). Of course, it is possible that other areas will also be improved. Thus it would seem difficult to arrive at any conclusion as to what result would follow from an exemption.

\textsuperscript{79} Fisher, \textit{Housing Legislation and Housing Policy in the United States}, 31 Mich. L. Rev. 320 at 335f, 337 (1933). Federal and state relationships, of course, complicate the matter of the subsidy. But it is probably unrealistic to complain that such exemptions would discriminate against non-landlords. Compare Blum & Bursler, \textit{Tax Subsidies for Rental Housing}, 15 U. of Chi. L. Rev. 255 at 258ff (1948). On the other hand, it is true that an exemption of housing income from the federal corporate income tax might result in a fuzzy type of excess profits tax which would penalize efficiency. \textit{Id.} at 256f. It might also create a new class of tax exempt securities. \textit{Id.} at 260f. But usually one cannot argue against a tax exemption merely on the grounds that it relieves landlords from some of the burdens of government, for that is its very purpose. Compare Blum and Bursler, \textit{supra} at 260, 264. Whether accelerated depreciation would actually result in duplicate deductions by successive landlords would seem to depend upon the details of the subsidies statute. \textit{Id.} at 263f.

\textsuperscript{80} Blum & Bursler, \textit{Tax Subsidies for Rental Housing}, 15 U. of Chi. L. Rev. 255 at 261f (1948).

\textsuperscript{81} Brown, \textit{Urban Redevelopment}, 29 Boston U. L. Rev. 318 at 350 (1949); Blum & Bursler, \textit{supra} at 266f, 267f, 270.

\textsuperscript{82} Tax Policy League, \textit{Tax Exemptions} at 182 (1939). It has even been said that the income tax subsidy is so intricate and indirect that it is suggestive of secret diplomacy. Blum & Bursler, \textit{supra} at 265.
Authority  Its dams and power plants are tangible assets which citizens can see. Factories for producing automobiles, chemicals and everything else, all of which might have been built with the same funds if the government had permitted them to remain in private hands, are mere possibilities. Hence it is difficult to persuade people that the factories might have proven more productive than the TVA power system: the loss involved is not capable of tangible demonstration.\(^3\)

A second argument is even more cogent: the tax exemption is ill designed to accomplish its purpose. The amount of subsidy involved may be either too large or too small. Either the taxpayers are burdened unnecessarily or the inducement is not great enough to obtain results. Only in the unusual case would the amount of tax exemption be precisely equal to the subsidy required to encourage construction of housing.\(^4\)

Perhaps the tax exemption proposal should be rejected on that ground. That does not mean, however, that over-all reforms in the general property tax system would not be helpful to housing.\(^5\) Possibly other sources of revenue should, in part, supplant that levy; and relating the tax more directly to the production of income could ease its burden.\(^6\) But such proposals are beyond the immediate scope of the housing question.

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\(^3\) Russell, The TVA Idea at 10f (Foundation for Economic Education 1949).

\(^4\) It is, of course, foolish to insist that the subsidy be precisely equal to an amount necessary to cause housing to be erected. No such precision can be hoped for. But it should be possible to employ a device which links the subsidy to the result in some logical relationship. Tax Policy League, Tax Exemptions at 182f (1939); Fisher, Housing Legislation and Housing Policy in the United States, 31 Mich. L. Rev. 320 at 335 (1933).

\(^5\) Twentieth Century Fund, American Housing at 333 (1944); Lasch, Breaking the Building Blockade at 40, 292f (1946).

\(^6\) It has been suggested that assessments on vacant real estate be increased only as improvements are actually installed and not merely when subdivision takes place. Twentieth Century Fund, American Housing at 329 (1944).

Another analysis of tax problems stems from Henry George's single tax idea. It usually involves a separation of the assessment on land from that on improvements. An increased assessment on the land would, it is thought, create pressure to improve vacant property. Reduced taxes on improvements, on the other hand, would induce landlords to erect better dwellings. Buttenheim, The Relation of Housing to Taxation, 1 Law & C. P 198 at 199 (1934). Accordingly, it is urged that all taxes on improvements be abolished. Id. at 244f; Tax Policy League, Tax Exemptions at 215 (1939). On the other hand, such a program, while stimulating building, might multiply delinquency Tax Policy League, supra, at 219. Factors other than land cost may be retarding building and hence make heavier burdens on vacant property ineffective. Abramovici, The Future of Housing at 104 (1946). Note also that the single tax doctrine would compel far more intensive land utilization. As we have seen above, many 'planners' denounce such intensive use. In any event, experiments do not seem to vindicate the single tax theory. Abramovici, Housing the MASSES at 37 (1939).
E. SLUM CLEARANCE

Recent legislation has authorized the expenditure of public funds for the purchase and clearance of "blighted areas." Some such statutes make a merely negative contribution to the housing problem in that they provide only for demolishing existing structures deemed detrimental to the public interest. The program of the city of Indianapolis typifies such a scheme: the land, after clearance, is available for any use, commercial, industrial, recreational, or residential, as economic factors may indicate most desirable. There is no necessary relationship between the acquisition and demolition of the slums and the construction of new dwellings.

