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## Homelessness and the Affordable Housing Shortage: What Is to Be Done?

Eila Savela\*

The issue of proper care for the homeless matters so much. It is, without being dramatic about it, a matter of life and death. Unfed, the homeless starve. Unsheltered, they die of the cold. Funneled into shelters and hotels which are overcrowded and undersupervised, they get robbed, they get raped, they die in accidents. They get beaten to death.<sup>1</sup>

### Introduction

Homelessness,<sup>2</sup> contrary to popular belief, is not a modern phenomenon.<sup>3</sup> Within the past decade, however, homelessness metamorphosed from the cyclical displacement of laborers to the promiscuous displacement of persons whose only common denominator is the lack of shelter. The polarization of our economy through deindustrialization and fundamental changes in the building industry contributed directly to the depletion of low-income housing stock.<sup>4</sup> The federal government's failure to recognize and

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1. National Mental Health Association & Families for the Homeless, *Homeless in America* 12 (Michael Evans ed. 1988).

2. This article defines the homeless as those who lack a residence. The Homeless Assistance Act defines a homeless individual or homeless person as:

- (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and
- (2) an individual who has a primary nighttime residence that is
  - (A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
  - (B) an institution that provides a temporary residence for individuals intended to be institutionalized; or
  - (C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Homeless Assistance Act, 42 U.S.C. § 11302(a) (1990).

3. Poverty and homelessness seem to be part of the human condition. For a succinct synopsis of the history of homelessness, see Kim Hopper, *The Ordeal of Shelter: Continuities and Discontinuities in the Public Response to Homelessness*, 4 Notre Dame J.L. Ethics & Pub. Pol'y 301, 301-14 (1989) (tracing responses to homelessness from the Classical period).

4. United States' industries, especially transnational corporations, are becoming

remedy the affordable housing shortage, in turn, led to a homelessness crisis evocative of the Great Depression.<sup>5</sup> Other factors instigating homelessness—unemployment, decreasing federal assistance, discrimination, and deinstitutionalization of mentally ill patients<sup>6</sup>—exacerbate the housing crisis and follow from changes in our national economy and the federal government's laissez faire policies.<sup>7</sup>

The tension between the private housing industry's interests and the needs of low-income consumers undermines the efficacy of federal housing programs. The private housing industry generally determines the supply, availability, cost, and location of housing.<sup>8</sup> Federal intervention in the housing industry accommodates the economic interests of private industry, rather than the needs of consumers, due to its faith in the free market system.<sup>9</sup>

Private industry creates low-income housing indirectly, according to supply-side economics' "trickle-down" theory, which is used to justify reliance upon the free market. According to this theory, the creation of new housing always benefits the poor. High-income consumers buy new homes, causing a chain reaction of housing transactions. As consumers sell older, less expensive homes, the stock of low-income housing progressively increases. As long as the market acts according to theory, adequate housing

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ing internationalized, that is, are adapting to an international economy. Consequently, industries are simultaneously collapsing and emerging (deindustrialization and reindustrialization). The manufacturing industries of the United States, notably the steel and rubber industries, are disappearing, while technical and garment industries are flourishing. Joe Feagin & Michael Smith, *Cities and the New International Division of Labor: An Overview*, in *The Capitalist City* 3-17 (1987); David C. Perry, *The Politics of Dependency in Deindustrializing America: The Case of Buffalo, New York*, in *The Capitalist City*, *supra*, at 120-24 (see Table 5.1 and Table 5.2); Edward Soja, *Economic Restructuring and Internationalization of the Los Angeles Region*, in *The Capitalist City*, *supra*, at 181-85. The emerging industries create an economically polarized work force, with the blue collar middle class rapidly diminishing in size. Soja, *supra*, at 185. See also Kim Hopper, Ezra Susser & Sarah Conover, *Economies of Makeshift: Deindustrialization and Homelessness in New York City*, in *The Rights of the Homeless: 1988*, at 25-26 (1988). This study analyzed the work force in New York City during the past decade and concluded that a two tier work hierarchy has evolved, due to the loss of manufacturing and public sector jobs and the proliferation of low-wage service jobs. *Id.*

5. Kim Hopper & Jill Hamberg, *The Making of America's Homeless: From Skid Row to New Poor, 1945-1984*, in *Critical Perspectives on Housing* 12 (1986).

6. See *infra* notes 37-60.

7. Chester Hartman, *Housing Policies Under the Reagan Administration*, in *Critical Perspectives on Housing*, *supra* note 5, at 363.

8. Emily Paradise Achtenberg & Peter Marcuse, *The Causes of the Housing Problem*, in *Critical Perspectives on Housing*, *supra* note 5, at 5.

9. *Id.* at 7-8 (government enhances opportunities for private profit and placates dissatisfied social groups).

is provided for everyone.<sup>10</sup>

As a rule, the federal government's regulation of housing is viewed as "unneeded and counterproductive," and "[c]onstruction subsidy programs are inefficient because they substitute governmental regulation for market discipline."<sup>11</sup>

Previously, federal programs addressed supply-side deficiencies, and programs provided funding for low-interest mortgages and public housing. Fundamental shifts in federal housing policy during the 1970s and 1980s towards demand-side deficiencies reversed long-term trends toward providing low-income housing.<sup>12</sup> Basic shelter, much less home ownership, is currently beyond the means of hundreds of thousands of Americans.<sup>13</sup>

A revised federal housing program could successfully ameliorate homelessness.<sup>14</sup> Part I of this paper describes the extent, characteristics, and underlying causes of homelessness in the United States. Part II analyzes the inadequacy of judicial activism, state responses, and current federal policies toward the homeless. Part III discusses solutions and concludes that none of these programs can stand alone. Alternatively, this article suggests that the federal government should revise subsidized public housing programs, thereby conserving existing housing stock and creating desperately needed new housing.

## I. The State of Homelessness

### A. Demographics

Homelessness is ubiquitous; it is found in rural as well as metropolitan areas,<sup>15</sup> and afflicts all low-income groups indiscrimi-

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10. Todd Swanstrom, *No Room at the Inn: Housing Policy and the Homeless*, 35 J. Urb. & Contemp. L. 81, 88-91 (1989).

11. Peter Marcuse, *Housing Policy and the Myth of the Benevolent State*, in *Critical Perspectives on Housing*, *supra* note 5, at 258-59.

12. Swanstrom, *supra* note 10, at 89-98; see also Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing: 1988*, Exhibit 21 and accompanying text (1988) (housing assistance resources have failed to keep pace with growth of low-income renter households); *id.* at Exhibit 16 (home ownership declined from 65.6% in 1980 to 64.0% in 1987).

13. See Joint Center for Housing Studies of Harvard University, *supra* note 12, at apps. 9, 10, 12.

14. This article does not discuss the special needs of single parent families or the mentally disabled. See Patrick Carty, *Preventing Homelessness: Rent Control or Rent Assistance*, 4 Notre Dame J.L. Ethics & Pub. Pol'y 365 (1989) (addresses preventing homelessness for single parent, female-headed households). Rather, the creation of low-income housing is generally addressed.

15. See L.A. Times, Jan. 1, 1989, § 1, at 24, col. 1.

nately. At least 90,000 people sleep without shelter each night,<sup>16</sup> and perhaps as many as three million Americans are homeless.<sup>17</sup> Studies indicate that homelessness is steadily increasing<sup>18</sup> and that episodic homelessness is an "urban survival strategy."<sup>19</sup> These statistics demonstrate the magnitude and urgency of the housing crisis. The housing crisis is not a temporary aberration: it threatens an increasing number of low-income Americans.

In the 1980s, the demographics of homelessness changed dramatically.<sup>20</sup> The modern homeless person, unlike the stereotypical skid row misanthrope, does not choose to live in the street.<sup>21</sup> A disproportionate number of women, minorities, unskilled workers, veterans, and the mentally disabled are homeless.<sup>22</sup> Families with

16. Office of Policy Dev. and Research, Dep't of Hous. and Urban Dev., A Report to the Secretary on the Homeless and Emergency Shelters (Apr. 23, 1984).

17. House Comm. on Banking, Finance & Urban Affairs, H.R. Rep. No. 100-10(1), 100th Cong., 1st Sess. 17-18, reprinted in 1987 U.S. Code Cong. & Admin. News 362, 362-63 (explicitly rejected lower HUD Report estimates of 250,000 to 300,000 American homeless); Mary Hombs & Mitch Snyder, *Homelessness in America: A Forced March to Nowhere*, xvi (1982); Pamela Siebert, *Homeless People: Establishing Rights to Shelter*, 4 *Law & Inequality* 393, 394 (1986) (citing estimate of Community for Creative Non-Violence and the National Coalition for the Homeless). Other studies suggest that the number of homeless hovers at approximately three million. National Coalition for the Homeless, *Homelessness in the United States: Background and Federal Response—A Briefing Paper for Congressional Candidates*, in *The Rights of the Homeless: 1988*, *supra* note 4, at 70 n.1.

18. National Coalition for the Homeless, *Homelessness in the United States: Background and Federal Response—A Briefing Paper for Congressional Candidates*, in *The Rights of the Homeless: 1988*, *supra* note 4, at 70 n.2 (citing Conference of Mayors, *The Continuing Growth of Hunger, Homeless and Poverty in America's Cities: 1987*, at 15 (1987); National Coalition for the Homeless, *Pushed Out: America's Homeless*, Thanksgiving, 1988, at 1 (1987)); see also Amherst H. Wilder Foundation, *Results of the Twin City Survey of Emergency Shelter Residents* 24 (1989).

19. Hopper, Susser & Conover, *supra* note 4, at 193. The demand for emergency shelters increased twenty-one percent on average in 1986 among UNCF member cities. United States Conference of Mayors, *The Continuing Growth of Hunger, Homelessness and Poverty in America's Cities: 1987*, at 21, 41 (1987).

20. Hopper & Hamberg, *supra* note 5, at 17.

21. Skid rows developed during the Great Depression and almost disappeared by the late 1960s, before reversals in federal housing policy and the economy created a new generation of homeless persons. Skid row occupants generally chose to live on the streets and its population was:

almost exclusively . . . men, usually older white men, many of whom had long resided at the margins of polite society and a good proportion of whom suffered from chronic ailments, especially alcoholism . . . With rare exception . . . the studies of this period found not community but exile—a listless, aimless world, void of ambition or bonds, populated by casualties of poverty, pathology, old age, character deficiencies, or alcohol dependency.

Hopper & Hamberg, *supra* note 5, at 16-17. See generally Carl Cohen & Jay Sokolovsky, *Old Men of the Bowery: Strategies for Survival Among the Homeless* (1989).

22. National Coalition for the Homeless, *supra* note 17, at 71-72; Richard Rop-

children currently compose from thirty-three to forty percent of those without shelter.<sup>23</sup>

Despite these disturbing trends, the federal government steadfastly adheres to the traditional view that "the causes of homelessness are situated in personal pathologies,"<sup>24</sup> such as alcoholism, drug addiction, and mental disability, although evidence suggests such a view is inaccurate.<sup>25</sup> Nevertheless, the conservative administration evades its responsibility to assist the homeless by miscasting the homeless as the "undeserving poor."<sup>26</sup> In the United States, the poor are stigmatized and blamed for their poverty.<sup>27</sup> Blaming the victims obviates the need to take action against private interests, and ensures the perpetuation of a cheap labor pool.<sup>28</sup> Only during periods of extreme economic distress and political activism by the disadvantaged does the government respond to the needs of the poor by recognizing that the poor need assistance.<sup>29</sup> The conditions are now ripe for federal recognition of its obligation to provide for the homeless as victims of a rapidly changing economy.

### B. Are Shelters Enough?

The crisis facing the displaced poor threatens to become a permanent feature of American society.<sup>30</sup> Length of residence at welfare hotels in New York City averages over one year.<sup>31</sup> A significant proportion (37%) of shelter users have been homeless for over one year.<sup>32</sup> The tight housing market has transformed emergency shelters into permanent housing by default. Emergency shelters are not designed to be homes. Frequently, abandoned

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ers, *The Invisible Homeless: A New Urban Ecology* 109 (1988); Amherst H. Wilder Foundation, *supra* note 18, at 8; Metropolitan Council, *Homelessness in the Twin Cities Metropolitan Area* 8 (1986).

