Housing: A Cursory Analysis of Available Remedies With Particular Reference to the Anti-Trust Laws--Part II

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Housing:
A Cursory Analysis of Available Remedies With Special Emphasis on the Anti-Trust Laws*

By G. E. Hale**

III. BREAKING DOWN ARTIFICIAL BARRIERS

In the preceding discussion frequent reference has been made to the desirability of a free market allocation of goods and services. The suggestion, of course, is that the market, as opposed to legislative fiat, puts men and materials to work in the most economic manner. And if high costs are a fundamental obstacle to better housing conditions, it follows that free market conditions should play a larger role in housing.

Such a recommendation, however, does not imply a purely passive policy of laissez faire. For markets are not free and nothing but government action can make them so. Only subsidies can reduce necessary costs. And profits need not be eliminated. But artificial costs—expenses which arise from monopoly conditions—can be attacked

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39 Profits are not high in contracting; even in 1920 only 55% of the firms showed earnings. In 1937 the mean profit of all construction firms was .5%. Twentieth Century Fund, American Housing at 84 (1944). Handicraft methods have not lent themselves to production economies and present procedures offer little hope of reducing costs by increased volume. Id. at 93; cf Abrams, The Future of Housing at 121 (1946).
by legislation. Such measures are already on the books in the form of the familiar antitrust laws.\textsuperscript{141}

A. Monopolized Materials and Entrepreneurs

Nothing is easier to prove than the assertion that markets are not free in the field of building. Restraint of trade is everywhere the rule: at all levels of the construction business private arrangements seek to soften the rigors of competition. Agreements among contractors to maintain prices and otherwise rig the market abound in the record. One common device employed to that end, for example, is the maintenance of a device known as a “bid depository” to assure the group that no “chiseler” quotes a low figure to the would-be house builder. Labor unions often are used to police such conspiracies.\textsuperscript{142}

While some building materials are available at competitive prices, there is considerable evidence indicating that the contractors are frequently unable to buy supplies at free market levels. When many producers occupy the field a trade association may form the vehicle for informal agreements to maintain prices. In other industries the manufacturers are few in number and that concentration apparently results in “sticky” markets.\textsuperscript{143}

Interaction between the two foregoing types of restraints produces a third and even more costly barrier. Jobbers and retailers of building materials combine to prevent manufacturers from making direct sales to contractors and consumers. All goods must pass through the familiar channels say, of plumbing jobber and master plumber, before they may reach the contractor.\textsuperscript{144} In some instances, such as that just given, the retailer (master plumber) may himself also be a subcontractor. In others, the lumber business for example, the retailer sells to contractors. Either arrangement introduces unnecessary handling costs. Labor unions (journeymen plumbers) cooperate by refusing to install “bootleg” merchandise. Anyone who has purchased a bathtub from a mail order house and tried to secure a plumber to connect it to his pipes knows of the problem. In short,
the building industry, for self protection, conspires to prevent development of vertical integration. And it is easy to demonstrate that such integration could reduce expenses of building.145

B. RESTRAINT OF TRADE, UNION MADE

Familiar, too, is the sorry record of the craft unions in the building field. Workers refuse to utilize efficient tools: the painters ban on spray guns and brushes more than four inches wide is a classic example. Anything approaching prefabrication is likely to be barred: electricians will not install switchboards wired at the factory and glaziers will not permit the use of windows glazed at the mill.146 Of course there is strong opposition to the erection of wholly prefabricated dwellings.147

Craft unions tend to restrict their own membership and to insist that skilled men do semi-skilled work.148 In some of the building trades extortion is far from unfamiliar.149 Perhaps the most disruptive feature of union activity, however, is the maintenance of craft jurisdictions.150 It has been said that three-quarters of the strikes in the construction industry involve disputes as to which union’s members should perform a particular task.151 Sometimes contractors find it desirable to employ several men to do one’s job. Thus a bricklayer, plasterer and carpenter have all been employed to install cork tile simply because triple pay was cheaper than jurisdictional strife.152

145 Loevinger, Handicrafts and handcuffs—the anatomy of an industry, 12 Law & C. P. 47 at 55 (1947).
146 Joint Committee on Housing, Final Majority Report at 14f (80th Cong. 2d Sess. H. Rpt. No. 1564, 15 March 1948); Slichter, Union Policies and Industrial Management at 179ff (Brookings Institution 1941); Loevinger, Handicrafts and handcuffs—the anatomy of an industry, 12 Law & C. P. 47 at 49 (1947); Stone & Denton, Toward More Housing at 55, 134, 135f (TNEC Monograph No. 8, 76th Cong. 3d Sess. 1940); Harper v. Hoecherl, 153 Fla. 29, 14 So. 2d 179 at 180 (1943); Joint Committee on Housing, Housing in America at 40ff, 42, 44 (House document No. 629, 80th Cong. 2d Sess. 1948); Lasch, Breaking the Building Blockade at 93 (1946).
147 Id. at 104 (use of violence reported).
148 Haber, Construction Industry, 4 Encyc. Soc. Sci. 262 at 274 (1932); Stone & Denton, Toward More Housing at 51, 135 (TNEC Monograph No. 8, 76th Cong. 3d Sess. 1940); Joint Committee on Housing, Housing Study and Investigation at 14 (House report No. 1564, 80th Cong. 2d Sess. 1948); Joint Committee on Housing, Housing in America at 42 (House document No. 629, 80th Cong. 2d Sess. 1948).
149 Anon., Boss Carpenter, 33 Fortune No. 4, 119 at 121ff (April 1946); Haber, Construction industry, 4 Encyc. Soc. Sci. 262 at 275 (1932); Loevinger, Handicrafts and handcuffs—the anatomy of an industry, 12 Law & C. P. 47 at 52 (1947).
150 Anon., Boss Carpenter, 33 Fortune No. 4, 119 at 121 (April 1946); Loevinger, Handicrafts and handcuffs—the anatomy of an industry, 12 Law & C. P. 47 at 50 (1947).
151 Haber, Construction industry, 4 Encyc. Soc. Sci. 262 at 272 (1942).
152 Lasch, Breaking the Building Blockade at 99f (1946). Efforts to reduce jurisdictional disputes by organization of building trades councils, etc., have not
Obviously “featherbedding” and other practices of the craft unions tend to increase costs. And it is equally clear that such activities constitute restraints of trade. But the Supreme Court and the Congress have seen fit to exclude all labor union conduct from the prohibitions of the anti-trust statutes. Thus at present the federal law condones the labor union practices sketched above. Some features of the Labor Management Act of 1947 touch on the problem but they are far from adequate to prevent the costly abuses of which the building trades unions are guilty.