In the bulk of the clearance legislation, however, positive means are provided for the betterment of housing conditions. Usually the statutory powers are vested in a commission which has power to select the clearance sites. It may acquire such land either by voluntary conveyance or through exercise of the power of eminent domain. The statutes contemplate that the commission will assemble a number of parcels into a sizeable tract. It is then authorized to convey the whole property to a "redeveloper" who undertakes to construct a housing project on it. The "redeveloper" need not pay the commission its cost: a loss is contemplated. Often the law will compel the commission to make some provision, by preference or otherwise, for the persons formerly resident in the area.

As in the case of police power legislation, slum clearance attacks the problem of housing quality directly. But it is demonstrably more effective: immediate results are achieved in ridding the community of blighted areas. And if the provision of parks and beaches is a legitimate governmental function, it would be difficult to show that slum clearance was not likewise proper. Furthermore, land clearance com-

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[footnotes]

88 Book, Indianapolis Goes After Slums, 35 NATIONAL MUNICIPAL REV. 453 at 464, 455 (1946). In Great Britain much of the burden has been imposed upon landlords. Jennings, Courts and Administrative Law, the Experience of English Housing Legislation, 49 HARV. L. REV. 426 at 432f (1936); Cf. LASCH, BREAKING THE BUILDING BLOCKADE at 295 (1946).
89 Ill., Blighted Areas Redevelopment Act of 1947, § 14; 2 July 1947; 3 Aug. 1949; L. 1947, p. 1072; L. 1949, p. 997; REV. STATS. c. 67 1/2, §63 (1949). 15% of the land cleared may, with municipal and state approval, be sold to a local housing authority ($18).
92 Robinson and Altman, Equivalent Elimination Agreements in Public Housing Projects, 22 BOSTON UNIV. L. REV. 375 (1942).
missions may influence importantly the size and structure of cities. Slum areas represent a considerable investment in streets, water mains, schools and similar improvements. They are usually nearer the sources of gas and electricity than outlying areas. Some of the slum improvements can still be used and their utilization tends to reduce costs.\footnote{Aronovici, Housing the Poor: Mirage or Reality, 1 Law & C. P. 148 at 154 (1934).} In addition, a compact city is easier to serve with fire and police protection, etc. Observers therefore see in slum clearance a way to halt the rush to the suburbs and rehabilitate cities on an economic basis.

Again, it is clear that clearance contributes to solution of the contamination problem. Assembly of many small parcels into a single large tract permits those in control of that area to prevent deterioration within its borders.\footnote{Loevinger, Handicrafts and Handcuffs—the Anatomy of an Industry, 12 Law & C. P. 47 at 73 (1947); cf Lasch, Breaking the Building Blockade at 204 (1946). It is sometimes said that slum housing is never destroyed. Wood, A Century of the Housing Problem, 1 Law & C. P. 137 at 137 (1934). But it is doubtful whether that statement could be proven.} (We shall have more to say of this important question of “pooling” and the protection it affords good housing hereafter.)

One objection to slum clearance is that rehabilitation of the blighted areas would be cheaper than demolition and new construction. In other words, it is urged that all of the values in blighted areas be salvaged instead of merely the water mains, churches and the like. Some writers have ventured to suggest that a remodeling program could be carried out for one-third the cost of clearance and reconstruction.\footnote{Strunk, Low Cost Housing Under the U.S.H.A. Experiment, 16 Land Econ. 96 at 99 (1940); Anon., Public Housing in Illinois, 8. U. of Chi. L. Rev. 296 at 306 (1941).} Others deny that any saving at all would result.\footnote{Lasch, Breaking the Building Blockade at 200 (1946).} Which version is correct seems to be ascertainable only in the light of cost studies in specified times and places. Perhaps rehabilitation could obtain results more efficiently. But that circumstance would not establish that we do not need land clearance commissions with power to assemble parcels into tracts and to use public funds for improvement purposes.

A more serious consideration relates to the question, already raised, of whether the inhabitants are responsible for slum conditions. For it is argued that people will move from blighted areas as soon as better housing is available at the same rent. The slums will empty themselves at no cost to the taxpayers if housing is otherwise encouraged. And there is evidence to support the view that slum dwellers will move...
when they can. It is said, for instance, that half a million such persons abandoned Manhattan tenements between 1924 and 1934.97

In other words, elimination of slums is not identical with the problem of improving housing conditions. Thus it is contended that removal of blight should not necessarily involve use of that land for housing. Even those advocating detailed city planning do not necessarily advocate erection of dwellings in former blighted areas. Noise, soot and other factors may make the territory suitable only for industrial uses. Thus a careful student said:

A good many people live in unfit surroundings. So the jump is made to the conclusion that the thing to do is to clear the area and rebuild it with good housing; a proposal which involves an immense effort and outlay of public or private funds or both. How does anybody know, however, that the area is the appropriate place (2071) for this effort and outlay on housing? How does anybody know whether the population decline may be due to the population trend of the whole community and not merely of the area? Might it not be probable that other parts of the city have such advantages that they will inevitably drain off the population of that area? New houses for old and in the same place may be too simple and superficial a remedy for a disease which has its causes in forces more deep, varied and complex than the size, character and condition of the old buildings.