23. National Coalition for the Homeless, *supra* note 17, at 71-72.

24. Ropers, *supra* note 34, at 115.

25. National Coalition for the Homeless, *supra* note 17, at 71-72.

26. See Ropers, *supra* note 22, at 115.

27. The perverse practice of stigmatizing the poor for their poverty is particularly virulent in the United States, due to the "American belief in economic individualism." Frances Piven & Richard Cloward, *Regulating the Poor: The Functions of Public Welfare* 46 (1971). Poverty is viewed as a product of laziness rather than the consequence of insurmountable obstacles to self-help. *Id.*

28. *Id.* at 3, 123-77.

29. *Id.* at 7.

30. See Ropers, *supra* note 22, at 116.

31. Victor Bach & Rennee Steinhagen, *Alternatives to the Welfare Hotel: Using Emergency Assistance to Provide Decent Transitional Shelter for Homeless Families* 13 (1987).

32. Amherst H. Wilder Foundation, *supra* note 18, at 10; Metropolitan Council, *supra* note 22, at 9.

buildings and hotel rooms are converted into "temporary" shelter.<sup>33</sup>

Shelters provide a makeshift solution at best. The homeless turn to shelters as a last resort, because they are denigrated and abused by an impersonal shelter bureaucracy. Typically, a homeless person risks "brutalization by armed guards, being put back on the streets at 5:30 A.M. in an unfamiliar area . . . theft of personal property; [and] an abundance of lice and bedbugs."<sup>34</sup> Alienation and feelings of powerlessness are exacerbated by the misconceptions about the homeless and callousness of the "housed":

As we sat on the grate, day after day, thousands of people walked or drove by. They looked through or beyond us, when we caught them furtively glancing in our direction. It was a frightening and amazing experience. What was more incredible was the discovery of just how quickly one's sense of substance and self-worth melts away under these conditions.<sup>35</sup>

Living on the streets and in emergency shelters puts the homeless under constant psychological stress and physical danger.

Assistance programs for the homeless, on local, state, and national levels, continue to treat the symptoms of homelessness, rather than its causes. Unless the causes of homelessness are treated, the temporarily homeless will become a permanent powerless underclass.<sup>36</sup>

### C. Causes

Four interrelated factors underlie the homelessness crisis: the mass release of mentally disabled patients from hospitals; shrinking public assistance programs; unemployment; and the nation's severe shortage of low-cost housing.<sup>37</sup> A fifth element, discrimination, limits the housing opportunities for minorities and

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33. Ellen Baxter & Kim Hopper, *Private Lives/Public Spaces: Homeless Adults on the Streets of New York City* 50-54 (1981).

34. Hombs & Snyder, *supra* note 17, at 57.

35. *Id.* at 115; see Baxter & Hopper, *supra* note 33, at 74-100 (an accurate description of the daily struggles faced by the homeless). Homeless persons internalize their dilemma, and "feel that they have somehow failed, because our system stresses independence and individual responsibility over our lives." Joe Neterval, *Viewing the Homeless in the "Right Light": MJF Attorney Member Experiences "Homelessness,"* Pro Bono Rep., Sept./Oct., 1980, at 3, col. 2.

36. Cohen & Sokolovsky, *supra* note 21, at 220-21.

37. James K. Langdon, Jr. & Mark A. Kass, *Homelessness in America: Looking for the Right to Shelter*, 19 Colum. J.L. & Soc. Probs. 305, 311 (1985); see Hopper, Susser & Conover, *supra* note 4, at 14-15; see also Koch, *The Federal Role in Aiding the Homeless*, in *The Homeless in Contemporary Society* 220-21 (1987); Ropers, *supra* note 22, at 93-94; Cohen & Sokolovsky, *supra* note 21, at 57 (cites three factors: deinstitutionalization, economic decline, and decline of low-income housing).

women with children.<sup>38</sup> Although the first three factors increase the likelihood that the mentally disabled, the unemployed, and welfare recipients will become homeless, none of these factors alone caused wide-spread homelessness.<sup>39</sup> Rather, the housing shortage precipitated homelessness among the mentally disabled, impoverished, and unemployed.<sup>40</sup>

The extent that deinstitutionalization of mentally disabled patients contributed to homelessness is, at times, exaggerated.<sup>41</sup> While the mentally disabled are the most visible segment of the homeless population,<sup>42</sup> homelessness amongst the mentally disabled cannot be attributed to their deinstitutionalization.

Chronic homelessness among the mentally disabled developed years after deinstitutionalization.<sup>43</sup> The mass release of mental patients occurred after the introduction of psychotropic drugs in the early 1960s. Reformers planned to place patients in private homes, but those facilities never materialized.<sup>44</sup> Thus, "[d]einstitutionalization in itself is not responsible for the presence of chronically mentally disabled individuals on the streets. Rather, it is the result of the lack of resources [such as housing] dedicated

38. Richard Appelbaum & John Gilderbloom, *Supply-Side Economics and Rents: Are Rental Markets Truly Competitive?*, in *Critical Perspectives on Housing*, *supra* note 5, at 169.

39. See Swanstrom, *supra* note 10, at 84-85. "The poverty rate was higher in previous periods, such as the 1950s, yet homelessness was never the acute problem that it is today." *Id.* at 84; see also Metropolitan Council, *supra* note 22, at 6; Cohen & Sokolovsky, *supra* note 21, at 60-61.

40. The federal government seized upon deinstitutionalization because it reinforces their characterization of the homeless as the "undeserving poor." "One way to salvage the personal pathology explanation is to argue that the number of individuals with personal pathologies did not suddenly increase, but the number of them on the street did. In other words, the deinstitutionalization of mental patients caused homelessness." Swanstrom, *supra* note 10, at 83.

41. Ropers, *supra* note 22, at 112-14.

While it is undoubtedly true that most homeless persons suffer from the psychological distress of being homeless, empirical studies have demonstrated that only a minority of the homeless are deinstitutionalized chronic mental patients or are currently suffering from a chronic mental illness that causes them to be homeless . . .

. . . Unfortunately, in the view of many health professionals and the lay public, the term "homeless" has too often come to mean mentally ill.

*Id.* at 113-14 (citations omitted).

42. Neterval, *supra* note 35. Approximately thirty percent of the homeless suffer from mental disability. National Coalition for the Homeless, *supra* note 18, at 72.

43. Hopper & Hamberg, *supra* note 5, at 15.

44. Sally S. Spector, *Finding a Federal Forum: Using the Stewart B. McKinney Homeless Assistance Act to Circumvent Federal Abstention Doctrines*, 6 *Law & Inequality* 273, 278-79 (1988). Originally, reformers envisioned that private care homes would provide housing and continued treatment for the patients. Funding for the homes, however, never materialized.



to making community placement a workable reality."<sup>45</sup> The lack of low-income housing—particularly single-room occupancy hotels (SROs)—forced released patients onto the streets.<sup>46</sup>

Like deinstitutionalization, decreases in federal income assistance are overly emphasized as a factor causing homelessness. Shrinking federal assistance programs undermine the ability of low-income individuals to afford housing, but cannot be credited as the sole reason marginal groups find themselves on the streets.<sup>47</sup> In the 1980s, the government relied upon privately sponsored relief to provide housing for the indigent.<sup>48</sup> Catastrophic cutbacks in federal assistance crippled federal housing programs.<sup>49</sup> Only one-fourth of eligible low-income households received housing assistance in 1987.<sup>50</sup> Without sufficient low-income housing stock, an income-based assistance program is futile.<sup>51</sup>

Underemployment among the homeless could also contribute to the development of a permanent homeless underclass without the creation of a sufficient stock of low-income housing. Deindustrialization, characterized by the loss of manufacturing and growth of service jobs, contributed significantly to the rise of underemployment as well as unemployment in the United States during the 1970s and 1980s.<sup>52</sup>

Unemployment is not necessarily a characteristic of the homeless anymore. The rise in employed persons living in the streets is a sobering development in the homelessness crisis. The "proliferation of low-wage service jobs" decreases the ability of the poor working class to afford any type of housing.<sup>53</sup> Significantly, twenty to thirty percent of the homeless are employed but do not

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45. Metropolitan Council, *supra* note 22, at 6.

46. Hopper & Hamberg, *supra* note 5, at 17.

47. Swannstrom, *supra* note 10, at 84 (cites falling AFDC benefits and termination of disability payments); United States Conference of Mayors, *supra* note 30, at 26.

48. Koch, *supra* note 37, at 222, 225.

49. Spector, *supra* note 44, at 278-79. "The House Committee on Banking, Finance and Urban Affairs has identified the decrease in federal, state and local social service funding as one of the major causes of homelessness in the United States." *Id.*, at 278 n.24; see Ropers, *supra* note 22, at 116.

50. Joint Center for Housing Studies of Harvard University, *supra* note 12, at Exhibit 21. "[O]nly 2.1 million (or twenty-eight percent) of the nation's 7.5 million poverty-level renter households lived in public housing or other subsidized rental housing last year." *Id.*

51. National Low Income Housing Preservation Commission, Preventing the Disappearance of Low Income Housing 13-15 (1988).

52. See *supra* note 4; Ropers, *supra* note 22, at 100-101. "The homeless all have different stories, but many have a common theme. They either do not have adequate life skills or have not been able to switch from a manufacturing to a service job, making them unemployable." Neterval, *supra* note 35, at 3, col. 3.

53. Joint Center for Housing Studies of Harvard University, *supra* note 12, at

earn enough to afford permanent shelter.<sup>54</sup>

While deinstitutionalization, shrinking federal assistance, and unemployment helped to create a vulnerable population, the most significant cause of homelessness is the lack of housing. The dimensions of the shortage are daunting. In 1980, for example, "[there were] twice as many households with incomes below \$5,000 as there [were] affordable units in the housing inventory."<sup>55</sup> Historically, federal intervention in the private housing industry and implementation of public housing programs evolved from private industry's inability (or unwillingness) to provide adequate housing to low-income persons.<sup>56</sup> Despite mixed policy motives, poor planning and implementation, and insufficient subsidies for public housing, the government implemented an array of successful federally assisted housing programs.<sup>57</sup> These programs provided significant housing for low-income persons from the 1930s to the early 1970s.<sup>58</sup>

The Nixon administration's moratorium on public housing in the early 1970s signaled the beginning of a private sector oriented housing policy.<sup>59</sup> In the late 1970s and 1980s, chronic shortages of low-income housing displaced deinstitutionalized mental patients, unemployed and minimum wage workers, and even those receiving federal housing assistance.<sup>60</sup> Federal response to the depletion

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Exhibits 8, 10, 11 and accompanying text; see also Cohen & Sokolovsky, *supra* note 32, at 60.

54. National Coalition for the Homeless, *supra* note 18, at 72.

55. Cushing N. Dolbeare, Federal Housing Assistance: Who Needs It? Who Gets It? 17 (1985).

56. J. Paul Mitchell, *The Historical Context for Housing Policy*, in Federal Housing Policy & Programs: Past and Present 6-8 (1985). Industry can build low-income housing when it is in its own interest to do so. Company towns, built in the 19th and early 20th centuries by copper, coal, and lumber companies, show that entire communities can be privately funded. James B. Allen, *The Company Town in the American West* 79-93 (1966). For a description of private industry's role in providing low-income housing, see generally Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (1985).

57. National Low Income Housing Preservation Commission, *supra* note 51, at 15-20. Federal housing units included 1,400,000 public housing units, 1,950,000 privately owned and subsidized units, and 813,000 § 8 Existing/Voucher units. *Id.* at 17, Exhibits 1-3; see also Rachel Bratt, *Public Housing: The Controversy and Contribution*, in Critical Perspectives on Housing, *supra* note 5, at 336-42 (giving an historical overview of housing).