C. Government Restrictions

Not content with standing by while contractors and unions indulge in innumerable conspiracies against the house builder, governmental bodies join the combinations. Instead of using legislation as a weapon against restraint of trade, governments have written restrictions into the statutes themselves. All kinds of “make-work” and “stretch out” devices have been incorporated into one type of law or another.

Building codes have proven a favorite vehicle for those desiring to perpetuate costly practices. New materials and methods are effectively barred by codes specifying ancient arts. Plastering of interior wall surfaces, for example, an antiquated method of curtaining rooms, has been required by building codes and the plasterers union makes a valiant fight to prevent changes in the ordinances. Writing a building code is a complex and technical problem but certainly many improvements could be effected.


156 National Policy Committee, Is housing on the way? at 14 (report No. 41, 2 May 1946); Stone & Denton, Toward More Housing at 100f (TNEC Monograph No. 8, 76th Cong. 3d Sess. 1940).

158 A full page advertisement was taken in an expensive daily to protest building code amendments permitting “dry” walls. Chicago Federation of Labor, Building and Construction Trades Council, Advertisement, Chicago Tribune part 3, page 11 (Monday 31 October 1949); Lasch, Breaking the Building Blockade at 105f (1946). Codes may also be used to “protect” particular brands of building materials. Twentieth Century Fund, American Housing at 127 (1944); Stone & Denton, Toward More Housing at 63 (TNEC Monograph No. 8, 76th Cong. 3d Sess. 1940). General provisions in building codes, while sometimes desirable for flexibility, lend themselves to abuses (corruption). Twentieth Century Fund, American Housing at 128 (1944); cf. Thompson, Building Code Improvement, 12 Law & C. P. 95 at 106 (1947).

157 Joint Committee on Housing, Housing in America at 98 (House document No. 629, 80th Cong. 2d Sess. 1948).
Another vehicle for governmental enforcement of conspiracies against house builders is found in the licensing requirements of states and municipalities. Building contractors, sub-contractors and sometimes workers, must all be licensed. Often the number of licenses is limited and bidders from "foreign" areas (perhaps only so far removed as the city limits) are hampered in competing for business. Again the license system is used to prevent the creation of vertically integrated firms in the building business and to force distribution of materials through "orthodox" channels. Thus government again, so far from discouraging restraint of trade, actively promotes restrictions which add to the cost of housing.

D. Attacking the Restraints

Cost is the core of the building aspect of our housing problem. And it is clear that the restraints of trade just outlined add importantly to construction expense. Many observers believe that a vigorous attack upon such restrictions would effect substantial economies. Thus it has been said that the pre-war campaign to enforce the anti-trust laws in the building field reduced prices as much as 20%.

Thoughts naturally turn, therefore, to renewed utilization of those statutes which are generally described as the anti-trust laws. If restraints could be eliminated there is solid ground for the belief that a host of new materials and methods would come into common use.

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138 Edwards, Legal requirements that building contractors be licensed, 12 Law & C. P. 76 at 77, 81 (1947); Stone & Denton, Toward More Housing at 39 (TNEC Monograph No. 8, 76th Cong. 3d Sess. 1940); Arnold, The Bottlenecks of Business at 42f (1940); Twentieth Century Fund, American Housing at 129 (1944). The very multiplicity of license requirements hampers builders: as many as 20 permits, etc., may be demanded. Id. at 128.

139 Edwards, Legal requirements that building contractors be licensed, 12 Law & C. P. 76 at 83 (1947). Other statutes have been blamed for discouraging construction. Thus it is said that mechanics lien laws add to costs, discourage lending, increase the tendency to "jerry building" and contribute to the expense of title insurance. Stalling, The Need for Special, Simplified Mechanics Lien Acts Applicable to Home Construction, 5 Law & C. P. 592 at 595 (1938). Title examination is also said to be unduly onerous and the compulsory use of the Torrens system has been recommended. Twentieth Century Fund, American Housing at 333 (1944); but cf. Abrams, The Future of Housing at 103 (1946).

140 Loewinger, Handicrafts and handcuffs—the anatomy of an industry, 12 Law & C. P. 47 at 66 (1947); Anon., Chicago Building Code, 33 Fortune No. 4, 262 at 265 (April 1946); Stone & Denton, Toward More Housing at 141 (TNEC Monograph No. 8, 76th Cong. 3d Sess. 1940); Joint Committee on Housing, Housing Study and Investigation at 13f (House report No. 1564, 80th Cong. 2d Sess. 1948). Favorable results were obtained in a British program to remove restrictions on numbers of apprentices. Anon., Low-cost Housing: a European Survey, 37 Ill. L. R. 167 at 177 (1942).

141 Twentieth Century Fund, American Housing at 329f (1944); Joint Committee on Housing, Final Majority Report at 2 (House report No. 1564, 80th Cong. 2d Sess. 15 March 1948); cf. Lasch, Breaking the Building Blockade at 291 (1946) (recommendation that reliance be placed upon local committees attempting to act by discussion and persuasion). There is a solid basis for the belief that un-
Two obstacles, however, impede the realization of such a program.

In the first place, as we have seen, many restraints of trade are embodied in local law. It is always difficult for the federal (or state) government to interfere in what appears to be a community problem. The mere filing of enough suits to enjoin enforcement of restrictive statutes and ordinances is a formidable undertaking. Carrying such litigation through to a decree would require proof of the restrictive character of the local legislation. Altogether, the task would be tremendous.

In the second place, existing federal statutes would have to be amended to overcome the effect of the Supreme Court's decision that labor unions are not affected by the anti-trust laws.1 As we have seen, many of the restraints of trade in building are of union origin. Others are "policed" by organized labor. No significant trust-busting could be achieved unless labor's exemption were repealed.

Apart from the practical difficulty of putting repealing legislation through the federal Congress against union opposition, amendment of the Clayton Act with such an object in view would require skillful draftsmanship. National policy now appears fixed upon the encouragement of unionization. Accordingly any amendment designed to bring labor's restrictive practices within the purview of the anti-trust laws would require careful consideration: a labor union, like a corporation, is by its nature a combination in restraint of trade. Again, many of the practices embodied in union working rules are legitimately designed to protect the health and safety of employees.2

In view of the foregoing difficulties it may be worth while to examine other possible approaches to the problem. An obvious and often suggested method of eliminating the restraints in building is to repeal the building codes and other ordinances which enforce them.3

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1 United States v. Hutcheson, 312 U. S. 219 (1941); Lasch, Breaking the Building Blockade at 291 (1946).
2 Twentieth Century Fund, American Housing at 109 (1944). One student concluded that the only hope for removal of wasteful practices lay in either the open shop or spasmodic intervention of vigilantes such as the Citizens Committee to Enforce the Landis Award (which was largely a failure). Montgomery, Industrial Relations in the Chicago Building Trades at 317 ff (1927).
3 Lasch, Breaking the Building Blockade at 291 (1946); Twentieth Century Fund, American Housing at 330 (1944); but cf. id. at 160 (efforts to date ineffective). Apart from all questions of restraint of trade, every building code is a compromise between standards and costs: if the standards are too high, costs become prohibitive. Id. at 159. And apparently there is a serious lack of eng-
Action would be required at local levels and perhaps that is democratic and desirable. Possibly the federal government could assist by formulating acceptable codes (subject to modification for regional factors).