A free market allocation of resources might well divert present slum land, when cleared, away from residential uses. That circumstance lends support to the assertions of those who deny that it is economical to utilize the improvements already made (and still useful) in blighted areas as part of a housing project. Perhaps suburbs are better sites for residential purposes.99 And to the extent that slum lands are

97 Aronovici, Housing the Poor: Mirage or Reality, 1 Law & C. P. 148 at 151 (1934). It is said that the 18 block area used for the Stuyvesant Town Project only contained 11,000 persons in 1940, against 27,000 some years earlier. Brown, Urban Redevelopment, 29 Boston Univ. L. Rev. 318 at 348 (1949). Similar experience has been recorded in Europe. Aronovici, Housing the Poor: Mirage or Reality, 1 Law & C. P. 148 at 151f (1934). Some other considerations affect the problem. Large scale building may be required to reduce costs and such building demands large areas of raw land not available within most city limits. Lasch, Breaking the Building Blockade at 158. It is also argued that clearing the slums, with accompanying payments to landlords, results in unjust enrichment to that unpopular class. Lasch, Breaking the Building Blockade at 217 (1946); but cf Firey, Ecological Considerations in Planning for Urban Fringes, 11 Am. Sociol. Rev. 411 at 411f (1946).

99 Bettman, Housing Projects and City Planning, 1 Law & C. P. 206 at 206f (1934); Twentieth Century Fund, American Housing at 4 (1944). It is sometimes said that the linkage between slum clearance and housing is the work of selfish real estate interests and bankers who wish to salvage something from slum area investments. Aronovici, Housing the Poor: Mirage or Reality, 1 Law & C. P. 148 at 150 (1934).

100 Aronovici, Housing the Masses at 29f (1939); Brown, Urban Redevelopment, 29 Boston Univ. L. Rev. 318 at 372f (1949). If land is cleared and new housing erected thereon it is difficult to understand how it could be made avail-
adjacent to the hearts of cities and thus possessed of an advantage of convenience, it would seem economic to house there only those persons whose time was so valuable they could afford to pay for the privilege.\textsuperscript{100}

As suggested, the “redevelopment” acts have a dual purpose: to eliminate bad housing and to provide good housing. Any legislation with dual objectives is likely to sacrifice one or the other (or both) in some degree.\textsuperscript{101} In the present instance a good example is found in those portions of the statutes which require that provision be made for former inhabitants of the cleared areas. Such requirements lead to administrative difficulties. For example, a redeveloper may also be required to lease apartments to all persons without discrimination as to race or color. Such a requirement is obviously inserted for the benefit of minorities, such as negroes. But if the site of the redevelopment is in an area previously occupied wholly by negroes, the effect of the racial covenant is to prevent re-occupancy (assuming the same or less density of population) by some of the former inhabitants: thus it becomes impossible to comply with the mandate favoring the old tenants and redevelopers are discouraged from proceeding with projects.\textsuperscript{102}

It follows that slum clearance legislation, when divorced from a requirement that the land be used for housing, is an appropriate vehicle for subsidies. Clearance is a civic improvement which the taxpayers should enjoy if they are willing to pay for it. As admin-

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<td>Anon., <em>Public Housing in Illinois</em>, 8 Univ. of Chi. L. Rev. 296 at 312 (1941); Perry, <em>Housing for the Machine Age</em> at 201 (1939).</td>
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<td>101</td>
<td>Similar problems have been experienced in connection with the several objectives of T.V.A. Russell, <em>The T.V.A. Idea</em> at 186 (Foundation for Economic Education 1949); Roberts, <em>Certain Aspects of Power Irrigation and Flood Control Projects</em> at 10 (prepared for Commission on Organization of Executive Branch of Government, January 1949).</td>
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<td>No doubt it would be possible to devise a formula which would make the problem just outlined less difficult of practical solution. It is unlikely, however, that all the features of dual object statutes can be reconciled satisfactorily. Brown, <em>Urban Redevelopment</em>, 29 Boston U. L. Rev. 318 at 359 (1949); Twentieth Century Fund, <em>American Housing</em> at 336 (1944).</td>
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istered in Indianapolis, such a program contains several other desirable features. Proceeds realized from the sale of sites may nearly equal costs of acquisition and demolition because the land is not limited to residential use (indeed, it is conceivable that the land clearance commission would make a profit). Thus the taxpayers' dollars are stretched and larger areas can be included in the program. Again, the taxpayer benefits because commercial or industrial use of the cleared land adds greater value to the assessment rolls.