58. Bratt, *supra* note 57, at 354. "There is no question that public housing has made a considerable contribution to addressing the low-income housing problem in this country. Millions of low-income families are provided with decent affordable units . . . ." *Id.*

59. Eugene J. Meehan, *The Evolution of Public Housing Policy*, in Federal Housing Policy and Programs: Past and Present, *supra* note 56, at 305-6.

60. Cf. Bach & Steinhagen, *supra* note 31, at 42 n.27 (fifty-five percent of New York City's low-income individuals unable to locate suitable apartments under § 8

of affordable housing stock erroneously focused on income deficiencies, and arose from a devout faith in the powers of the private market.

Housing—a necessity of life—is treated not as a social good but as a source of private profit, as a commodity . . . . Government policies affecting housing . . . systematically operate to reinforce the profitability of the housing sector and of the business community as a whole.<sup>61</sup>

The private market theory animating this conservative public policy fails to take into account the crucial role that subsidized housing plays in sheltering low-income individuals. Thus, low-income housing is viewed as a private concern, leaving the poor at the mercy of private interests.<sup>62</sup>

The private housing industry virtually stopped building low-income housing in the 1980s,<sup>63</sup> and the private owners of federally subsidized low-income stock now threaten to convert their properties to market-rent use.<sup>64</sup> The private sector's underwhelming performance is not unexpected. The types of programs the private housing industry is willing to support do not best serve the needs of low-income persons,<sup>65</sup> but cater to the interests of "real estate developers, builders, materials producers, mortgage lenders and

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Existing Housing Program); see also Amherst H. Wilder Foundation, *supra* note 18, at 5. The Committee on Government Operations concluded that "the scarcity of low-income housing appears to be the main cause of homelessness. Poor people simply cannot afford . . . [the] majority of available housing in the United States." U.S. House, Committee on Government Relations 3 (1985).

61. Achtenberg & Marcuse, *supra* note 16, at 4.

62. Ropers, *supra* note 22, at 95.

63. Swanstrom, *supra* note 10, at 91-92. The construction industry did not collapse. Instead, builders and developers concentrated on profitable, high-income housing. Robert C. Lesser, *The Future of Housing Depends on Adaptable Builders*, in Housing Supply & Affordability 68 (1983). In 1982, "over 300,000 new single-family homes, 80,000 new condos, and 90,000 converted condos," were built. The U.S. Department of Housing and Urban Development (HUD) lower-income housing programs, which provide incentives to private industry to create low-income housing, resulted in only 119,000 housing starts in 1983. Hartman, *supra* note 7, at 364. The "average" home is far beyond the means of the poor. In 1987, the average price for a house was \$66,886 in the United States, and the average income of homeowners was \$31,400, compared to \$15,200 for renters. Joint Center for Housing Studies of Harvard University, *supra* note 12, at app. table 1; see also Nina Gruen, Claude Gruen & Wallace F. Smith, *Living Space: Households in the 1980s*, in Housing Supply & Affordability, *supra*, at 61, 65 (Table 2).

64. See National Low Income Housing Preservation Commission, *supra* note 51, at 1-3. These privately owned buildings are subsidized by HUD and insured by the Federal Housing Administration (FHA) under the § 221(d)(3) Below Market Interest Rate Program (BMIR), § 221(d)(3) Market Rate Program with rental assistance, and the § 236 Program. *Id.* at 1. See *infra* notes 154, 196, 204, 222 and accompanying text.

65. Rachel Bratt, *Public Housing: The Controversy and Contribution*, in Critical Perspectives on Housing, *supra* note 5, at 342.

other providers of housing credit, investors, speculators, landlords, and homeowners."<sup>66</sup> Simply stated, low-income housing is not profitable enough to interest the private sector.<sup>67</sup> Large nationally oriented builders dominate the housing industry.<sup>68</sup> Detached from local communities' housing needs, these large housing companies construct housing that is profitable,<sup>69</sup> rather than responsive to social needs.

Conservatives argue that, despite the housing industry's disinterest in low-income housing construction, adequate affordable housing should be provided as high-income persons move into newly constructed housing. Unfortunately, theory is not reality. Market imperfections, caused in part by the deregulation and collapse of the savings and loan (S&L) industry, and by a dual cycle of gentrification and abandonment in deteriorated inner-city

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66. Achtenberg & Marcuse, *supra* note 17, at 5. Ironically, the private housing industry simultaneously opposes federal housing programs, such as public housing:

Throughout its half-century of existence public housing has failed to capture the public's fancy. On the national level it has always encountered fierce opposition from well-organized lobbying groups. Organizations such as the National Association of Real Estate Boards and the United States Savings League have consistently attacked public housing as a socialistic program which threatens private enterprise with unfair competition from the public sector.

J. Paul Mitchell, *Historical Overview of Direct Federal Housing Assistance*, in *Federal Housing Policy & Programs: Past and Present*, *supra* note 56, at 196; see, e.g., U.S. House of Representatives, Committee on Banking and Currency, Excerpts from Legislative Hearings for the Housing Act of 1934, reprinted in *Federal Housing Policy & Programs: Past and Present*, *supra* note 84, at 66-67 (statement of National Association of Real Estate Boards' President, Hugh Potter).

67. Siebert, *supra* note 17, at 395. "[U]nsubsidized new construction or substantial rehabilitation of low-income housing is not economically feasible." Michel Carliner, *Homelessness: A Housing Problem?*, in *The Homeless in Contemporary Society*, *supra* note 37, at 121.

68. The housing industry underwent a metamorphosis following World War II. Large residential builders replaced small, local builders and developers. Barry Checkoway, *Large Builders, Federal Housing Programs, and Postwar Suburbanization*, in *Critical Perspectives on Housing*, *supra* note 5, at 121-23. In 1938, large builders built five percent of new housing units, but by 1959, they accounted for sixty-four percent of all new housing units started. *Id.* at 123. The housing industry is currently dominated by:

- (1) major industrials, conglomerates, and multi product companies whose housing interests are only a small portion of their overall enterprise;
- (2) vertically integrated companies that participate in the shelter trade from forest to financing;
- (3) large merchant builders (also called operative builders); and
- (4) mobile-home manufacturers . . . .

Tom Schlesinger & Mark Erlich, *Housing: The Industry Capitalism Didn't Forget*, in *Critical Perspectives on Housing*, *supra* note 5, at 145-46.

69. See Schlesinger & Erlich, *supra* note 68, at 152-53 (large builders charge one and one half times more than small builders for development); see, e.g., Howard Rudnitsky, *Squeezing the Builders*, *Forbes*, Apr. 30, 1990, at 152, col. 1.

neighborhoods, cut off the flow of low-income housing during the 1980s.<sup>70</sup>

The thrift (S&L) industry sponsored a majority of the Federal Housing Administration (FHA)<sup>71</sup> and Veterans Administration (VA)<sup>72</sup> home mortgages from the 1950s through the early 1980s.<sup>73</sup> The S&L industry's structure, however, was flawed because "it was a business in which one borrowed at short-term rates through deposits, but in which loans, at least those made before 1980, were long-term, thirty-year fixed-rate mortgages that did not adjust as inflation went up."<sup>74</sup> Inflation in the 1960s led to the commercialization of thrifts which, in turn, left thrifts vulnerable to corporate takeovers.<sup>75</sup> A second period of inflation in the late 1970s and early 1980s gave birth to deregulation of the S&L industry and its catastrophic consequences.<sup>76</sup>

Thrift restructuring in the 1960s and deregulation in 1982 spurred thrifts to expand outside of the mortgage industry, leading

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70. See *infra* notes 71-90 and accompanying text.

71. National Housing Act of 1934, Pub. L. No. 73-0479, 48 Stat. 1246 (codified as amended at 12 U.S.C. § 1701 (1982 & Supp. IV 1986)). "FHA mortgage insurance established as a standard the long-term, level-payment, low-interest mortgage which, in turn, made ownership accessible to most Americans." Lawrence Simons, *Overview: Housing Options for the 1990s, Toward a New National Housing Policy*, 6 Yale L. & Pol'y Rev. 259, 262 (1988). HUD took over administration of the FHA mortgage program upon its creation. Department of Housing & Urban Development Act of 1965, 42 U.S.C. § 3535 (1982 & Supp. III 1985).

72. Serviceman's Readjustment Act of 1944, Pub. L. No. 78-346, ch. 268, 58 stat. 284.

73. S&Ls held 24.14% of total residential mortgage debt outstanding in 1950; its market share subsequently increased. In 1981, S&Ls held 40.53% of the residential mortgage debt market. The President's Commission on Housing, *The Changing System of Housing Finance*, in *Housing: Supply & Affordability*, *supra* note 63, at 125 (Table 1). See *id.* at 123-26 for an excellent overview of the mortgage industry. The demand for mortgage credit far exceeded supply even before the S&L industry collapsed. Dwight Jaffee & Kenneth Rosen, *The Demand for Housing and Mortgage Credit: The Mortgage Credit Gap Problem*, in *Housing: Supply and Affordability*, *supra* at 133 (Table 5).

74. William Black, *Current State of the Savings and Loan Industry*, 58 *Antitrust L.J.* 497 (1989).

75. Ann Meyerson, *Housing Abandonment: The Role of Institutional Mortgage Lenders*, in *Critical Perspectives on Housing*, *supra* note 108, at 194-95 [hereinafter *Housing Abandonment*]; see also Ann Meyerson, *Deregulation and the Restructuring of the Housing Finance System*, in *Critical Perspectives on Housing*, *supra* at 68, 97 n.21 (Citicorp invaded mortgage industry to recoup losses on consumer loans).

76. Joe Klein, *It's a Wonderful Life: Behind the S&L Debacle*, N.Y. Mag., Apr. 23, 1990, at 19, col. 1 (General Accounting Office estimated S&L scandal may cost \$500 billion). "[D]eregulation has ended the sheltered position of housing finance." Swanstrom, *supra* note 10, at 89 (citation omitted). Inflation pushed interest rates to astronomical heights in the early 1980s—deregulation freed S&Ls to adjust their investments. See generally Black, *supra* note 5, at 497-504. Joint Center for Housing Studies of Harvard University, *supra* note 12, at app. table 1.

to disinvestment in cities.<sup>77</sup> The S&L crisis debilitates low and moderate income investors by taking away financing for rehabilitation and creation of housing. Withdrawal of financial support from institutions caused investors to abandon their property,<sup>78</sup> and low and moderate income investors lost their primary source of building capital in the S&L crisis.<sup>79</sup>

Gentrification,<sup>80</sup> insidiously destroys affordable housing stock in the guise of revitalizing urban centers. Gentrification encourages investors to convert abandoned housing into luxury apartments and condos, and to abandon low-income housing which is no longer profitable. Although gentrification arises from a strong demand for housing, abandonment<sup>81</sup> is both a cause and effect of the gentrified inner-city.<sup>82</sup> "Abandonment drives some higher-income households out of the city, while it drives others to gentrifying areas close to downtown. Abandonment also drives lower-income households to adjacent areas, where pressures on housing and rents are increased."<sup>83</sup> Abandonment, in turn, displaces low-income households and puts additional stress upon neighboring

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77. *Housing Abandonment*, *supra* note 75, at 190; *see also* Ropers, *supra* note 22, at 94-95.

78. *Housing Abandonment*, *supra* note 75, at 193. Profit motivates market activity and "the decision on the part of institutional lenders not to grant mortgages in an area or to force more stringent and higher-cost terms when loans come due causes owners to reevaluate their holdings radically." *Id.* at 192.

79. Meyerson, *supra* note 75, at 74 ("housing will permanently suffer the loss of a cheap pool of money for mortgages"). The Federal Financial Institutions Reform, Recovery & Enforcement Act of 1989 (FFIRREA) places restrictions upon the amount of loans a thrift can offer (fifteen percent of thrift's capital), further limiting funding for builders. Rudnitsky, *supra* note 69.