Such a program, however, appears to many observers as too uncertain and slow of accomplishment. National action may be required to clear trade channels so that mass producers can cut manufacturing costs. And the anti-trust actions which would be a necessary concomitant to any such program would seem to enjoy little prospect of success in view of the sad record of state action in the monopoly field.

Special federal legislation could be enacted to strike down local statutes and ordinances which dam the flow of interstate commerce in building materials. Enforcement of such an act might require almost as much effort as an anti-trust crusade. Perhaps it would be simplest, both in securing passage of the legislation and in its enforcement, simply to condition federal subsidies upon the local removal of restrictive practices. Indeed, the 1949 legislation came close to doing just that. It required executive officers to "consider" the extent to which restraints had been eliminated in allocating federal funds for slum clearance and the like. A change to a positive requirement of such elimination would seem the next logical step.

E. Practical Means of Eliminating Restraints

It has been suggested that it will be difficult to rid the building business of those restraints of trade which now make it costly. Several technical problems which would arise in any such effort have been outlined. In addition, there is the fundamental difficulty of persuading citizens that the cost savings to be achieved are worth while. For eliminating restrictions will cause at least temporary hardships to individual workers, contractors and building materials dealers. If a building code is amended to permit the erection of wallboard, many plasterers will be looking for new employment. And desirable as such a shifting of resources may be from the standpoint of the community, the plasterers will probably suffer temporary loss of wages and perhaps

neerign knowledge looking to the linkage of performance requirements with functional needs. Davison, Technological potentials in home construction, 12 Law & C. P. at 17f (1947).

162 Stone & Denton, Toward More Housing at 174 (TNEC Monograph No. 8, 76th Cong. 3d Sess. 1940).

166 Anon., The Illinois anti-trust act disinterred, 43 Ill. L. R. 205 at 218 (1949).

will never again earn their former incomes.\textsuperscript{168} Such considerations explain the obvious reluctance of legislators to come to grips with the essence of the cost problem.\textsuperscript{169} There is considerable public sympathy for the restrictive practices, partly because they chiefly originated as means of defense against stronger bargaining power.\textsuperscript{170} Indeed, the situation is comparable to the maintenance of artificial price supports for agricultural products: citizens are not willing to abolish them because the farmer traditionally has been an under-dog.

Thus the suggestion arises that the affected persons be paid to stop restraining trade. In that way, perhaps, acquiescence could be obtained to pass and enforce needed legislation. Of course, we cannot start a practice of bribing criminals to obey the law. But the long acquiescence in restrictive practices affords some justification for compensation.

Such compensation might take the form of dismissal pay.\textsuperscript{171} Or extra unemployment insurance could be provided. Existing statutes permit the payment of some unemployment benefits but $25 a week will not seem handsome remuneration to a man who has been earning $25 a day plus overtime.\textsuperscript{172} A proposal often made is that labor be guaranteed continuous employment in consideration of abandonment of restrictive practices. It finds support in the view that labor's "stretch-out" and "make-work" practices, to say nothing of high hourly wage rates, are based on the seasonal and cyclical character of work in the building trades. Studies have shown, for example, that high hourly rates do not give building construction workers high annual incomes.\textsuperscript{173} Of course there is some hope that costs so reduced would of themselves assist in the maintenance of regular activity because demand would be greater at lower prices.\textsuperscript{174}

\textsuperscript{168} When machines displaced hand labor in the cigar industry in 1931 many of the workers were unable to find comparable employment and some found none. Rosen, \textit{Technology and Society} at 237 (1941). Of course the times were not propitious but the principle illustrated may be sound. In housing, however, many of the employees should be able to find new jobs in the fields of renovating old dwellings and construction of a non-housing nature. Colean, \textit{Housing—an industrial opportunity}, 49 INTL. LABOUR REV. 160 at 169 (1944).

\textsuperscript{169} Joint Committee on Housing, \textit{Final Majority report} at 2 (House report No. 1564, 80th Cong. 2d Sess. 1948).

\textsuperscript{170} Twentieth Century Fund, \textit{American Housing} at 101 (1944).

\textsuperscript{171} Pribram, \textit{Unemployment}, 15 ENCYC. SOC. SCI. 147 at 153 (1934).

\textsuperscript{172} e.g. Illinois, Unemployment Compensation Act § 4(b) (1) (c), 30 June 1937, L. 1937 p. 571, as amended; Rev. Stats. c. 48 § 220 (1949); Social Security Act, Title III; 14 August 1935, 49 Stat. 620, as amended; 42 U.S.C.A. § 501.

\textsuperscript{173} Lasch, \textit{Breaking the Building Blockade} at 94 (1946). Insecurity of employment leads to a "stretch-out" of existing jobs. Stone & Denton, \textit{Toward More Housing} at 54 (TNEC Monograph No. 8, 76th Cong. 3d Sess. 1940).

\textsuperscript{174} Abrams, \textit{The Future of Housing} at 142f (1946). It has been suggested that government guarantee regularity of employment. Lasch, \textit{Breaking the Building Blockade} at 146 (1946); Joint Committee on Housing, \textit{Final Majority Report
Regularization of workers' earnings is not, however, easy to accomplish. For one thing, contractors bid separately on each job and do not know how many men they will need until contracts are awarded. Hence it would be difficult to guarantee employees a fixed annual wage: the result would be a shortage of labor to the contractor at times when he had received awards and a surplus when his bid had been high.\textsuperscript{175} Again, the construction industry is affected by a seasonal pattern. Certain types of building cannot be carried on efficiently in winter. On top of the engineering requirements is a public tradition whereby house building starts in the spring. Efforts to modify seasonal patterns by staggering lease dates and similar devices have not proven successful.\textsuperscript{176} Basically, however, the difficulty is even more profound. All construction is subject to strong cyclical trends and depression brings more unemployment to its workers than to those in other industries.\textsuperscript{177} Thus the problem of regularizing pay checks in the building trades is really part of the basic policy of eliminating over-all unemployment. And that heroic task can scarcely be considered here.

Perhaps a more hopeful possibility is suggested by the transfer and re-training programs often conducted by modern industry when labor saving machinery is introduced.\textsuperscript{178} Although such re-education may be more costly to the individual firm than simply hiring green hands for new jobs, it may be cheaper for the community as a whole.

\textsuperscript{175} Stone & Denton, \textit{Toward More Housing} at 53 (TNEC Monograph No. 8, 76th Cong. 3d Sess. 1940).