F Yield Insurance

We have already discussed the British scheme of paying subsidies directly to house builders. A more sophisticated program was adopted by our federal government in 1948. That year's legislation permits executive officers to insure a yield of 2 1/4% to anyone building and maintaining a rental housing project. Both the government and the entrepreneur enjoy certain options to transfer title to the former and it is not wholly clear whether the statute would then protect all or only 90% of the principal investment. Rents in such projects are subject to the control of executive officers and racial restrictions are forbidden. No yield insurance under the act was written up to 10 April 1950.

There is much to be said in favor of the yield insurance plan. It seems well adapted to rapid production of new dwellings with little governmental intervention in the economy. In other words, it is a form of subsidy which leaves the market relatively free: it need not, for example, involve purely governmental decisions as to the type or size of housing to be erected. Best of all, if coupled with a cost reduction program, there is a good possibility that yield insurance would burden the taxpayers relatively little. If good housing were erected at modest cost then, on our assumption that there is a quantitative

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103 Book, Indianapolis Goes After Slums, 35 NATIONAL MUNICIPAL REV. 453 at 454f (1946).
104 Id. at 464, 455. From a short run standpoint, it may be politically necessary to link slum clearance to some rehousing program. But the structure of that program should be sound and over a longer term a divorce should be effected. When eminent domain powers are exercised to construct highways, build post-offices, and the like, it is not customary to provide housing for the displaced persons.
106 Richards (Federal Housing Commissioner), Racial Restrictions 14 F R. 7582, 24 C. F. R. §8290.8, 401 (20 December 1949).
“shortage” of dwelling units, it would seem to follow that the govern-
ment would not be called upon to pay out on the insurance policies.\textsuperscript{108}
As indicated, yield insurance would have little direct bearing on
the cost program: a program designed to effect construction savings
would have to accompany it. And, as in the case of any subsidy, it
would result in an uneconomic allocation of resources. Perhaps,
therefore, its use should be confined to the short and intermediate
term.

If yield insurance is a desirable—perhaps the best—form of subsidy,
it is awkward and discouraging to note that it has had no apparent
effect in nearly two years of existence. Only one explanation seems
possible for the failure of entrepreneurs (meaning the life insurance
companies) to utilize the yield insurance provisions of the 1948 stat-
ute: the legislation is too restrictive and not sufficiently generous in
character. All the bother of rent controls and non-discrimination
against racial groups\textsuperscript{109} (some of which may be touchy and excitable)
may not be worth a yield of 2\%\textsuperscript{1/4}. After all there is an easy method
of attaining the same result: clipping coupons on government bonds.
Thus it would seem desirable, if subsidies are to be used, to liberalize
the statute sufficiently to make it effective.

G. Socialized Housing

What its proponents prefer to call “public” housing is the procedure
by which government acts directly to provide dwellings for its citizens.
State legislation commonly recites that slums are a cause of disease,
crime and immorality. It further asserts that private enterprise can-
not remedy blighted area conditions.\textsuperscript{110} Municipal corporations or
“authorities” are created to clear slum lands and to erect apartments
on the sites. They are armed with the weapon of eminent domain

\textsuperscript{108} Twentieth Century Fund, American Housing at 333 (1944); Lasch,
Breaking the Building Blockade at 293f (1946); cf Copeland, Business Stabili-
zation by Agreement, 84 American Economic Rev. 328 at 331f (1944). It is
not to be expected, of course, that such insurance could be written wholly without
risk. If sites were poorly selected, for example, the insurer might be called upon
to pay even though there were an ample demand for similar housing in other
places.

\textsuperscript{109} No justification can be offered for taxing citizens of all races, colors, etc.,
to provide a subsidy for one ethnic or other group. Whether it is necessary to
require each landlord to receive as tenants all persons who apply may be a differ-
et question. Housing is a serious enough problem apart from such complications.
On the other hand it will be recalled that land owners have frequently entered
into restrictive covenants against occupancy by certain minority groups without
apparently creating an undue burden upon real estate.

Another difficulty with the yield insurance program as now constituted may
be that it is not well adapted to a program for minimizing income tax.

\textsuperscript{110} New York, Public Housing Law, § 2, L. 1939, c. 808, Consolidated Laws,
c. 44-A.
so that they may assemble numerous small parcels into large tracts.\textsuperscript{111} When the buildings have been erected the government leases space to tenants found unable otherwise to secure safe, sanitary and un-congested housing.

It has always been understood that government housing is a money-losing venture: rents do not purport to cover costs. For some unascertained reason, recoupment of exactly 55\% of costs is popular with legislators and administrators.\textsuperscript{112} Thus it is clear that public housing is a form of subsidy in which about 45\% of the expenses of shelter constitutes a gift from the taxpayers to the tenants.