80. Gentrification occurs:

[w]hen new residents—who disproportionately are young, white, professional, technical, and managerial workers with higher education and income levels—replace older residents—who disproportionately are low-income, working-class, and poor, minority and ethnic group members, and elderly—from older and previously deteriorated inner-city housing in a spatially concentrated manner, that is, to a degree differing substantially from the general level of change in the community or region as a whole.

Peter Marcuse, *Gentrification, Abandonment, and Displacement: Connections, Causes, and Policy Responses in New York City*, 28 J. Urb. & Contemp. L. 195, 198-99 (1985).

81. This article adopts the following definition of abandonment:

Abandonment of a unit occurs when all those having a private profit-oriented economic interest in a unit lose any incentive for continued ownership beyond the immediate future, and are willing to surrender title to it without compensation, because of the absence of effective demand for its continued use or reuse.

*Id.* at 199-200.

82. *See id.* at 208-22 (study of effects of gentrification and abandonment in New York City in 1981).

83. *Id.* at 196.

rental markets.<sup>84</sup>

Gentrification appeared to resolve the dilemma of urban blight in its nascent stages because it was associated with stimulating the economy and improving the value of property.<sup>85</sup> Uneasiness over displaced blue-collar residents was brushed aside by assurances that displacement "did not appear to cause significant hardship among those forced to move."<sup>86</sup>

Gentrification also causes abandonment because profits from the conversion of low-income rental property to condominiums and luxury apartments encourage the abandonment of low-income housing by developers and landlords.<sup>87</sup> Consequently, low-income housing stocks dwindle because affordable units are not profitable to replace.<sup>88</sup>

Gentrifying inner-city areas not only displaces the poor, it also polarizes individuals by race and income.<sup>89</sup> "A vicious circle is created in which the poor are continuously under pressure of displacement and the well-to-do continuously seek to wall themselves in within [sic] gentrified neighborhoods."<sup>90</sup>

The profit-oriented private building industry's vulnerability to economic turns, as evidenced by the collapse of the S&L industry and by the gentrification of poor neighborhoods, contributes directly to the depletion of low-income housing; to displacement; and to homelessness. The experience of the 1980s shows that the solution to the homeless dilemma cannot be expected to come from the private sector.

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84. The term "displacement" includes a multitude of circumstances, such as direct off-site displacement, exclusionary displacement, chain displacement, blocked displacement, and anticipatory displacement. Peter Marcuse & R. Rasmussen, *Off-Site Displacement: How the Changing Economic Tide of a Neighborhood Can Drown Out the Poor*, 22 Clearinghouse Rev. 1352, 1356-57 (Apr. 1989). An inclusive definition of displacement is adopted in this article:

Displacement occurs when, as a result of a given action, the continued or new occupancy of a unit is made, or is reasonably expected to become, impossible, hazardous, unaffordable, or socially untenable, for a household that, but for that action, would occupy that unit.

*Id.* at 1357.

85. David Listokin, *Living Cities* 67 (1985).

86. *Id.* at 71.

87. Siebert, *supra* note 17, at 395. Inclusionary zoning ordinances would require creation of replacement housing by private developers, but most local governments have not adopted them. George Sternlieb & David Listokin, *A Review of National Housing Policy*, in *Housing America's Poor* 36-38 (Peter Salins ed. 1987).

88. Siebert, *supra* note 17, at 395. The desirability of single room occupancies (SROs) as permanent housing for low-income persons is questionable. See Ropers, *supra* note 22, at 187.

89. Peter Marcuse, *Abandonment, Gentrification, and Displacement: The Linkages in New York City*, in *Gentrification of the City* 169 (1986).

90. *Id.* at 154.

## II. Ineffective Responses

Moribund federal housing policies prompted judicial and state/local governmental efforts to alleviate homelessness, but structural and fiscal limitations constrain their effectiveness.<sup>91</sup> The courts provide minimal relief to homeless persons, rejecting both constitutional and statutory bases for the right to shelter.<sup>92</sup> Moreover, courts are unwilling to impose expensive shelter systems upon state governments.<sup>93</sup> State efforts vary dramatically according to political ideology, but even comprehensive state programs cannot provide sufficient emergency assistance, much less permanent low-income housing.<sup>94</sup>

### A. Judicial

According to the courts, there is no right to shelter. Claims based upon the United States Constitution have been unsuccessful in securing a right to housing for the poor. The Supreme Court refuses to recognize poverty as a suspect classification or to identify housing as an entitlement.<sup>95</sup>

In *Dandridge v. Williams*, the Supreme Court held that a Maryland regulation, imposing a \$250 per month ceiling on an AFDC grant regardless of actual need and family size, did not violate the equal protection clause.<sup>96</sup> The Court determined that socio-economic interests do not fall within the scope of protection created by the equal protection clause. As a result, the Court applied the rational basis standard to the legislation.<sup>97</sup>

In *William v. Barry*, the District Court for the Federal Dis-

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91. See *infra* notes 95-127 and accompanying text.

92. See *infra* notes 95-107 and accompanying text.

93. Langdon & Kass, *supra* note 37, at 346.

94. See *infra* notes 120-127 and accompanying text.

95. *Dandridge v. Williams*, 397 U.S. 471 (1970); *Lindsey v. Normet*, 341 F. Supp. 638 (D.Or. 1970), *aff'd in part, rev'd in part*, 405 U.S. 56 (1972). Justice White, in his opinion for *Lindsey* states:

We do not denigrate the importance of decent, safe, and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality . . . . Absent constitutional mandate, the assurance of adequate housing . . . [is a] legislative, not [a] judicial function.

405 U.S. at 74.

96. 397 U.S. at 486. U.S. Const. amend. XIV, § 1.

97. In the area of economics and social welfare, a state does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality."

*Id.* at 485 (citing *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911)).



trict of Columbia held that a state could close its homeless shelters because the homeless do not have a property interest in shelter.<sup>98</sup> Shelter, as it is currently construed by the courts, is a gift and not an entitlement. Consequently, courts uphold state actions absent specific statutory or constitutional provisions.<sup>99</sup> Even when judicial relief is granted, the inherent limitations of the judicial system detract from its ability to assist the homeless. Limitations such as "the shortage of legal service, the barrier of justiciability, the time required to litigate an issue, and the difficulties faced in implementing and enforcing a remedy,"<sup>100</sup> contribute to judicial ineffectiveness.

Although most states enacted "general assistance" statutes, courts are reluctant to interpret such statutes liberally to create a duty to provide shelter.<sup>101</sup> Three state courts (New York, West Virginia, and New Jersey), however, found a duty to provide adequate shelter based on mental health and public assistance statutes.<sup>102</sup> In *Maticka v. City of Atlantic City*, the Superior Court of New Jersey held that "the prevention of homelessness is a necessary governmental function, at least when all private resources have proved unavailing,"<sup>103</sup> and directed the state to revise its AFDC administrative procedures to comply with due process requirements.<sup>104</sup> The West Virginia Supreme Court in *Hodge v. Ginsberg* construed the term "incapacitated adult" contained in the Department of Welfare's enabling act to include indigent persons,<sup>105</sup> thereby entitling homeless persons to state relief. Similarly, the Massachusetts Supreme Court established a right to shelter based upon state and federal law and policy.<sup>106</sup> Although the recognition of a right to shelter in these states is encouraging,

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98. No. CV-80-1104 (D.C. June 8, 1982). See Siebert, *supra* note 17, at 405.

99. *Robbins v. Reagan*, 616 F. Supp. 1259 (D.D.C. 1985) *aff'd in part*, 780 F.2d 37 (D.C.Cir. 1985); *Caton v. Barry*, 500 F. Supp. 45 (D.D.C. 1980); see Siebert, *supra* note 17, at 404-5.

100. Langdon & Kass, *supra* note 37, at 345.

101. *Id.* at 325-32.

102. *Callahan v. Carey*, No. 42582-79 (N.Y. Sup. Ct. filed Oct. 2, 1979); *Eldredge v. Koch*, 118 Misc.2d 163, 459 N.Y.S.2d 960 (Sup. Ct.), *rev'd on other grounds*, 98 A.D.2d 675, 469 N.Y.S.2d 744 (N.Y. App. Div. 1983); *Hodge v. Ginsberg*, 303 S.E.2d 245 (W. Va. 1983); *Maticka v. City of Atlantic City*, 216 N.J. Super. 434, 524 A.2d 416 (1987).

103. 216 N.J. Super. 434, 524 A.2d at 425.

104. *Id.* at 428.

105. 303 S.E.2d at 250. "[T]he term 'incapacitated adult' contained in W. Va. Code § 9-6-1 was intended by the Legislature to encompass indigent persons . . . who, by reason of the recurring misfortunes of life, are unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health." *Id.*

106. *Mass. Coalition for the Homeless v. Sec. of Human Serv.*, 40 Mass. 806, 511 N.E.2d 603 (1987).

other states have not followed suit.<sup>107</sup>

Explicit constitutional provisions would give courts authority to find a right to shelter, but only six state constitutions have language requiring the needs of the poor to be met.<sup>108</sup> A state's role in providing shelter varies dramatically as a result of these specific constitutional provisions.<sup>109</sup>

### B. State Programs

State responses to the homeless vary. A few states deny that homelessness is a problem, while other states are openly hostile to the homeless.<sup>110</sup> A number of states are responding with extensive programs that attempt to provide both emergency relief and long-term shelter.<sup>111</sup> Few states have comprehensive housing pro-

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107. Langdon & Kass, *supra* note 37, at 327. For excellent overviews of the triumphs and limits of judicial activism in housing the homeless, see Robert Coates, *Legal Rights of Homeless Americans*, 24 U.S.F. L. Rev. 297 (1990); Hopper, *supra* note 3.

108. Langdon & Kass, *supra* note 37, at 333-34. Mont. Const. art. 12, § 3(3); Tex. Const. art. XI, § 2; Ala. Const. art. IV, § 88; Okla. Const. art. 17, § 3; Kan. Const. art. 7, § 4; N.Y. Const. art. XVII, § 1 (New York legislation proposed amendment to Constitution which will specifically provide homeless with right to shelter, N.Y. Const. art. XVIII, § 1). Other state constitutions that could provide support for statutory relief programs are: Ind. Const. art. 9, § 3; Mich. Const. art. 4, § 51; Miss. Const. art. 14, § 262, art. 4, § 86; Mo. Const. art. 4, § 37; N.C. Const. art. XI, § 4; S.C. Const. art. XII, § 1; Colo. Const. art. XXIV, § 3; Ga. Const. art. IX, § 4, para. 2; Haw. Const. art. IX, § 3; Idaho Const. art. X, § 1; Nev. Const. art. 13, § 1(1).

109. See, e.g., Governor Mario M. Cuomo, *The State Role*, in *The Homeless in Contemporary Society*, *supra* note 37, at 295-313; see also Marsha Ritzdorf & Sumner Sharpe, *Portland, Oregon: A Comprehensive Approach*, in *The Homeless in Contemporary Society*, *supra* note 37, at 186.

110. Arizona, Florida, and Michigan enacted legislation hostile to the homeless. Langdon & Kass, *supra* note 37, at 322 n.91. The Arizona and Florida legislatures, however, recently passed legislation to assist the homeless. H.B. 2177, 39th Leg. 2d Sess., 1990 Ariz. ch. 315; Fla. Stat. § 288.1166 (1989).

111. New Jersey, for example, enacted the New Jersey Prevention of Homelessness Act in addition to programs for emergency shelter. The program aids families on the brink of eviction; the law provides:

(e) To provide rental assistance grants to persons of low or moderate income to enable them to pay the fair market value for housing units.

(f) To provide loans and grants of temporary rental or other temporary housing assistance to persons without housing or in imminent danger of losing housing as a result of having insufficient income from other sources to allow payment of the rental or other housing costs.

N.J. Stat. Ann. § 52:27C-24 (West 1984).