\textsuperscript{176} Id. at 72; Kaplan, \textit{The Guarantee of Annual Wages} at 234 (Brookings Institution 1947). In addition, it has been suggested that the guarantee of annual wages would have widespread and undesirable effects upon the economy as a whole. \textit{Id.} at 242f. One result, for example, might be the production of commodities which could not be sold above cost. A legal question relates to the power of one legislature to commit another: the guarantee might be repealed at another session and the worker left without remedy.

\textsuperscript{177} Riegel, \textit{Management, Labor and Technological Change} at 112ff (1942). Great Britain has enjoyed some limited success with schemes for re-training displaced labor. Beveridge, \textit{Unemployment} at 308 ff (2d ed. 1931).
because it reduces relief burdens. And in the housing field there is an analogy in the contract with craft unions executed by a leading ex-manufacturer of prefabricated housing. That agreement provided that union carpenters, electricians and other workmen would be employed to make houses but that the employer should decide which work should be done in a factory and which at the building site.

Nevertheless it would not be simple to mitigate a re-training program. As pointed out above, contractors are small and often have few permanent employees. Thus no one employer could undertake the task of re-educating workers. Even if government undertook the burden it might be found that aged hand craftsmen of the building trades are so unsuited for employment as tenders of machines that relief would be cheaper. In addition, factories must be somewhat consolidated and transportation problems would be raised for employees scattered over wide areas. Labor union leaders might lose power, prestige and profits in a geographical concentration of employment. Thus while some form of re-training might be desirable, the proposal would probably not alone suffice to eliminate opposition to anti-trust enforcement.

**F ENCOURAGEMENT TO SIZE OF FIRMS**

One of the paradoxes of the building industry is that despite all its restraints of trade it suffers from atomization. As we have seen, contractors bid from job to job and have no fixed force of workers. Many of the contractors are astonishingly small. It is reported, for example, that over half of all new houses are built by enterprisers who erect less than five units per year. Certainly this is the opposite of monopoly and it seems clear that a substantial increase in the size of firms would effect economies. Such a change might also be helpful to regularize employment in the manner suggested above.

Contractors need to expand vertically as well as horizontally

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182 Ober, *Trade-Union Policy and Technological Change* at 25 (WPA 1940). Cash payments would also have the virtue of permitting the displaced employee to invest either in re-education or in some other manner as he might prefer.
184 Joint Committee on Housing, *Final Majority Report* at 17 (House report No. 1564, 80th Cong. 2d Sess. 1948). Some reasonable increase in the size of firms might also effect adoption of efficient methods of management. Such methods are urgently needed. Stone & Denton, *Toward More Housing* at 136 (TNEC Monograph No. 8, 76th Cong. 3d Sess. 1940).
Vertical integration could result in important savings. Even Professor Edwards, who is chilly to integration in industry as a whole, has apparently given his blessing to such a development in the housing field. Consolidation of the contractor with the retailer and jobber of building materials would reduce handling, storage and selling costs. It might ameliorate the jurisdictional problem among the craft unions and assuage some restrictions contained in licensing ordinances and the like. And although vertical integration has been attacked by the Attorney General as inherently monopolistic, that position has not been sustained by the courts or analysis.

We may, therefore, conclude that government should encourage the growth of contracting enterprises. It is less easy to say what form that encouragement should take. Perhaps relief from income taxation would be appropriate. Later in this study consideration will be given to the pooling of parcels. Possibly consolidation of small tracts into large areas will cause a growth in the size of contractors employed to build the greater structures thus made possible.

IV ENCOURAGEMENT TO CONSTRUCTION EFFICIENCY

We have outlined the possibilities of cutting construction costs by eliminating restraints of trade. That is the negative aspect of the cost problem. Steps could also be taken positively to reduce the expense of erecting housing.

A. Standardization and Research

Building materials are made in a bewildering variety of styles, shapes and sizes. There are, for example, 1,200 different sizes of slate roofing. Combinations produce a total of several million methods...
of trimming a door opening. No degree of architectural splendor would seem to require such variety. Students are in agreement that a considerable measure of standardization would reduce costs to an important degree. Part of dealers and contractors' storage expenses could be saved if there were fewer styles and sizes of windows.

We have already noted the suggestion that the federal government act to eliminate restraints in building codes. Since the diverse requirements of such ordinances also obstruct standardization, federal action might have double benefits. Trade associations could well increase their activities in the fields of simplification and standardization. So long as the groups do not fix prices, the courts should permit competitors to work together for such purposes.

Small and scattered contractors have not been able to carry on the technical research which characterizes many industries today. Makers of building materials have worked upon individual problems but remarkably little has been done to develop new over-all techniques of construction. In view of the amazing results of technological research in, say, the chemical industry, it is not unreasonable to expect considerable benefit from similar efforts in the housing field.

Since contractors are mostly too small to conduct formal research programs, it has been suggested that government directly engage in such projects. Some studies have been made for several decades and the federal statute of 1948 directed the inauguration of a systematic program. Apparently work is progressing under that authority in the form of drafting a model building code. No doubt such activity is desirable, particularly in the short run. But we should not

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190 Id. at 61. Hopes have been held out for substantial reductions in building costs through the adoption of "modular" principles. Joint Committee on Housing, Housing in America at 95 (House document No. 629, 80th Cong. 2d Sess. 1948).
191 Twentieth Century Fund, American Housing at 127 (1944); Joint Committee on Housing, Housing Study & Investigation at 16 (House report No. 1564, 80th Cong. 2d Sess. 1948); Stone & Denton, Toward More Housing at 100f (TNEC Monograph No. 8, 76th Cong. 3d Sess. 1940). In Sweden, the national government has assisted citizens in the construction of their own houses by encouraging standardization (and furnishing instruction). Lasch, Breaking the Building Blockade at 153 (1946).
192 Hale, Agreements among competitors, 33 MINN. L. R. 331 at 362ff (1949).
193 Stone & Denton, Toward More Housing at 105ff, 141f (TNEC Monograph No. 8, 76th Cong. 3d Sess. 1940).
194 Joint Committee on Housing, Final Majority Report at 1f, 21 (House report No. 1564, 80th Cong. 2d Sess. 1948); Twentieth Century Fund, American Housing at 184, 330 (1944); Lasch, Breaking the Building Blockade at 290 (1946); but cf id. at 160 (achievements of Bureau of Standards in field not impressive).
raise our hopes too high. Governments are sensitive to the pressure of organized groups and, as we have seen, powerful interests would prefer to bar innovations.\(^{106}\)

**B. Prefabrication**

For many years men's imaginations have been fired by the idea of constructing complete houses in factories. Production line methods have greatly reduced the cost of many products and it would seem to follow that prefabrication of dwellings would effect similar savings.\(^{107}\) In the post-war period positive steps were taken by the federal government to encourage use of such techniques. Ample statutory authority was vested in executive officers. Markets were guaranteed, loans made and insured and direct subsidies granted.\(^{108}\) Good quality buildings were thus produced.\(^{109}\) But the quantity sold was disappointing.\(^{200}\)

It is difficult to understand why prefabrication has not been more successful. Perhaps diagnosis should follow these lines: a factory large enough to produce houses on a mass basis requires a tremendous capital investment.\(^{201}\) Presumably it should be considerably larger than an automobile plant both because houses are larger than cars and because auto makers purchase many of their parts, such as frames and bodies, already manufactured. Such a factory could only operate successfully if it ran continuously: high overhead costs demand huge sales. But restraints of trade such as those previously summarized in this paper have prevented prefabricators from achiev-

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\(^{107}\) Stone & Denton, *Toward More Housing* at 128 (TNEC Monograph No. 8, 76th Cong. 3d Sess. 1940).