It is easy to understand the fervor which animates the advocates of socialized housing. It promises quick action to rid the community of nauseous slums. The unfortunate inhabitants are to be re-housed in structures embodying all the utility and beauty which modern architecture can provide. Re-building on the slum sites obviates the painful necessity (involved in slum clearance alone) of moving citizens permanently from their chosen places of residence. Short term leases from a governmental agency permit close supervision of the premises and taxpayers funds are available to assure adequate maintenance. In addition, such a housing project can provide playgrounds for children's safe recreation, stores for shopping convenience and many other facilities which make the whole program seem steeped in glory.

Any housing subsidy permits the beneficiaries to maintain a standard of living which is conducive to good will toward the community. And if direct subsidies are to be undertaken, the rental basis may be necessary since maintenance, as well as erection, may require taxpayers funds. In practice, public housing helps combat the contami-

\textsuperscript{111} Illinois, Housing Authorities Act §§ 8, 9, ILL. REV. STAT. c. 67½, § 1 (1949). For a general description of the program contemplated by such legislation see Robinson, State Spending for Veterans Housing (1949), Wis. L. Rev. 10 at 16f. There has also been an extensive federal program. In the National Industrial Recovery Act of 16 June 1933, 48 STAT. 211, 40 U.S.C.A. § 402, it was provided that the comprehensive program of public works there authorized should include construction of low cost housing under public regulation or control. § 202(d). An emergency public works statute provided for the erection of low cost housing two years later. Act of 29 June 1936, § 4, 49 STAT. 2026, 40 U.S.C.A. § 424. A comprehensive program was contemplated by legislation in the next year. U. S. Housing Act of 1937, §§ 1, 9, 10, 11, 18, 20, 1 September 1937, 50 STAT. 899, 42 U.S.C.A. § 1401. For a description of federally sponsored public housing see Cam, U. S. Government Activity in Low-cost Housing 1932-38, 47 JNL. POL. ECON. 357 at 361ff (1939).

nation problem because it is constructed and maintained in relatively large units. Furthermore, statistics are often cited to prove a phenomenal improvement in the health, safety and morals of slum dwellers re-housed in projects under governmental control. Whether the statistics are meaningful or not, it is obvious that the tenants have been benefitted: without expense to themselves they are removed from dingy, dank and dangerous quarters into gleaming new accommodations with modern conveniences.

Unfortunately the glorious vision of socialized housing is marred by numerous flaws. Some of the objections are relatively minor. Most government housing projects enjoy for example, a tax exemption which provides some of the subsidy for their maintenance. As suggested above, such exemptions—and, indeed, the subsidy as a whole—discriminate against taxpayers not fortunate enough to become tenants in such housing. Apparently however, the tangible character of the public housing subsidy gives rise to ill feeling. It is said that some fifteen million urban families cannot afford housing as good as that provided others by government; naturally the overlooked citizens are somewhat resentful. And it is probably little solace to read

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113 Dean, The Myths of Housing Reform, 14 Am. SocioL. Rev. 281 at 284 (1949).
114 Blum & Bursler, Tax Subsidies for Rental Housing, 15 Univ. of Chi. L. Rev. 255 at 276 (1948); Tax Policy League, Tax Exemptions at 185 (1939). It has been argued that the subsidies cost nothing because slum clearance relieves municipalities of excessive police, fire and other costs in the slum area. On the other hand, it is said that unsubsidized slum clearance would be just as effective to reduce such costs. Blum & Bursler, Tax Subsidies for Rental Housing, 15 Univ. of Chi. L. Rev. 255 at 273 n (1948).
115 Creer & Hansen, Urban Redevelopment and Housing at 21 (National Planning Association 1941); Taylor, Federal Handouts Can't Solve Slum Problems, 29 Barrons, No. 23, 18 at 18 (6 June 1949). One acute observer commented: "Since the public housing program has thus far been able to furnish dwellings for only a very small percentage of the low income groups, the housing program constitutes a special privilege in favor of a very few of the 'deserving'" Anon., Public Housing in Illinois, 8 Univ. of Chi. L. Rev. 296 at 305 (1941). It has been said that public housing has involved "flagrant discriminations" in favor of persons less needy than those contemplated in the enabling legislation. Miner, Some Constitutional Aspects of Housing Legislation, 39 Ill. L. Rev. 305 at 341 (1945); see Columbus Housing Authority v. Thatcher, 140 Ohio State 38, 42 N.E. (3d) 437 at 442 (1942). The presence of high income tenants has been justified on the grounds that the wartime inflation raised incomes and also caused the housing "shortage" which made eviction impossible. LASCHE, BREAKING THE BUILDING BLOCKADE at 202 (1946). If that be so, an interesting question arises as to what will happen during a depression when some of the tenants are unable to pay rent.