New York, California, and Massachusetts also have many faceted state programs. Mass. Gen. L. Ch. 450 (1987); Cal. Gov't Code § 15299 (West 1987); Cal. Gov't Code § 15290 (1990); Cal. Gov't Code § 53150 (West 1990); N.Y. Soc. Serv. Law § 41 (McKinney 1987). Governor Mario M. Cuomo, *supra* note 109, at 207:

First, we have tried to ensure that decent shelter is available to all who need it. Second, we have expanded our efforts to meet the needs of special dependent populations, especially the needs of those on the street and in shelters and those in need of community-based supported

grams.<sup>112</sup> Although many states' "[s]tatutory and constitutional provisions appear to require [these] states to provide shelter and assistance" to the homeless, only a few states "have acknowledged such an obligation."<sup>113</sup>

Placing responsibility to provide housing entirely on states is dangerous. Some states effectively ostracize their homeless population. Florida, for example, has ranked near the bottom in its public services expenditures.<sup>114</sup> Florida municipalities have either denied the existence of homelessness or blamed the homeless, claiming that they did not deserve assistance.<sup>115</sup> State and local officials characterized the homeless in Florida as transients and vagrants.<sup>116</sup> Relief efforts originated primarily from private and county programs, and focused on supplying only emergency relief.<sup>117</sup> The rationale underlying Florida's response to its homeless population derives directly from a prevailing conservative ideology.<sup>118</sup> Such state indifference and hostility exacerbates homeless-

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housing . . . . Fifth, we have begun ambitious programs to develop much needed low- and moderate-income housing.

*Id.*

112. States regulate, facilitate, and subsidize housing. This article focuses upon funding an affordable housing industry, but states also control housing stocks through zoning and land use regulations and taxes. David Berger, Dale Bertsch, John Bowman & Marlene Shaul, *The Role of State Government in Affordable Housing*, in *Housing: Supply & Affordability*, *supra* note 63, at 168-72. The types of programs undertaken by states include financial assistance for: new construction/substantial rehabilitation, rehabilitation/conservation/preservation, tenants, homeowners, predevelopment costs, temporary/special housing needs, and land acquisition and/or development. Council of State Community Affairs Agencies, *State Housing Initiatives: A Compendium*, 1986, at 11-71 (1986). See *id.* for descriptions of individual projects implemented in forty-two states. For a discussion of the negative impact of zoning and land use laws on homeless people, see Katherine Devers & J. Gardner West, *Exclusionary Zoning and its Effect on Housing Opportunities for the Homeless*, 4 *Notre Dame J.L. Ethics & Pub. Pol'y* 349 (1989).

113. Langdon & Kass, *supra* note 37, at 334.

114. Doug Timmer & J. D. Knottnerus, *Homeless in Florida*, in 1 *Homelessness in the United States* 39 (1989). "[T]he public dollars that could support research on the homeless as well as services to them have been virtually nonexistent." *Id.*

115. *Id.* at 40-41. Local hostility toward the homeless is shown in local ordinances. For example, in Fort Lauderdale, Florida, a city councilperson suggested spraying garbage cans with poison to prevent the homeless from scavenging. Langdon & Kass, *supra* note 37, at 323 n.91 (citation omitted).

116. *Id.* at 42, 55. (In 1984, approximately 22,650 to 25,740 people did not have shelter in Florida.)

117. *Id.* at 55; see *id.* at 47-55 for description of individual metropolitan programs.

118. *Id.* at 39.

[A] very conservative political climate prevails in Florida, which creates a tendency for state and local officials, busily hustling developers, and investors from outside the state to deny the reality of serious social problems like homelessness . . . . [I]n regard to all manner of public service expenditures, Florida consistently ranks at or near the bottom of all 50 states.

ness by punishing the victim. Some states, for example, have passed vagrancy laws and arbitrary zoning codes in a vain effort to eliminate the homeless crisis by removing the homeless from their communities.<sup>119</sup>

Most states are only beginning to implement policies to combat homelessness. As a result, many lack comprehensive shelter services.<sup>120</sup> Frequently, state sponsored programs approach homelessness in a piecemeal fashion, preserving some low-income housing<sup>121</sup> or providing emergency shelter.<sup>122</sup> All states rely upon private organizations to provide assistance to the homeless.<sup>123</sup> Without federal guidance and funding, assistance to the homeless develops haphazardly, depending upon the resources and/or political agenda of individual states.<sup>124</sup>

Political pressures limit state efforts to help the homeless. State and local policy-makers believe that state and locally implemented homeless assistance programs will attract non-resident, indigent people to the area, thereby escalating the homeless crisis.<sup>125</sup> As a result of these beliefs, state programs overwhelmingly provide transitional or temporary housing. Preservation efforts focus upon the worst low-income housing, such as single room occupancy

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*Id.*

119. Langdon & Kass, *supra* note 37, at 322.

120. *Id.* at 305, "[M]ost local governments provide no shelter for homeless persons. Of those that do, not one has facilities adequate for the needs of its homeless population." *Id.*; see also Gerald Blake & Martin Abbott, *Homelessness in the Pacific Northwest*, in *Homelessness in the United States*, *supra* note 114, at 178; Hazel Morrow-Jones & Willem van Vliet, *Homelessness in Colorado*, in *Homelessness in the United States*, *supra* note 128, at 32.

121. Allen Heskin, *Los Angeles: Innovative Local Approaches*, in *The Homeless in Contemporary Society*, *supra* note 37, at 174-77; see also Metropolitan Council, *supra* note 22, at 10.

122. Cal. Gov't Code § 15290 (West 1987); Cal. Gov't Code § 8698 (West 1987); Cal. Welf. & Inst. Code § 13500 (West 1987); Ill. Ann. Stat. ch. 127, para. 46.38a (1988); Me. Rev. Stat. Ann. tit. 22, § 8101 (1989); Md. Code Ann. § 132 (1985); Mass. Gen. L. ch. 117.5, § 117.5a (1987); Mich. Comp. Laws § 400.14(a) (1987); N.J. Rev. Stat. § 55-13c (1988); N.Y. Soc. Serv. Law § 41 (McKinney 1987); N.Y. Soc. Serv. Law § 131(1), (3) (McKinney 1987); N.Y. Soc. Serv. Law § 62 (McKinney 1987); W. Va. Code § 31-18-3 (1989); Wash. Rev. Code § 43.185 (1987).

123. Koch, *supra* note 37, at 222; "The vast majority of efforts to assist the homeless have always been undertaken by the private sector, including business, churches, non-profit groups, and voluntary organizations. [An] HUD study found that over ninety percent of all shelters are privately run." *Id.*; see also Langdon & Kass, *supra* note 37, at 318.

124. See, e.g., Timmer & Knottnerus, *supra* note 114, at 39. But see Cuomo, *supra* note 109, at 207.

125. See Langdon & Kass, *supra* note 37, at 322 n.91. "At all levels of government, even when officials perceive pressing need, they fear that implementing creative programs will attract more homeless people to the area." Metropolitan Council, *supra* note 22, at 22.

hotels (SROs).<sup>126</sup> Ultimately, state programs probably cannot replace housing lost due to federal housing cutbacks because of the overwhelming nature of the housing shortage and states' lack of financial resources.<sup>127</sup>

### C. Federal Policies and Programs

The federal government accepted responsibility for providing low-income housing during the Great Depression with the passage of the National Housing Act of 1934.<sup>128</sup> Historically, federal programs used supply-side measures to provide low-income housing.<sup>129</sup> Clearly, housing poor people ranks as a secondary

126. See, e.g., Ritzdorf & Sharpe, *supra* note 109, at 195-96 (twelve point program in Portland, Oregon that relied heavily upon existing housing stock, such as SROs and welfare hotels).

127. By and large, housing assistance does not come cheaply. The anxiety over financing is probably a major reason why states hesitate to become involved in housing. *No matter how aggressive states become in housing collectively they are unlikely to replace the federal cutbacks, whether that amount is \$10 billion or \$30 billion.*

Council of State Community Affairs Agencies, *supra* note 112, at 8 (emphasis added).

128. National Housing Act of 1934, Pub. L. No. 73-0479, 48 Stat. 1246 (codified as amended 12 U.S.C. § 1701 (1982 & Supp. IV 1986)).

129. For an excellent overview of the history of national housing policy, see Simons, *supra* note 71, at 262-68. According to Simons, "[t]he federal government attempted to increase the supply of housing through mortgage insurance to facilitate the development of market rate housing, through tax policy favoring homeownership, and through subsidy mechanisms intended to provide shelter for families the market would not otherwise serve." *Id.* at 262.

Programs implemented since the 1930s include: the FHA mortgage insurance program, Federal Home Loan Bank Act of 1932, Pub. L. No. 72-304, 47 Stat. 725 (codified as amended at 12 U.S.C. § 1421 (1982 & Supp. IV 1986)) (transferred to the Department of Housing and Urban Development (HUD) in 1965 under the Department of Housing & Urban Development Act of 1965, 42 U.S.C. § 3534 (1982 & Supp. III 1985)); Fannie Mae, Federal National Mortgage Association, 12 U.S.C. § 1716 (1982 & Supp. IV 1986), and Freddie Mac, Federal Home Lien Mortgage Corporation, 12 U.S.C. § 1452 (1982 & Supp. IV 1986))(Fannie Mae and Freddie Mac established a secondary market for mortgages); Ginnie Mae, Government National Mortgage Association, 12 U.S.C. § 1716b (1982 & Supp. IV 1986))(Ginnie Mae guarantees mortgage-backed securities that generate funds for mortgages insured under the FHA and VA). The United States Housing Act of 1937, 42 U.S.C. § 1437f (1982 & Supp. III 1985), authorized the construction of federally subsidized low-income housing.

In addition to mortgage insurance, tax policies encouraged developers to invest in low income housing. The Tax Reform Act of 1986, 26 U.S.C. 1 "repealed tax incentives specifically designed to encourage low-income housing production . . ." Janet Stearns, *The Low-Income Housing Tax Credit: A Poor Solution to the Housing Crisis*, 6 Yale L. & Pol'y Rev. 203, 208 (1988). The Tax Reform Act repealed: (1) accelerated depreciation, I.R.C. § 167(k) (CCH 1981); (2) full deductibility of construction period interest, I.R.C. § 189 (CCH 1981)(repealed by Tax Reform Act, § 803(b)(1); and, (3) special capital gains treatment, I.R.C. § 1039 (CCH 1981) (repealed by Tax Reform Act, § 301). The Tax Reform Act "also restricted the issuance of tax-exempt bonds, the proceeds of which could be loaned by local

consideration in federal housing policy.<sup>130</sup> Congress pursues other goals, such as stimulating the economy, and attempts to create low-income housing as a by-product of these goals.<sup>131</sup> Powerful private interest groups operating on behalf of the private housing industry, further constrain federal housing programs. The private housing industry's lobbyists strenuously oppose federal public housing programs, thereby limiting the construction and use of public housing.<sup>132</sup>

Nonetheless, federal programs expanded the nation's housing stock. Over the past few decades, federal programs resulted in the construction of more than four million subsidized rental units for low-income persons.<sup>133</sup> Federally subsidized public housing created approximately 1.9 million units.<sup>134</sup> In 1980, 65.6 percent of Americans owned their own homes<sup>135</sup> due to long-term, low-rate mortgages sponsored by the government.<sup>136</sup>

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governments to developers of low-income housing at below market interest rates, [See I.R.C. §§ 141-47 (1986)]." *Id.*

130. Peter Marcuse, *Housing Policy and the Myth of the Benevolent State*, in *Critical Perspectives on Housing*, *supra* note 5, at 253.

131. Simons, *supra* note 71, at 262; see also Checkoway, *supra* note 99, at 129-34.

132. For a historical analysis of ways in which the private housing interests directed housing policy, see Checkoway, *supra* note 99, at 127-31. The federal government's ambivalence about its role in providing low-income housing undermines federal programs' effectiveness. Programs tend to be inefficient, costly, bizarrely inequitable or unpredictable. Peter Salins, *Can We Ensure that All Americans Are Well Housed?*, in *Housing America's Poor*, *supra* note 87, at 177.