\(^{200}\) Housing & Home Finance Agency, *First Annual Report* at 12 (1947); Federal Housing Administration, *Fifteenth Annual Report* at 5f (1948); but of Housing & Home Finance Agency, 3 Housing Statistics No. 1 at XI (January 1950). After spending $37,500,000 (of government funds) one prefabricator was still in the red and its costs were above site-produced housing. Anon., *That Lustron Affair*, 40 Fortune No. 5, 92 at 94 (November 1949). Bad luck may have played a role in this particular failure. Rauh, *Government by directive*, 61 Harv. L. R. 88 at 107ff (1947).

ing high sales volume.\textsuperscript{202} The volume achieved has not been sufficient to undercut conventional house building by substantial price margins. Now private enterprise is discouraged. Thus unless government is ready to undertake a further and larger experiment in financing prefabrication, factory construction of complete houses may be postponed indefinitely.

For various lesser degrees of prefabrication, however, the outlook is happier. If trade restraints can be downed, the use of windows glazed at the mill, steel panels for exterior covers and the like seems a real possibility. Even today there is a considerable degree of prefabrication. Metal and even wooden window sash is factory built; doors are planed and assembled at mills and electric refrigerators are merely plugged into outlets at the site. Once restrictive practices are terminated we could expect a substantial expansion of partial prefabrication, with commensurate economies.

Another type of prefabrication is termed the shop-on-site method. An “operative builder” acquires land, subdivides it and installs utility mains. He sets up a small mill on the site and proceeds to cut his materials to standardized lengths there. Specialized crews move from lot to lot, installing the partially prefabricated materials. This so-called “California” method has proven itself capable of very considerable savings.\textsuperscript{203} Encouragement for such procedures was afforded by the 1948 federal statute, which permitted insurance of loans against such housing.\textsuperscript{204}

If the restraints which now raise building costs were eliminated, market forces would presumably determine the most economical allocation of labor in the construction field. In other words, the free market would determine the degree of partial prefabrication and shop-on-site building. Thus it would not be necessary to determine in the abstract which cuts costs most.\textsuperscript{205} And unless such a free market is established, neither procedure is apt to enjoy large success.

V ENCOURAGEMENT OF GEOGRAPHIC SIZE

It has been suggested that government foster an increase in the size of contracting firms. Larger contractors, it is thought, could build at lower costs. A kindred problem is that of the geographical

\textsuperscript{202} Anon., \textit{That Lustron affair}, 40 \textit{Fortune} No. 5, 92 at 94 (November 1949); Joint Committee on Housing, \textit{Housing in America} at 98f (House document No. 629, 80th Cong. 2d Sess. 1948).

\textsuperscript{203} Anon., \textit{Big Dave Bohannon}, 33 \textit{Fortune} No. 4, 145 at 192 (April 1946); Twentieth Century Fund, \textit{American Housing} at 138 (1944).


area which a housing development covers. A project occupying several city blocks can presumably be erected at lower cost per unit than a "four-flat" apartment building.**206** Big sites also promise economies through innovations in street plans and the like.**207**

More important is the effect of geographic size upon contamination. A large project can insulate itself against adverse influences in the surrounding area. Single control of a large unit would permit a housing project to turn its back (garages and other service facilities) on a neighboring slum or industrial zone.**208** And within the project many facilities can be provided for the convenience of tenants. Playgrounds for children, beauty shops, groceries and even theaters can be inserted unobtrusively.**209** There seems nothing intrinsically impossible in incorporating a school within the walls of a large residential development. In other words, a tremendous increase in the convenience of living is among the potentialities of geographic size. And there may be efficiency in sharing playground space and similar facilities with neighbors.**210**

A. EMPLOYER-BUILT HOUSING

It has been a common practice for employers to erect houses to rent or sell to their employees. When the place of employment is distant from an existing settlement, that procedure may be a practical necessity.**211** In the absence of local subdividers, contractors, architects and speculative builders, the individual employee could not efficiently build for himself. Employer-sponsored housing usually in-

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**206** Anon., *Metropolitan Life makes housing pay*, 33 *Fortune* No. 4, 133 at 212 (April 1946). Integration of subdividing and building functions has reduced costs. Twentieth Century Fund, *American Housing* at 142f (1944). It would seem likely that territorial integration of ownership would reduce title expenses.

**207** Stone & Denton, *Toward More Housing* at 96f (TNEC Monograph No. 8, 76th Cong. 3d Sess. 1940); Whitten & Adams, *Neighborhoods of Small Homes*, c. VIII (Harvard U. School of City Planning 1931). It has been said that a large land area is an essential feature of a housing development. Woodbury, *Land assembly for housing developments*, 1 *Law & C. P.* 213 at 213 (1934).

**208** Anon., *Metropolitan Life makes housing pay*, 33 *Fortune* No. 4, 133 at 212 (April 1946). It may be necessary for the builder to retain title (and merely lease dwelling space). Lewis, *Large-scale rental developments as an alternative to home ownership*, 5 *Law & C. P.* 602 at 605 (1938). Cf. Firey, *Ecological considerations in planning for urban fringes*, 11 *Am. Sociol. Rev.* 411 at 413 (1946) (slum comes into being when land has equal value for residential and commercial uses; depreciation arises from interpenetration).

**209** Anon., *Metropolitan Life makes housing pay*, 33 *Fortune* No. 4, 133 at 138f (April 1946); Anon., *Big Dave Bohannon*, 33 *Fortune* No. 4, 145 at 146 (April 1946).


volves a subsidy element. Wages are paid partly in the form of rent reductions. But utilization of large land areas permits the laying out of big projects with accompanying benefits.