In some instances taxation upon other property has been authorized in order to raise funds for the construction and maintenance of public housing. New York, Public Housing Law § 110(c), L. 1939, c. 808, Consolidated Laws, c. 44-A. In Vienna such a program, coupled with rent control, was carried so far as to make existing housing virtually worthless. With the proceeds of such taxation, the city erected ninety-three million dollars worth of public housing and rented it at a figure which merely represented the cost of maintenance. Pribram, Housing, 7
that a public housing authority plans to install television facilities at the taxpayers expense.116

Our discussion of land clearance programs has suggested an objection to the use of former slum sites for new housing: that use of land may result in an uneconomic allocation of resources.117 Even careful investigation might not show whether that is true; and the subsidies involved in actual operation of rental units by government redistribute income (from taxpayers to tenants) on the theory that the poverty of the tenants is such that they cannot afford respectable housing. Those who deny that basic theory and hold that the tenants can (but will not) pay an economic rent accuse the advocates of public housing of compelling the taxpayers to foot a bill which the tenants are unwilling to meet.118 The contention (equally valid against some other forms of subsidy) is that improvement of housing conditions should march in step with a general increase in living standards and no faster.119 In addition, it is argued that limitations on tenants incomes in government housing discourage earning effort and hence are wasteful to the community.120

There is considerable evidence to indicate that construction costs are higher for government dwellings than those erected by private persons.121 Those who believe that costs lie at the root of many hous-

116 Stewart, Homes for America at 40 (National Assn. of Real Estate Boards 1948).
117 Aronvic, Housing the Masses at xiv (1939); Pribram, Housing, 7 Encycl. of Soc. Sci. 496 at 508 (1932).
118 Thus an advocate of public housing said that even if real wages were increased, workers would not spend more money on housing: they would buy washing machines, radios, beefsteaks, etc., before they improved their housing conditions. Abrams, The Future of Housing at 165 (1946). Another advocate of socialization has made the same admission. In one breath he advocated public housing on the grounds that the poor could not afford to pay for it: “public housing program recognizes the responsibility of government to extend credit and subsidies toward providing decent housing for those whose incomes are too low to purchase it for themselves,” but a few pages later the same author admitted that even under conditions of full employment the “demand” for housing would not meet the “need”. Keyserling, Progress Toward “The Right of Every Family to a Decent Home,” 5 Lawyers Guild Rev. 154 at 154, 157ff (1945). Cf. Grebler, Stabilizing Residential Construction, 34 Am. Econ. Rev. 898 at 901 (1949). On the other hand, there is some merit in the argument that a rise in wages would not be effective because construction costs would also go up. Lasch, Breaking the Building Blockade at 51 (1946).
119 Von Mises, Planned Chaos at 26 (Foundation for Econ. Education 1947). Prof. Von Mises sets forth the position of those who advocate free market allocation of resources with both clarity and vigor.
120 Gray, Housing and Citizenship at 139 (1946); Anon., Public Housing in Illinois, 8 Univ. of Chi. L. Rev. 296 at 305ff (1941).
121 Strunk, Low Cost Housing Under U.S.I.A. Experiment, 16 Land Econ. 96 at 98 (1940); Joint Committee on Housing, Housing in America at 115 (House document No. 629, 80th Cong., 2d Sess., 1948); Stone & Denton, Toward More
troubles are of course distressed by governmental action which appears to raise, rather than reduce, the expense of building. A reason for the high costs of public housing is found in statutory provisions making it clear that one purpose of the legislation is to afford employment for building trades labor. A question thus arises as to whether it is politically possible for government to build efficiently.

Proponents of public housing deny competition with private business. Tenants are only accepted in government projects if their incomes are low. Private enterprise, it is argued, has never built dwellings for that income group. Thus a leading advocate of direct action by government said:

The housing problem is an inevitable feature of our modern industrial civilization and does not tend to solve itself. Supply and demand do not reach it, because the cost of new housing and the distribution of income are such that approximately two-thirds of the population cannot present an effective demand for new housing.

Note the assumption that private enterprise should have supplied citizens of low income with new housing. Thus we enter upon the well known controversy as to "filtering down."

Since the life of a dwelling probably exceeds the life of the average man building his own house, it would be wasteful to insist that every citizen be installed in wholly new quarters. New housing, in other words, is a luxury. That fact is vividly reflected in the disparity between construction costs and the prices asked for comparable buildings of some age. Perhaps most of our citizens live in second-hand houses, just as many drive second-hand cars, and it seems unreasonable to

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Similar results have been reported from European experience. Pribram, Housing, 7 Encycl. Soc. Sci. 496 at 505 (1932).

Strunk, Low Cost Housing Under U.S.H.A. Experiment, 16 Land Econ. 96 at 99 (1940); Senate Report No. 933, Creating a U. S. Housing Authority at 2 (75th Cong., 1st Sess., 1937); Lasch, Breaking the Building Blockade at 193 (1946).