The housing industry's hostility toward federal public housing does not extend to federal subsidy programs that benefit their interests. Urban renewal, which owes its existence to the private housing industry's powerful lobbies, gives federal subsidies to real estate developers through the government's sale of "cleared" slum areas at substantial discounts. Urban renewal should not be confused with gentrification; urban renewal is a federally subsidized program that can be an element in the gentrification process. Although urban renewal and public housing seem closely associated, urban renewal actually decreases low-income housing stock. The program requires property to be residential before renewal, but does not require developers to build residential units. As a result, low-income housing gives way to office buildings, convention centers, and luxury apartments. Marc Weiss, *The Origins and Legacy of Urban Renewal*, in *Federal Housing Policy & Programs: Past and Present*, *supra* note 56, at 255-71. Urban renewal's success proves that subsidized "housing" programs do work with sufficient support and capital.

133. National Low Income Housing Preservation Commission, *supra* note 78, at 13.

134. Stearns, *supra* note 129, at 205.

135. Joint Center for Housing Studies of Harvard University, *supra* note 22, at Exhibit 16. Homeownership rates, however, fell throughout the 1980s. By 1987, the number of households that owned their own homes fell by 1.6% to 64%. *Id.* The deregulation and subsequent collapse of the savings and loan industry, combined with an increasingly polarized economy and declining actual salaries, contributed directly to low- and moderate-income households' difficulty in achieving homeownership. The income of homeowners rose significantly, while the median income of renters fell. *Id.* at Exhibits 9, 10, 11 and accompanying text.

136. J. Paul Mitchell, *Historical Overview of Federal Policy: Encouraging Home-*

Despite these tremendous achievements, disagreement over the success of public housing and over the proper scope and means of federal participation in the creation of public housing continues to plague federal housing programs. In fact, this past decade witnessed a full-scale retreat from federal commitment to the provision of adequate housing for all Americans.<sup>137</sup>

During the first thirty years following the enactment of the National Housing Act of 1937, the federal government concentrated upon supply-side programs, i.e., the creation of public housing through subsidies and tax incentives.<sup>138</sup> Public housing's mounting economic inefficiencies, caused by inflation and the use of tenants' rents to finance maintenance and repair of public housing (while tenants' incomes remained static), prompted reevaluation of public housing in the late 1960s.<sup>139</sup> Subsequently, federal

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*ownership* in Federal Housing Policy & Programs: Past and Present, *supra* note 56, at 39-43. Federal Home Loan Bank Act of 1932, 12 U.S.C. § 1421 (1982 & Supp. 1986).

137. For a description of a Reagan policy proposing cutbacks, see Chester Hartman, *Housing Allowances: A Bad Idea Whose Time Has Come*, in Federal Housing Policy & Programs: Past and Present, *supra* note 56, at 384 [hereinafter *Housing Allowances*].

Public housing and tax incentives to developers, rather than mortgage insurance, remain controversial. Unlike most social reforms, public housing did not clearly succeed or fail:

In the U.S., public attitudes about social security, collective bargaining, and national economic controls have all followed the classic steps outlined years ago by George Bernard Shaw: 1) it's impossible; 2) it's against the Bible; 3) it's too expensive; and 4) we knew it all along. But public housing . . . still drags along in a kind of limbo, continuously controversial, not dead but never more than half alive.

Catherine Bauer, *The Dreary Deadlock of Public Housing*, in Federal Housing Policy & Programs: Past and Present, *supra* note 56, at 277. Public housing remains in limbo, in part, because public housing projects suffer from poor design and management, and the private housing industry vigorously lobbies against public housing. *Id.* at 278-81.

138. Simons, *supra* note 71, at 262.

139. J. Paul Mitchell, *The Historical Context for Public Housing*, in Federal Housing Policy & Programs: Past and Present, *supra* note 56, at 13-17 [hereinafter *Historical Context*]. The shift from construction to housing vouchers began with the Housing and Urban Development Act of 1965, Pub. L. No. 89-117, 79 Stat. 451 (codified as amended at 12 U.S.C. § 1701 (1982 & Supp. IV 1986)). In 1970, the federal government conducted a pilot program, the Experimental Housing Allowance Program (EHAP), to test the effectiveness of rent subsidies. Mitchell, *supra* note 66, at 201; see also Carty, *supra* note 24, at 379. The project analyzed the impact of housing assistance on:

1) the quantity of housing services consumed by low-income households, 2) the supply of new or rehabilitated housing, 3) possible housing inflation, 4) household mobility, and 5) neighborhood upgrading, among others." Mitchell, *supra* note 66, at 201. The project provided 30,000 families with rent vouchers in twelve cities across the country. The project's findings, though mostly inconclusive, indicate that people did not participate in the program when the government imposed standards for housing quality. "Very poor people, minorities, large fami-

policy swung from a supply-side approach to a demand-side approach<sup>140</sup> during the Nixon administration.<sup>141</sup> The federal government increasingly relied upon the private sector to construct low-income housing throughout the 1970s and 1980s.<sup>142</sup>

Federal assistance for low-income housing from 1974 through the early 1980s consisted of the Section 8 New Construction and Substantial Rehabilitation and Moderate Rehabilitation programs and the Section 8 Existing Housing program.<sup>143</sup> The New Construction and Substantial Rehabilitation program, which the Reagan administration decommissioned in 1983,<sup>144</sup> permitted local communities to create low-income housing through owner subsidies.<sup>145</sup> The demise of Section 8 supply-side programs dramatically diminished the federal government's direct participation in supply-side creation of low-income housing.

Today, the Section 8 Existing Housing program, which provides rental vouchers to eligible low-income people for use in the private housing market, is the major federal housing assistance program.<sup>146</sup> The program presumes that sufficient affordable

lies, and families living in substandard housing had the lowest participation rates.

*Housing Allowances*, *supra* note 137, at 385.

140. A supply-side subsidy is paid to the owner who builds or operates a low- or moderate-income housing project. A demand-side subsidy is paid directly to the tenant and permits her to participate in the private market. Simons, *supra* note 71, at 267.

141. *Id.* at 266; see also *Historical Context*, *supra* note 139, at 16.

142. The Reagan administration, in particular, heralded the private sector as the panacea of all societal ills, and asserted that, "[t]he genius of a market economy, freed of the distortions forced by government housing policies and regulations that swung erratically from loving to hostile, can provide for housing far better than Federal programs." Report of the President's Commission on Housing xvii (1982) (quoted in Hartman, *supra* note 15, at 362-63).

Even public housing owned by the federal government increasingly became privately owned in the 1980s. The Department of Housing and Urban Development (HUD) sold "publicly owned and subsidized housing . . . to private developers, requiring in return only a commitment that such housing remain dedicated to low-income persons for 15 years." Stearns, *supra* note 129, at 206 (citing 12 U.S.C. §§ 1701z-1711). Conversion to private use threatens to remove these low-income housing units from the affordable housing stock entirely. See *infra* note 222 and accompanying text.

143. Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (codified at 42 U.S.C. § 1437f (1982 & Supp. III 1985)).

144. Housing and Urban Rural Recovery Act of 1983, Pub. L. No. 98-181, 97 Stat. 113 (codified at 42 U.S.C. § 1437f (1982 & Supp. III 1985)). The § 8 Moderate Rehabilitation program is still in operation. 42 U.S.C. § 1437o (1985 & Supp. 1987).

145. Units built under the § 8 New Construction and Rehabilitation program "dropped steadily in this decade: from 183,000 units in 1980 . . . to an estimated 28,000 in 1985." Hartman, *supra* note 15, at 364.

146. Koch, *supra* note 37, at 226.

Because housing affordability is generally the problem, the Reagan Administration has made the housing voucher program the corner-



housing stock exists, and that lack of housing results from income deficiencies.<sup>147</sup> Section 8 attempts to maximize economic efficiency by promoting freedom of choice, by lifting geographic limitations, and by eliminating middlemen from subsidized housing.<sup>148</sup>

If adequate housing stock did exist, the program would be an attractive solution to the low-income housing crisis. Unfortunately, adequate rental housing simply does not exist. As a result, the Section 8 Existing Housing program fails to assist more than a fraction of impoverished families.<sup>149</sup> This demand-side program has strict requirements: to be eligible, a family's income may not exceed the median household income of an area; and Section 8 households cannot participate in the program if the unit cost exceeds the fair market rental value.<sup>150</sup> Moreover, Congress slashed federal housing expenditures during the 1980s,<sup>151</sup> and a majority of eligible families do not receive assistance.<sup>152</sup>

Ultimately, the Section 8 experience indicates that a demand-side approach, even if properly funded, cannot succeed because it is based upon incorrect assumptions about the rental market. Income deficiency is not the sole cause of the housing crisis—poverty, discrimination, and the lack of housing stock are all to blame.<sup>153</sup> Any practical solution to the homeless crisis must ad-

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stone of its assisted housing policy . . . . The housing voucher approach recognizes that the private market provides an adequate supply of rental housing for the nation.

*Id.*

147. *Id.* at 225-26.

148. Bernard J. Frieden, *Housing Allowances: An Experiment that Worked*, in *Federal Housing Policy and Programs: Past and Present*, *supra* note 56, at 367.

149. For example, a study conducted by the Pratt Institute's Center for Community and Environmental Development found that "36 percent of New York City families given § 8 certificates were unable to use them because they couldn't find decent vacant units. Minorities and families with children were least able to use their certificates." *Housing Allowances*, *supra* note 137, at 386.

150. Simons, *supra* note 71, at 267; Carty, *supra* note 14, at 380.

151. Dolbeare, *supra* note 55, at 27-31 (Chart 9, Table 8). Budget authority for low-income housing was \$30.2 billion in 1980 but by 1986 the budget authority dwindled to \$0.5 billion. *Id.*

152. Simons, *supra* note 71, at 267. Housing and Community Development Amendments of 1981, 42 U.S.C. 5301 (1981). Families are required to contribute thirty percent of their income toward rent regardless of their income level. The § 8 program fails to meet the needs of all groups of low-income renters. For example, in 1980, a mere sixteen percent of renter households below the poverty line lived in subsidized housing (1,430,000 families out of 8,956,000 families). Dolbeare, *supra* note 55, at 21 (Table 4). By 1987, there were 3,200,000 families below the poverty line who did not receive any rental assistance. Simons, *supra* note 71, at 267, n.28.

153. The current administration's neglect and conversion of existing housing stock and its refusal to subsidize construction of new public housing, coupled with the inability of private developers to build low- and moderate-income housing is destroying existing low-income housing without replacing it. See Ropers, *supra* note 22, at 95; Note, *Reassessing Rent Control: Its Economic Impact in a Gentrifying*

dress both income deficiencies and the lack of affordable housing.<sup>154</sup>

Tax incentives, such as accelerated depreciation, special capital gains treatment, and deductions for construction period interest, supplemented incentives created under Section 8.<sup>155</sup> The Tax Reform Act of 1986,<sup>156</sup> however, repealed these tax incentives for the construction of low-income housing.<sup>157</sup> The Low-Income Housing Tax Credit,<sup>158</sup> which Congress enacted within the Tax Reform Act, replaced previous provisions as the predominant indirect federal subsidy of low-income housing.<sup>159</sup> The Low-Income Housing Tax Credit gave investors credit for a percentage of their investment in the construction, purchase, or rehabilitation of low-

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*Housing Market*, 101 Harv. L. Rev. 1835, 1847 (1988) [hereinafter *Reassessing Rent Control*]. "In 1986, unsubsidized private developers produced only 30,600 units of housing that rented for less than \$300 per month." Simons, *supra* note 71, at 270. Yet, even "[i]n 1983, the number of households in need of an apartment renting for \$250 per month increased to about 12 million while the number of units with such rents decreased to nearly 9 million. Projections for the year 2003 show an ever widening gap." National Low Income Housing Preservation Commission, *supra* note 78, at 13-14. Clearly, "[w]ithout government subsidies, the construction of new low-income units remains unprofitable," and "lost [low-income] units go largely unreplaced." *Reassessing Rent Control*, *supra*, at 1839.