For one reason or another, however, employer-controlled housing has acquired a bad name. Perhaps today, when labor unions are strong, “company housing” would not arouse ancient antigonisms. But the theory that the method is feudal and coercive has gained widespread acceptance.\(^{212}\)

A possibility remains that a group of employers might create a joint agency to build such housing for all of their employees.\(^{213}\) Such an arrangement might preserve the advantages of employer-sponsored housing and avoid some of the stigma attached to burdening the difficult relationship of boss and worker with that of landlord and tenant. If the dwellings were sold to the employees (on favorable terms, of course) the employers might ultimately detach themselves completely from the venture.

Employers may have a legitimate interest in the housing of their workers. Yet if work is provided in a settled community, the employer would seem under no greater duty to provide his workers with shelter than to feed and clothe them. Subsidies involved in company housing ventures are actually a form of wages and perhaps the employees should be free to dispose of their pay as they see fit. In the short term, however, while housing conditions remain so unsatisfactory to many citizens, groups of employers might well wish to experiment with projects of the type just outlined.

**B. LIMITED-DIVIDEND CORPORATIONS**

Another avenue of attack upon the problem of geographic size is found in the legislation authorizing limited-dividend housing corporations. As the name indicates, such companies may only distribute modest dividends (usually 6%) and are controlled by executive authority. In return they are granted the right to use the state's power of eminent domain, thus enabling them to assemble many contiguous parcels into single tracts of land suitable for large housing projects.\(^{214}\)

Companies formed under such statutes are subject to rigid con-

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\(^{213}\) Magnusson, *Company housing*, 4 ENCYC. SOC. SCI. 115 at 117 (1931).

trols. Profits are limited by rent ceilings and capital structures may be regulated. Profits are limited by rent ceilings and capital structures may be regulated. Broad powers are vested in executive officers to supervise management of the apartments. For example, such officers may order repairs made to the buildings at any time.

Although some of the legislation authorizing limited-dividend housing is now nearly a quarter century old, the results obtained have been disappointing. A dozen-odd projects were constructed in New York but elsewhere even that poor showing has not been achieved. Undoubtedly the failure of limited dividend housing is due to the restrictive character of the legislation. A possible return of 6%, coupled with extensive administrative controls, it too little compensation for the serious risks involved. As in the case of yield insurance, the government's offer is simply not sufficiently attractive.

Underlying the legislation is a basic theory that housing should become a price-fixed public utility. It is true that every geographic location contains elements of monopoly but the number of landlords in large cities is reckoned in the hundreds of thousands. The situation is thus scarcely comparable to that in the railroad, gas and electricity field. And some observers think that we have been far

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215 New York, Public Housing Law §§ 132, 175, 179, 180, 182. Rents may only be increased after a public hearing, § 184. In the Illinois statute (State Housing Act § 8) dividends are limited and, upon dissolution, undistributed earnings become the property of the state. Thus no opportunity is afforded to realize capital gains instead of ordinary income.

216 New York, Public Housing Act § 27. Fisher, Housing legislation and housing policy in the United States, 31 Mich. L. R. 320 at 339 (1933); Abrams, The Future of Housing at 177 (1946); Stone & Denton, Toward More Housing at 84 (TNEC Monograph No. 8, 76th Cong. 2d Sess. 1940); Illinois, State Housing Board, Your State Plan for Slum Clearance and Better Housing at 5 (Chicago n.d.) (limitations upon rents and dividends made projects unattractive despite possibility of rent adjustments provided in 1945 amendments to statute). For a short time the federal government lent funds to limited dividend corporations but the PWA discarded the program as "unsuited to its purpose." Cam, United States government activity in low-cost housing 1932-38, 47 Jnl. Pol. Econ. 357 at 359f (1939).

217 A few observers are less ready to write off the limited dividend idea, e.g., Lewis, Large-scale rental developments as an alternative to home ownership, 5 Law & C. P. 602 at 606 (1938).

218 Stone & Denton, Toward More Housing at 89ff (TNEC Monograph No. 8, 76th Cong. 3d Sess. 1940); Abrams, The Future of Housing at 178 (1946); Blucher, Control of housing administration, 1 Law & C. P. 238 at 244f (1934); New York City Housing Authority v. Muller, 270 N. Y. 333, 1 NE 2d 153 at 156 (1936); Anon., Public housing in Illinois, 8 U. of Chi. L. R. 296 at 310 (1941). It has been suggested that a statutory limitation on dividends may develop into a statutory guaranty of dividends in practice. Fisher, Housing legislation and housing policy in the United States, 31 Mich. L. R. 320 at 338f (1933).

219 Apparently little attempt has been made to utilize limited dividend statutes to avoid the impact of I.R.C. § 102. Cf. Cary, Accumulations beyond the reasonable needs of the business: the dilemma of section 102 (e), 60 Harv. L. R. 1282 at 1302 (1947).

220 Lerner & Singer, Some notes on duopoly and spatial competition, 45 Jnl. Pol. Econ. 145 (1937); Veblen, Absentee Ownership at 147 (1923).
from successful in attempting proper regulation of the latter types of concerns.\textsuperscript{220}

C. Cooperative Companies

A number of would-be house builders may form a cooperative housing company. By banding together the group may be able to achieve sufficient geographic size to protect itself against unfavorable influences in the surrounding area. Individual preferences may find expression in the plan. And, as indicated above, there are probably substantial cost savings in building many units at a time.\textsuperscript{221} Another circumstance indicating the desirability of cooperative ventures is that they avoid the tension which seems always to accompany the relationship of landlord and tenant.\textsuperscript{222} Apparently factors beyond the economic sphere enter into that relationship. Cooperative schemes whereby the tenant becomes his own landlord thus possess attractions which cannot be reckoned in dollars.

Unfortunately experience with cooperative housing has not been favorable. It is usually found necessary to express the relationship among the tenants and mortgagees in a complex corporate or trust structure. Documents embodying the arrangements must be prepared by skilled lawyers and the business situation they create is not understood by unschooled persons. Thus the device seems poorly adapted to the requirements of wage earners.\textsuperscript{223} Again, cooperative housing involves an element of ownership and such an investment may impede labor mobility. Experience, moreover, has shown that during a period of depression cooperative ventures are highly unstable. As tenants move out because they can no longer pay rent (or whatever the monthly assessments may be called), the burden of maintenance falls upon fewer shoulders. Since taxes, and operating expenses, interest payments and debt retirement, do not fall as rapidly as tenants depart, the load soon becomes crushing. Fore-

\textsuperscript{220} e.g. Simons, \textit{Economic Policy for a Free Society} at 50, 57 (1948).
\textsuperscript{221} Joint Committee on Housing, \textit{Housing Study & Investigation} at 24 (House report No. 1564, 80th Cong. 2d Sess. 1948); Abrams, \textit{The Future of Housing} at 184 (1946) (needs government credit). Cooperative housing has the advantage of assured initial rentals and the fixing of rentals by government does not affect it.\textsuperscript{222} In spite of thousands of prior adjudications already reported, the recently available Fifth Decennial Digest of the West Publishing Company devotes some 929 pages to indexing decisions of courts of appeal under the heading of landlord and tenant (covers period 1936-1946). Cf. Silk, \textit{Sweden Plans for Better Housing} at 86 (1948) (refusal to make rental subsidies available to tenants of private landlords arose out of fear that landlords might benefit thereby).
\textsuperscript{223} Anon., \textit{Co-operative apartment housing}, 61 Harv. L. R. 1407 at 1408f (1948); Ascher, \textit{The Housing authority and the housed}, 1 Law & C. P. 250 at 252 (1934).
Houses following shortly afterward. Certainly such an investment should be shunned by persons with small savings.