Wood, A Century of the Housing Problem, 1 Law & C. P. 187 at 187 (1934). To the same effect, see Warnecke, Financing Slum Clearance, 1 Law & C. P. 194 at 195 (1934); Lasch, Breaking the Building Blockade at 142, 293 (1946); Abrams, Future of Housing at 106ff (1946). That theory has been adopted by legislatures. Thus in § 2(2) of the U. S. Housing Act of 1937, the Congress defined "families of low income" as those who could not afford to pay enough to cause private enterprise to "build an adequate supply of decent, safe and sanitary dwellings for their use." Sometimes, however, it is suggested that taxpayers be compelled merely to rehabilitate old dwellings rather than to provide wholly new ones. Twentieth Century Fund, American Housing at 335f (1944).
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insist that the poor be provided with brand new establishments. Even monarchs live in ancient palaces.

Advocates of government housing, however, deny that "filtering down" of used accommodations suffices to fill the "needs" of the poor. In the first place, they say, the size and arrangement of housing constructed for upper income levels is not always suitable for less fortunate citizens. Yet the fact remains that conversion of old mansions into small apartments proceeds apace and apparently constitutes an economically feasible method of supplying dwellings. Again, the bulk of middle class housing may be suitable for lower income tenants without change and today's crushing burdens of taxation may discourage the further construction of strictly rich men's houses.

A more substantial objection to "filtering down" is that the process operates too slowly by the time housing is ready for the poor it is also ready for demolition. Of course that is partly a problem in maintenance and contamination. It also raises the problem of quantity If second hand housing were as plentiful as second hand automobiles perhaps even the most ardent advocates of public housing would be satisfied. And the problem of quantity is really the problem of cost: if construction were cheaper the upper income classes would buy new dwellings more frequently. As a result the process of "filtering down" would become more rapid.

Rents in government operated housing are held below economic levels. Accordingly the space is rationed by the executive officers in charge of the program. It is difficult to discover upon what basis

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125 Twentieth Century Fund, American Housing at 185 (1944).
127 To what extent housing originally constructed for upper and middle income groups is "suitable" for the poor is apparently unknown. As stated above, however, it is a matter of common knowledge that many ancient mansions have been converted into boarding houses and apartments. Even government officers have admitted by implication that such conversion is feasible. Thus, one authority wrote that the reason why new housing was built for persons of higher income is that the old housing offers too much competition at the lower levels. Wittausch, Marketing Prefabricated Houses, 26 Harv. Bus. Rev. 693 at 698 (1948). Such an assertion would seem to indicate that considerable "filtering down" was actually going on. Cf. Blum & Bursler, Tax Subsidies for Rental Housing, 15 Univ. of Cin. L. Rev. 255 at 270 (1948). It is, of course, true that only the first tenants of a public housing project secure brand new quarters.
129 LAsCH, BREAKING THE BUILDING BLockade at 55f (1946). Some public housing advocates nevertheless assert that no matter how much new housing were constructed, suitable second-hand dwellings would not become available to the poor. ABRAMS, THE FUTURE OF HOUSING at 160 (1946). It is difficult to understand how such a sweeping statement can be made.
130 New York, Public Housing Law § 156(2) (authorities to rent no greater number of rooms to a tenant than necessary for safety and sanitation). It is inter-
the tenants are selected. Apparently, however, some of the most poverty-stricken elements in the population are excluded. It is readily understandable that no housing manager wants tenants of proven criminal tendencies or those whose laziness or alcoholism would inscribe a sorry record on rent rolls. But no judicial determination of unfitness is made and the question may obviously be controversial.\[131\]

Far more important than the foregoing objections is the threat to freedom inherent in government control of shelter. In the first place, executive officers exercise considerable authority over tenants' lives. It starts innocently enough in an effort to make sure that the taxpayers' money is not wasted by occupancy of more space than is "needed" or in a desire to avoid high maintenance costs. Advocates of socialized housing assert that the tenants need "guidance" in order to make sure that their quarters are kept clean and neat.\[132\] After all, if the fortunate inhabitants put coal in the bathtub (to use the stock illustration), the taxpayers have suffered in vain. But it is easy to imagine that the "guidance" may become more extensive.\[133\] Certainly socialized housing has shown such tendencies abroad.\[134\]

Even if government control of shelter does not regiment the tent-

\[130\] For good and obvious reasons the manager of a public housing project may assign each tenant a garden plot. Then a tenant who fails to show an interest in horticulture appears not to be "cooperative" and his continued tenancy may seem undesirable. Another approach to control of the lives of tenants is suggested in the following quotation:

"If Johnny Zilch is a problem child, that is no responsibility of the private landlord. If Johnny's problems find overt release, the landlord may turn Johnny over to the juvenile court. But the city's interest is basically different. It cannot divorce so completely its responsibility as landlord and its obligation as re-moulder of delinquent children. Indeed, is not the almost inevitable preliminary to a public housing program the spot map blanketing areas of bad housing with cases of crime, disease, delinquency, desertion and other municipally expensive social ills?"