Even if sufficient low-income units existed, "[t]enant voucher and rent subsidy programs depend on open rental markets and cannot operate successfully in communities where racial discrimination or discrimination against families with children limits the availability of housing." Simons, *supra* note 71, at 274. The article cites a study which found that "more than three-quarters of minority and non-minority families that consist of both parents and more than four children and that have § 8 rent certificates experience discrimination in finding housing." *Id.* Many minority families could not find housing within the sixty day time limit. *Id.*

154. The Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-645, — Stat. — (1990), does address both supply-side and demand-side deficiencies. Many of its programs, however, are merely pilot projects and/or implement programs that do not remedy the affordable housing shortage. The Act implements a new HOME Investment Partnerships program, a National Homeownership Trust program, and Hope programs, and amends existing programs. The Act includes revised mortgage programs, a new pilot urban homesteading program, and a new housing preservation program. See *infra* notes 196, 204, 222, and accompanying text.

155. Tax incentives, even with § 8 subsidies, did not inspire developers to construct a lot of low-income housing in the 1980s. See *supra* note 145. These incentives included "an election to amortize expenditures to rehabilitate low-income housing over sixty months, . . . preferential treatment in calculating ACRS recovery deductions . . . [and] a quicker write-off of construction period interest and taxes." Stanley Rier, *Tax Ideas: Low-Income Housing—The Rest of the Story*, 18 Real Estate L.J. 90 (1989).

156. Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986). Congress enacted the Tax Reform Act in response to public perception that the wealthy took unfair advantage of tax shelters under the existing code. Stearns, *supra* note 129, at 208.

157. See *supra* note 129 and accompanying text.

158. I.R.C. § 42 (1986).

159. Stearns, *supra* note 129, at 209.

income housing.<sup>160</sup> This complicated and temporary tax incentive has not created significant incentives for developers to invest in low-income housing.<sup>161</sup>

In spite of, and perhaps because of, demand-side federal assistance programs, the homeless ranks swelled throughout the 1980s.<sup>162</sup> Congress reacted to this crisis by enacting the Stewart B. McKinney Homeless Assistance Act in 1987 (McKinney Act),<sup>163</sup> which provides subsidies for emergency and transitional homeless assistance programs.<sup>164</sup> In its findings, Congress recognizes its responsibility to meet the "basic human needs" of the homeless, the complexity and overwhelming scale of homelessness, and acknowledges that state and local governments lack the resources to meet even the basic needs of the homeless.<sup>165</sup> The McKinney Act estab-

160. I.R.C. § 42 (1986). For an overview of the Low-Income Housing Tax Credit and its amendments under the Revenue Reconciliation Act of 1989, see Stearns, *supra* note 129; Michael J. Novogradac & Eric Fortenbach, *The Low-Income Housing Tax Credit: Impact of the Changes Wrought by the Revenue Reconciliation Act of 1989*, J. Real Estate Tax'n 219 (1989).

161. Revenue Reconciliation Act § 7108(a)(1). The Omnibus Budget Reconciliation Act of 1990 extended the term of the low-income housing tax credit. Pub. L. No. 101-508, 104 Stat. 1388. See Stearns, *supra* note 129, at 213-23.

162. See *supra* notes 16-20 and accompanying text.

163. Stewart B. McKinney Homeless Assistance Act of 1987, Pub. L. No. 100-77, 101 Stat. 484 (codified in 42 U.S.C. § 11301 (1987 & Supp. 1990)). Other federal efforts to specifically assist the homeless include alcohol, drug abuse, and mental health programs. Pub. L. No. 100-690, 102 Stat. 4213 (codified in 42 U.S.C. §§ 290aa (1988 & Supp. 1990)); and health services for the homeless, Pub. L. No. 100-177, 101 Stat. 999 (codified in 42 U.S.C. § 256 (1987 & Supp. 1990)).

164. Stewart B. McKinney Homelessness Assistance Act of 1987, 42 U.S.C. § 11301(b). The purposes of the Act are to establish an Interagency Council on the Homeless, coordinate resources and programs, and to fund programs to "assist the homeless, with special emphasis on elderly persons, handicapped persons, families with children, Native Americans, and veterans." *Id.* It would seem that the Act's purpose is to assist the deserving poor, rather than homeless persons with "personal pathologies" such as mental illness, alcoholism, or substance abuse.

165. *Id.* at § 11301(a). Congress found that:

(1) the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families, including elderly persons, handicapped persons, families with children, Native Americans, and veterans;

(2) the problem of homelessness has become more severe and, in the absence of more effective efforts, is expected to become dramatically worse, endangering the lives and safety of the homeless;

(3) the causes of homelessness are many and complex, and homeless individuals have diverse needs;

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(5) due to the record increase in homelessness, states, units of local government, and private voluntary organizations have been unable to meet the basic human needs of all the homeless and, in the absence of greater Federal assistance, will be unable to protect the lives and safety of all the homeless in need of assistance; and

(6) the Federal Government has a clear responsibility and an existing capacity to fulfill a more effective and responsible role to meet the ba-

lishes an emergency food and shelter program,<sup>166</sup> an emergency shelter grants program,<sup>167</sup> a supportive housing demonstration program,<sup>168</sup> and supplemental assistance for facilities to assist the homeless.<sup>169</sup> These programs only provide emergency assistance and do not solve the problems creating homelessness. The McKinney Act creates education and job training programs, which do address one of the factors causing homelessness; that is, unemployment or underemployment.<sup>170</sup> These programs will expire on October 1, 1992.<sup>171</sup>

Congress seemingly intended to provide at least some permanent housing for the homeless in the McKinney Act's provisions for a Section 8 SRO dwellings program,<sup>172</sup> and for the use of surplus public buildings and facilities to assist the homeless.<sup>173</sup> The surplus properties program, however, merely leases facilities to nonprofit agencies for emergency and transitional assistance for the homeless. Inadequate funding and administrative delays, however, circumvent the McKinney Act's potential benefit.<sup>174</sup>

Two cases brought in the Federal District Court for the District of Columbia, *Lee v. Pierce*<sup>175</sup> and *National Coalition for the Homeless v. United States Veterans' Administration* [hereinafter *National Coalition for the Homeless*],<sup>176</sup> challenged HUD's implementation of the Act, but failed to expand the types of properties included in the surplus properties program or to limit HUD's discretion. In *Lee v. Pierce*, the plaintiffs tried to enjoin HUD from selling its single-family housing inventory to anyone but homeless

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*sic human needs and to engender respect for the human dignity of the homeless.*

*Id.* (emphasis added).

166. *Id.* at §§ 11331-11352.

167. *Id.* at §§ 11371-11377. The Act also requires states to develop comprehensive homeless assistance plans. *Id.* at § 11361.

168. *Id.* at §§ 11381-11388.

169. *Id.* at §§ 11391-11394.

170. *Id.* at §§ 11421-11450.

171. *Id.* at § 11450.

172. *Id.* at § 11401. Single room occupancy dwellings (SROs) are not an adequate solution to homelessness even if widely implemented. SROs lack kitchens and bathrooms and other amenities. In the past, SROs were the last refuge of the poor. See Ropers, *supra* note 22, at 187.

173. 42 U.S.C. §§ 11411-11412. The Secretary of Housing and Urban Development must collect information about and identify unutilized or underutilized public buildings that are "suitable for use for facilities to assist the homeless." *Id.* at § 11411(a). The federal government retains title to the property, however, and merely leases the premises to non-profit agencies that provide food, shelter, or other services to homeless people. *Id.* at §§ 11411(d), 11412(b).

174. For example, the SRO program temporarily lost its funding in 1988. National Coalition for the Homeless, *supra* note 18, at 87.

175. 698 F. Supp. 332 (D.D.C. 1988).

176. 695 F. Supp. 1226 (D.D.C. 1989).

organizations or individuals.<sup>177</sup> The court rejected the plaintiffs' claim that the surplus public buildings program applied to single-family housing owned by HUD and held that the Act only includes properties subject to its survey requirement.<sup>178</sup> On the other hand, the court in *National Coalition for the Homeless* enjoined HUD from selling eligible properties until HUD independently determined whether the properties were suitable for use by nonprofit agencies assisting the homeless.<sup>179</sup> The district court also determined that the Federal Property and Administrative Services Act of 1949 (FPASA) does not limit application of the McKinney Act; therefore, HUD must apply the McKinney Act to properties disposed under FPASA.<sup>180</sup> Once HUD decides whether to lease the property to a nonprofit agency, however, the court will uphold the agency's action unless it is arbitrary and capricious.<sup>181</sup> Administrative delays, lack of adequate funding, and the small number of surplus properties involved severely limit whatever help the surplus properties programs might offer. Ultimately, the McKinney Act's surplus property program will not expand the nation's stock of affordable housing and it is, at best, a stop-gap measure.

### III. Proposals for New Federal Housing Programs

Federal programs must be implemented to solve the low-income housing shortage. State and local governments lack the financial resources to construct and maintain low-income public housing,<sup>182</sup> and the private building industry "cannot build unsubsidized housing that is affordable to low-income people."<sup>183</sup> A moral obligation to promote citizens' safety and welfare, and to improve society as a whole, justifies federal action.<sup>184</sup> Economic con-

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177. 698 F. Supp. at 334. In 1988, HUD owned approximately 50,000 vacant single-family houses. *Id.* at 335. At the same time, 800,000 households languished on waiting lists for subsidized housing. *Id.*

178. *Id.* at 340-41. The "plaintiffs have not shown that the McKinney Act was intended to apply to HUD's single-family inventory, since that inventory is not presently subject to a survey requirement." *Id.* Section 11411(a) of the McKinney Act requires the Secretary of Housing and Urban Development to assess properties described in surveys submitted by the heads of federal agencies. 42 U.S.C. § 11411(a).

179. 695 F. Supp. at 1229-30.

180. *Id.* at 1231. At the time of trial, only twelve properties were identified by HUD as suitable for use by nonprofit agencies assisting the homeless. *Id.* Only four of those suitable properties were offered to assist the homeless. *Id.* at 1233.

181. *National Coalition for the Homeless v. United States Veterans' Administration*, 715 F. Supp. 392 (D.D.C. 1989).

182. See *supra* notes 137-139 and accompanying text.

183. Bratt, *supra* note 85, at 335-36.

184. Henry Aaron, *Rationale for a Housing Policy*, in *Federal Housing Policy and Programs: Past & Present*, *supra* note 56, at 34. Although the United States

siderations lend further support to the case for federal programs. Some analysts argue that federal programs promote efficient allocation of resources or correct imperfections in the housing market.<sup>185</sup>

Perhaps the most compelling argument for federal action is the consequence of inaction. Without federally sponsored permanent low-income housing, "the homeless population could become a permanent, large and growing portion of our society and . . . shelters will become our society's poorhouses."<sup>186</sup> Homeless people need assistance today. The low-income housing shortage deserves immediate attention from Congress. Solutions to the housing crisis proposed by advocates and scholars range from nationalization of all rental housing to improved tax incentives for private developers. As the history of subsidized housing in this country reveals, a balanced program, which incorporates both demand- and supply-side measures, stands the best chance of success.

#### A. Socialized Housing

Socialized housing, which exists in Western European countries,<sup>187</sup> would make housing a right for everyone.<sup>188</sup> While all current federal programs respect private industry's profit expectations, a socialist approach refuses to define housing as a commodity and rejects profit-making in the housing market.<sup>189</sup> Socialized housing would attempt to minimize housing expenses of low- and middle-income people by reducing reliance on private financing systems, such as the mortgage industry.<sup>190</sup> Three basic elements of

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Supreme Court refused to recognize housing as an entitlement in *Dandridge v. Williams*, 397 U.S. 471 (1970), Congress chose to assume responsibility for providing adequate housing to all Americans with the enactment of the National Housing Act, Pub. L. No. 75-412, 50 Stat. 891 (codified as amended at 42 U.S.C. § 1437f (1982 & Supp. III 1985)).