Variations on the cooperative plan have been proposed whereby the tenant would not be tied to a single apartment. His status would be that of an investor with preferential rights to rent. If projects were large it might be easier to dispose of the tenant’s interest when the housing was no longer required and it would also be possible to secure larger or smaller space as family changes occurred. Another variation would involve the use of tenant labor, at low wages, to perform maintenance work about the premises. In that way tenants who were able to paint and plumb a bit could utilize spare time both to their own advantage and that of the group.

It is difficult, however, to find any advantage of cooperative endeavor which cannot be realized by an independent landlord. It is said that cooperators save the profits of the subdivider, builder and landlord. If any of the foregoing factors are subject to monopoly conditions, then the argument is valid. But if the landlord is merely enjoying competitive profits, the cooperators stand to gain little and to lose much by reason of their inexperience. And while they may save a small profit, to the extent they perform some of the landlord’s work, they are merely going into his business and must count their own labors as part of their costs. Persons of means may find the cooperative system helpful in order to secure the advantages of size but it does not seem likely that it offers a useful approach to the housing problem of the masses.

D. Parcel Pooling Companies

It has been suggested that geographic size combats both the cost and contamination problems which underlie housing deficiencies. Several means have been outlined whereby government could encourage the construction of residential projects covering large areas. One further device is possible: permit property owners to pool their parcels into a large tract, using the power of eminent domain against those unwilling to cooperate in the effort to obtain unitary control for the territory as a whole. A corporation thus acquiring title to con-
tiguous real estate could erect houses or apartments thereon and lease or sell the dwellings.

As opposed to cooperative housing schemes, the present proposal offers the possibility of increasing the amount of housing available on a rental basis.\textsuperscript{229} And there is some evidence to indicate that rent controls (and perhaps other forces) have pushed citizens into the ownership of real estate who did not desire to undertake such obligations. Several other advantages of parcel pooling shared with cooperative housing ventures and other devices are mentioned here because parcel pooling companies appear to offer the most promising approach to the problem of geographic size.

Single control of large tracts of land may offer considerable help on the muddled problems of zoning and planning. Pooling is at least partly inconsistent with zoning: the proprietor of a large housing project may well wish to install shops and other commercial establishments in the middle of his residential area. So long as the landlord controls such land uses through restrictive covenants in leases and other devices the tenants should be able to enjoy those conveniences even if a zoning ordinance would not otherwise permit them.\textsuperscript{230} It follows that assembly of large tracts under single control might gradually eliminate the necessity of zoning. As for city planning, that function could be restricted to broad decisions such as the location of principal transportation routes. Detailed planning of land use could be left to owners.

Parcel pooling might also affect the structure of city government. In large municipalities neighborhood associations have long fostered community betterment but there has been little machinery whereby areas within a city might become self-governing. Possibly some degree of such localization might raise the currently deplorable levels of municipal government.\textsuperscript{231}

Several objections have been raised to statutes permitting landowners to pool their parcels. Perhaps most important is the assertion that the resultant control of large areas is monopolistic.\textsuperscript{232} It is con-

\textsuperscript{229} Twentieth Century Fund, \textit{American Housing} at 205f (1944). No greater over-all amount of capital would be required because tenants would be freed from the burden of purchasing dwellings.

\textsuperscript{230} Wisconsin, \textit{Urban Redevelopment Law}, Wis. Stats. \textsection 66.406(1) (i) (1947); Twentieth Century Fund, \textit{American Housing} at 326f (1944).

\textsuperscript{231} Cf. Nelson, \textit{Urban housing and land use}, 1 Law & C. P. 158 at 164f (1934). This subject is apparently in need of careful exploration.

\textsuperscript{232} Twentieth Century Fund, \textit{American Housing} at 223 (1944); Bauer, \textit{Good neighborhoods}, 242 ANNALS 104 at 112 (1945). It has been suggested that racial segregation will result from "redevelopment" projects. \textit{Id.} at 106. Another critic alleges that a large socialized housing program would become necessary to house persons displaced by "redevelopment." Brown, \textit{Urban redevelopment}, 29 Boston U. L. R. 318 at 370 (1949).
ceivable that some day an objectionable degree of monopoly could arise in the rental housing business. And it would clearly be intolerable if citizens could look only to a single source of supply for such a vital commodity as shelter. At the present writing, however, any such monopoly seems far, far away. As indicated above, most landlords are too small rather than too large. It will be time enough to worry about monopoly when parcel pooling obtains in some significant proportion of our communities. We shall reserve consideration of another objection, that parcel pooling discourages individual home ownership, to a later point.

To be effective, parcel pooling companies must be vested with eminent domain powers. Otherwise "holdout" landowners could force the payment of unreasonable prices for their property. Suggestions for the necessary legislation were made some years ago and have been favorably received by both critics and legislatures. Statutes are frequently termed "Neighborhood Redevelopment Corporation" laws. They authorize formation of a special type of corporation. Some measures grant tax exemption subsidies to companies formed under their authority. Frequently executive officers are vested with powers to control the companies in important respects. For example, rent ceilings, dividend limitations and the like are found in various states.

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233 Id. at 321, Anon., Urban redevelopment, 54 Yale L. J. 116 at 121 (1944); Anon., Public housing in Illinois, 8 U. of Chi. L. R. 296 at 310 (1941). Reassembly of small and scattered tracts by voluntary sale is too costly, especially in abandoned subdivisions heavily burdened with tax and other liens. Twentieth Century Fund, American Housing at 158f (1944).

234 Perry, Housing for the Machine Age, c. VI (1939); Nelson, Urban Housing and land use, 158 at 164f (1934).

235 Id. at 322.

236 Twentyieth Century Fund, American Housing at 302, 327 (1944). A variation would have cities condemn, replan and rezone slum areas and then sell them in parcels of 3 or 4 acres each. McGoldrick, City Building and renewal, 242 Annals 96 at 98f (1945). This acute suggestion might accomplish much good at little cost to the municipality. Some problem might arise in finding purchasers able to buy such large tracts. In parcel pooling, of course, the amount of cash required is limited because the owners merely put in property they already have.