Ascher, *The Housing Authority and the Housed*, 1 Law & C. P. 250 at 254 (1934). Those who advocate "guidance" for public housing tenants would seem to accept the view that slum dwellers are responsible, at least in part, for their present unworthy surroundings. For a vigorous statement of the view that charity should not be conditioned upon good behavior as judged by standards of social workers, taxpayers, etc., see Smith, *Public Assistance as a Social Obligation*, 63 Harv. L. Rev. 266 at 276 (1949).

\[132\] In Russia control of the supply of housing is used to reduce labor turnover in industry if the worker quits his job, he loses his shelter. HAZARD, SOVIET HOUSING LAW at 18, 102 (1939). In the Netherlands, uncooperative tenants were labeled "undesirables" and placed in a special public housing project under the supervision of a social worker. The supervision is said to have involved a "substantial limitation of personal liberty." GRAY, HOUSING AND CITIZENSHIP at 74 (1946).
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ants lives there is ground for the fear that proponents of public housing seek to change the social pattern of American life. They often speak, for example, of the desirability of incorporating "communal facilities" in housing projects. There is more than a hint that matters hitherto reserved for family consideration and control should become the subject of neighborhood determination. Again, an effort to effect greater re-distribution of income than present rates of taxation prescribe can be spelled out of rents made flexible in proportion to tenants' incomes.

Even more dangerous is the hazard that discretion to ration shelter could be used as a means of entrenching the partisan power of a particular political group. There is, unfortunately, evidence to show that the rationing authority has been so used. In 1947 government

Brown, Urban Redevelopment, 29 BOSTON UNIV. L. REV. 318 at 349 (1949); Salk, Sweden Plans for Better Housing at 76 (1948). Apparently the goal is the Russian idea in which housing is on a non-family basis. Much of the Russian housing provides no separate kitchens, etc., for individual tenant families. Pribram, Housing, 7 Ency. of Soc. Sci. 496 at 505f (1932). One enthusiastic supporter of public housing has said:

"As both public housing abroad and few private large-scale demonstrations here have shown, low-cost housing projects of the type now proposed are more than the provision of cheap shelter, they presage a new mode of life. Community laundries, organized adult education and recreation, forums, libraries, pre-school training are but examples of the new relationships which the housing program involves."

"The municipal landlord can invoke all the machinery of employment services and public assistance before the family is thrown on the street. It would be intolerably artificial rigidly to separate these public functions, and to accept the four corners of a lease as the limits of the reciprocal duties of the parties."

Ascher, The Housing Authority and the House, 1 LAW & C. P. 250 at 254 (1934). Even though he did not advocate the extreme objectives of admirers of the Soviet system, a scholar nevertheless urged that housing be treated as a social experiment, inaugurating new types of social relationships. Dean, The Myths of Housing Reform, 11 AM. SOC. REV. 281 at 288 (1949).

New York, Public Housing Law § 156(3); Redlich, Rental Analysis in Wartime, 55 JNL. POL. ECON. 245 at 246 (1947); Hazard, Soviet Housing Law at 41 (1939).

Joint Committee on Housing, Housing in America at 116, 127 (House document No. 629, 80th Cong., 2d Sess., 1948); Post, The Challenge of Housing at xiv (1938) (Evans Clark, in foreword to Post's book, states that Post was thrown out of office as chairman of the New York Housing Authority for political reasons). Even advocates of public housing have admitted that:

"Political pressure will be brought to bear to secure dwellings for the politically influential who are outside the income group to be housed. Politics will also play a part in the selection of the operating personnel."

Robinson, Public Housing in Massachusetts, 18 BOSTON UNIV. L. REV. 83 at 100 (1938). See also Schofield & Usher, Housing Shortage by Statute, 30 CHICAGO BAR RECORD 169 at 173 (1949). As in other governmental activities, corruption has also crept into public housing. Stewart, Homes for America at 39ff (Natl. Assn. of Real Estate Boards 1948). Furthermore, the taxpayers money has been used to carry on propaganda for socialized housing. Joint Committee on Housing, Housing in America at 117, 128 (House document No. 629, 80th Cong., 2d Sess., 1948); Holden, Housing Dictatorship and Soft Socialism at 13 (Commerce and Industry Association of New York, Inc., 1949).
directly controlled only about 1% of the dwelling units in the United States. Even that low proportion of control might swing closely balanced election contests. And if the percentage were to rise to a substantial figure, concentrated in urban areas, it is not difficult to conceive that elections might be seriously affected.

Socialized housing can be modified to eliminate many of the features found objectionable in the foregoing discussion. New housing, for example, need not be constructed on the sites of former slums: it could be placed in more favorable locations. But the objections to socialization are weighty indeed. Accordingly, if subsidies must be used, it seems preferrable to employ those forms of redistributing income containing fewer hazards to economy and, especially, to liberty

[To Be Continued In Next Issue]