238 Id. at 331, Anon., Urban redevelopment, 54 Yale L. J. 116 at 123, 131 (1944); Wisconsin, Urban Redevelopment Law § 66.409.

In some states the neighborhood redevelopment laws have been utilized as foundations for housing projects. In New York, for instance, the well known Stuyvesant Town enterprise was made possible by such a statute.\textsuperscript{239} Insurance companies have been the principal enterprisers in the field and it is reported that one concern is netting a 4% return (after depreciation) on its housing ventures.\textsuperscript{240} While 4% is not a princely return it is not a loss either and even such modest success suggests the soundness of the basic program.

On the other hand it must be admitted that only a disappointingly scant use has so far been made of the statutes. It does not appear, for example, that any companies have been formed under the Illinois Act.\textsuperscript{241} It is not wholly clear why the legislation has been so relatively ineffective. One obvious answer is that high building costs have obtained since most of the statutes were enacted. Rent controls, as indicated above, have deterred all construction of rental residences. Another and perhaps more important reason is that the laws are encumbered with too many controls.\textsuperscript{242}

Parcel pooling companies would seem capable of producing considerable housing of good quality. They do not necessarily require subsidies from the taxpayers. They would obviate many of the difficult problems involved in alternative proposals. It follows that they should be encouraged. Controls should be liberalized and if subsidies are to be granted, perhaps parcel pooling companies form the best vehicle therefor.

\textbf{E. Merits of Home Ownership}

All parcel pooling programs (except perhaps cooperatives) can be attacked upon the ground that they discourage individual home ownership. Whether citizens should be encouraged or discouraged from owning their own homes raises many economic, political and sociological questions. On the economic side, for example, one can

\textsuperscript{239} Anon., \textit{Metropolitan Life makes housing pay}, 33 \textit{Fortune} No. 4, 133 at 136 (April 1946); cf. Blucher, \textit{Control of housing administration}, 1 \textit{Law & C. P.} 238 at 248f (1934).
\textsuperscript{240} Anon., \textit{Metropolitan Life makes housing pay}, 33 \textit{Fortune} No. 4, 133 at 209f (April 1946). In the same article it was said (at 134).
\textsuperscript{241} Metropolitan's housing projects have demonstrated that large-scale housing for families in the moderate-income group can be made a safe enough investment to satisfy the conservative standards of a big financial institution and still produce attractive earnings.
\textsuperscript{243} Id. at 354, 366; cf. Joint Committee on Housing, \textit{Housing Study & Investigation} at 25 (House report No. 1564, 80th Cong. 2d Sess. 1943) (need of government financing).
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compare the high cost of professional maintenance required for large residential rental dwellings with the individual household’s own time in recently-extended leisure hours. On the sociological side one must take account of the strong proclivity for home ownership which many citizens evidence (perhaps an aspect of the landlord-tenant antagonism mentioned above). From a political point of view there is some reason to suppose that property owners are more responsible citizens than tenants.243

To resolve all the problems involved in determining whether individual home ownership is desirable for each citizen loads government with an impossible and undesirable duty Instead, it would seem the part of wisdom to permit citizens to choose for themselves which legal relationship to their shelter they prefer, as we have done in the past. Thus until parcel pooling occupies so great an area that individual house ownership is made difficult, it seems unnecessary to curb neighborhood redevelopment companies or other firms assembling large tracts. And the possibility remains that such a company could sell off individual houses after it had assembled the property and erected the dwellings.

CONCLUSIONS

No claim is made that the foregoing discussion indicates a final solution to the housing problem. As stated at the outset, it merely represents an attempt to frame a rational policy for a free society on the basis of information readily available. Each reader may judge its reasoning for himself. One conclusion, however, is clear: the problem is sufficiently important and in need of attention to warrant further investigation. A team of economists, lawyers, engineers, political scientists and sociologists should be assembled to delve into many aspects of housing.244 And state legislatures should be encouraged to experiment freely with new devices.

243 It is argued, for example, that ownership is unduly onerous. Abrams, The Future of Housing c. 4 (1946). It impairs labor mobility. Pribram, Housing, 7 ENCYP. Soc. Sci. 46 at 501 (1932). It runs counter to a desire for apartment house living. Whitten & Adams, Neighborhoods of Small Homes at 13 (Harvard U. School of City Planning 1931). Other observers have noted a strong desire for individual home ownership on the part of citizens. Caplow, Home ownership and location preferences in a Minneapolis sample, 13 Am. SocioL Rev. 725 at 726 (1948); Twentieth Century Fund, American Housing at 225 (1944). And the cost of ownership as against renting is said to vary from time to time and from one case to another. Id. at 228ff.

244 Lawyers, for example, might attempt to draft legislation subjecting “feather-bedding” to the antitrust laws. Engineers could well give attention to the framing of building code requirements which would safeguard the public without restraining trade. Political scientists could be employed in studying the possibility of delegating governmental powers to neighborhoods within cities. Whether parcel pooling results in satisfactory living arrangements might well claim the attention
It may, however, be convenient to summarize the program indicated by this hasty survey. A temperate use of police power legislation appears desirable. Unless and until parcel pooling becomes effective, retention of zoning will probably be helpful. In the short term, the rent certificate proposal might be tried. In the intermediate term, slum clearance programs (not tied to new housing at the same site) may prove beneficial. Yield insurance is a form of subsidy which might be employed in the same period to the extent found necessary to increase the supply of dwellings.

Perhaps the most important objective of long term policy should be elimination of trade restraints and restrictive legislation which raise the cost of building. Encouragement of standardization is desirable for the same purpose. And neighborhood parcel pooling statutes should be liberalized to the point at which they become effective instruments against contamination and costs.

It is also apparent that no one weapon is sufficiently potent to be used alone in an attack upon the housing problem. Any form of subsidy, for instance, is at least partly wasted if nothing is done to eliminate restrictive practices. And the extremely modest success so far obtained in dealing with the question of more and better shelter strongly suggests the advisability of a concerted use of all appropriate armaments in the arsenal. Certainly there is little immediate danger of over-doing.

It must be admitted that legislation enacted to date is not of a character to raise our hopes unduly. Too often the measures have attempted to ameliorate superficial manifestations of basic problems left untouched. Thus underlying difficulties have often been intensified as well as ignored. As in so many other fields, development of a sound housing program depends on our willingness to forego short term palliatives for long run improvements. Whether democracies can shape such policies may prove the test of their survival.

of sociologists. Even this hasty survey has revealed many other subjects in need of detailed and specialized study.

246 The suggestion that substantial cost reductions would endanger all existing valuations may not be frivolous. But similar arguments could be advanced to block almost any economic betterment.

247 Twentieth Century Fund, American Housing at 290 (1944). Note, for example, that loans are made available without any requirement that local restraints of trade be curbed, e.g. New York, Public Housing Law § 71.