185. Aaron, *supra* note 184.

186. Metropolitan Council, *supra* note 22, at 22.

187. Emily Achtenberg & Peter Marcuse, *Toward the Decommmodification of Housing*, in *Critical Perspectives on Housing*, *supra* note 5, at 481.

188. *See id.* at 476. The goal of socialized housing (housing decommmodification) is "[t]o provide every person with housing that is affordable, adequate in size and of decent quality, secure in tenure, and located in a supportive neighborhood of choice . . . ." *Id.*

189. Chester Hartman & Michael Stone, *A Socialist Housing Alternative for the United States*, in *Critical Perspectives on Housing*, *supra* note 5, at 485-86.

190. According to socialist theory, affordable housing in the private market is scarce because the market relies upon credit to finance housing construction and purchases. Mortgages finance almost all housing, and private mortgages increase housing costs. Hartman & Stone, *supra* note 189, at 485; *see also* Roger Sanjek, *Federal Housing Programs and Their Impact on Homelessness*, in *Housing the Homeless* 316-17 (1986). The socialist model rejects private credit, such as home mortgages subsidies, loans to profit-making developers, or § 8 rent subsidies, as a

a socialized housing program include: direct financing grants for housing construction and purchases; rent based solely upon ability to pay; and federal ownership and management of all rental stock.<sup>191</sup>

Although socialized housing is appealing in theory, it is impractical. Funding to buy and operate the nation's rental stock is virtually non-existent, especially during an economic recession. The astronomical debt inflicted upon taxpayers by the thrift industry crisis taints any proposal for major federal housing-related expenditures. Even without financial obstacles, policy-makers would fiercely resist a program which fixes rental costs upon an ability to pay. Market-value pricing is deeply ingrained in our society and income-based pricing would appear to place an unacceptable burden on middle- and upper-income renters. Similarly, without fundamental societal change, socialization of the entire rental stock is inconceivable. Focus on these considerations is not meant to denigrate socialized housing, but to acknowledge that ideological biases in the United States must be overcome before a nationalized housing program is politically viable.

### *B. Low-Interest, Long-Term Mortgages*

Long-term mortgages under the VA and FHA mortgage programs and suburbanization literally transformed middle-class American society immediately following World War II.<sup>192</sup> Federally insured long-term, level-payment, low-interest mortgages made homeownership possible for a majority of Americans by the 1960s.<sup>193</sup> Under favorable market conditions, long-term low-interest mortgage programs work wonderfully for both consumers and the housing industry. During periods of low inflation, building construction prospers. This supply-side program indirectly benefits the poor because as high-income consumers buy new homes, vacated homes become available to low-income consumers.<sup>194</sup>

Inflation and recession, combined with flaws in the financing mechanisms of long-term, fixed-rate, low-interest mortgage pro-

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means to finance housing because it underwrites the real estate industry's power and profits. Kathy McAfee, *Socialism and the Housing Movement: Lessons from Boston*, in *Critical Perspectives on Housing*, *supra* note 5, at 420. "[A]nalysis shows that even with social ownership and production, as long as housing remains dependent on private mortgage credit, it will continue to be expensive to society and in short supply." Achtenberg & Marcuse, *supra* note 187, at 478.

191. Hartman & Stone, *supra* note 189, at 487-88.

192. Sternlieb & Listokin, *supra* note 87, at 26-27.

193. Joint Center for Housing Studies of Harvard University, *supra* note 12, at Exhibit 9 (in 1974, 64.7% of households owned their home).

194. See *supra* note 10 and accompanying text.

grams, made the thrift industry increasingly economically inefficient. The thrift industry's collapse, following its deregulation, severely curtailed an important financing source for low-interest mortgages; subsequently, homeownership rates fell throughout the 1980s.<sup>195</sup> Although a federally insured low-interest mortgage program would certainly stimulate the housing industry, it simply will not work unless the program is drastically modified and strictly regulated.<sup>196</sup>

### C. Urban Homesteading

Renovation of existing housing stock through urban homesteading<sup>197</sup> is, in theory, an attractive solution to the housing shortage because "wasted resources will thus be utilized, decay will be checked, neighborhoods revitalized and the poor housed."<sup>198</sup> Urban homesteading has the potential to combat abandonment and instability in low-income neighborhoods,<sup>199</sup> but studies indicate that renovation only succeeds some of the time and under restricted conditions.<sup>200</sup>

A study of four rehabilitation programs—neighborhood preservation partnerships, single family homesteading, multifamily homesteading, and the rental rehabilitation program—found that only one multifamily homesteading program improved low-income housing.<sup>201</sup> This study concluded that:

[L]ow-income cooperatives can serve as a relatively cost effective means to rehabilitate and stabilize deteriorating buildings in declining neighborhoods . . . [but] considerable technical assistance is required and . . . the risk of failure is fairly high.<sup>202</sup>

The study attributed the multifamily homesteading program's success to its highly skilled tenant coordinators and to the relatively

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195. Ann Meyerson, *Housing Abandonment: The Role of Institutional Mortgage Lenders*, in *Critical Perspectives on Housing*, *supra* note 5, at 194-96; see also Joint Center for Housing Studies of Harvard University, *supra* note 12, at App. Tables 9-10.

196. See *supra* notes 71-79 and accompanying text.

197. "[U]rban Homesteading addresses the problems of urban decay caused by residential housing abandonment, and the shortage of housing for low income persons by turning over abandoned properties to low income persons who volunteer to rehabilitate and inhabit them." Howard E. Mitchell, Jr., *Urban Homesteading: The Philadelphia Experiment 1* (1975).

198. *Id.*

199. Salins, *supra* note 132, at 182.

200. *Id.*; Mitchell, *supra* note 197, at 82-85.

201. Howard J. Sumka, *Creative Reuse of the Existing Stock*, in *Housing America's Poor*, *supra* note 87, at 115-34.

202. *Id.* at 133.



good condition of the buildings.<sup>203</sup> Even if initially successful, urban renewal only addresses the supply-side deficiencies of the market. Rehabilitation programs do not ensure that low-income tenants will be able to maintain their renovated homes, that is, that tenants will be able to afford maintenance and repair costs. At best, renovation can supplement low-income housing, and should be used with other federal programs.<sup>204</sup>

#### D. Rent Control

Rent control exists whenever the government regulates rent by intervening in the private, rental housing market.<sup>205</sup> The purpose of rent control is to protect low- and moderate-income renting households from rising rental costs.<sup>206</sup> Rent control is usually implemented locally,<sup>207</sup> and varies considerably in its provisions.<sup>208</sup>

Arguably, a restrictive rent control scheme, which requires a warranty of habitability, eviction restrictions, a moratorium on condominium conversion, and residential zoning restrictions,<sup>209</sup> would at least provide short-term relief to low-income tenants.<sup>210</sup> On the other hand, rent control which "indiscriminately freez[es] prices" does not necessarily help low-income renters, since anyone can take advantage of rent control.<sup>211</sup> The long-term effects of rent control could be disastrous for low-income renters. "By both inhibiting the construction of additional rental housing units and causing owners to reduce the quality and quantity of the existing [housing] inventory, stringent rent controls worsen whatever hous-

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203. *Id.*

204. The Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-645 §§ 251-59, 104 stat. 4734 (codified as amended at 42 U.S.C. 11301 (b) (1990)), creates a series of pilot programs, including rental housing production, rental rehabilitation, sweat equity model programs, home repair services for older and disabled homeowners, and low-income housing conservation and efficiency grant programs. Presumably, if these pilot programs are successful, Congress will implement large-scale programs based on these experimental programs.

205. Carty, *supra* note 24, at 371.

206. Anthony Downs, *Residential Rent Controls: An Evaluation 1* (1988).

207. The severity of rent control depends upon a variety of factors. Vacancy de-control provisions permit landlords of controlled units to raise prices to the market price when vacated. Rent rollbacks fix the base rent of controlled units while offsetting rent increases imposed in anticipation of the ordinance's enactment. Other restrictions include condominium conversion restrictions, eviction controls, and application to new construction. Carty, *supra* note 14, at 373; *see also* Downs, *supra* note 206, at 3.

208. Over 200 communities across the country have adopted some type of rent control since 1970. Downs, *supra* note 206, at 1.

209. *See Reassessing Rent Control*, *supra* note 153, at 1841.

210. *Id.*

211. Carty, *supra* note 14, at 376.

ing shortages existed when they were adopted.”<sup>212</sup> Rent control, rather than helping “shelter poor” tenants, would actively inhibit the construction of low-income housing.

#### *E. Tax Credit to Low-Income Renters*

The largest national federal housing program is the federal income tax code’s homeowner deductions for mortgage interest and property taxes.<sup>213</sup> Mortgage and property tax deductions favor the wealthy.<sup>214</sup> No comparable tax break exists for the poor because low-income people tend to be renters rather than homeowners.<sup>215</sup>

Existing inequities between homeowners and renters under the current tax code could be rectified by creating a refundable tax credit for renters. The tax credit program would give qualified renters a refundable tax credit, which would be the equivalent of a direct cash subsidy.<sup>216</sup> If a renter spends less than the scheduled credit amount, the difference would be refunded.<sup>217</sup> Reductions in homeowners’ subsidies could fund the tax credit.<sup>218</sup>

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212. Downs, *supra* note 206, at 40. In a study conducted in eleven cities in 1986, rent controls were correlated to the annual average number of new multifamily housing units built. The data indicated that a direct correlation between rent controls and decreased construction existed. Cities suffered, on average, a 48.7% decrease in the number of multifamily units built after rent controls were implemented. *Id.* at 41-42. Restrictive rent controls also adversely affect owners’ maintenance of rental units. *Id.* at 48-50. The study proved inconclusive on the effect of moderate rent controls on maintenance levels. *Id.* at 50.

213. Dolbeare, *supra* note 55, at 31. I.R.C. § 163(h)(2)(D) (deduction for interest on mortgages); I.R.C. § 164(a) (deduction for property taxes). These deductions account for ninety percent of the housing provision costs under the tax code. Dolbeare, *supra*, at 31. In 1987, the federal government spent \$70 billion on housing, of which three-quarters was spent to promote homeownership. Simons, *supra* note 71, at 284 n.72.

214. Dolbeare, *supra* note 55, at 36-39 (Tables 10, 11):

In 1981, one quarter of all households had incomes below \$10,000, but they received only one-eighth of all federal housing assistance. . . . At the other end of the income distribution, one quarter of all federal housing assistance went to the seven percent of all households with income above \$50,000, and forty-three percent of the assistance went to the twenty percent of households with incomes between \$30,000 and \$50,000.

*Id.* at 36 (emphasis omitted).

215. “In 1987, 63% of poverty-level households were renters.” Simons, *supra* note 71, at 269, n.33. See Joint Center for Housing Studies of Harvard University, *supra* note 12, at Exhibit 10 and accompanying text. “Rental housing is increasingly the home of the nation’s lower-income households, while higher-income households increasingly choose to own a home.” *Id.* (see accompanying text).

216. Elizabeth A. Roistacher, *A Modest Proposal: Housing Vouchers as Refundable Tax Credits*, in *Housing America’s Poor*, *supra* note 87, at 166-67.

217. *Id.* at 166.

218. *Id.* at 169-70.

The tax credit program resolves many problems that plague other demand-side programs, such as the Section 8 Existing Housing program. The program would not rely upon annual congressional appropriations and would be somewhat immune from political pressures. Renters would receive the subsidy directly, eliminating landlord participation and bureaucratic red tape. Finally, renters could use the tax credit in all rental housing, whether private or subsidized. The tax credit program would not increase the amount of low-income housing, but would increase the economic power of low-income people. It should be used to supplement supply-side programs, such as publicly subsidized housing.

#### F. Public Housing

In 1949, Congress adopted a federal housing policy to provide "a decent home and a suitable living environment for every American family."<sup>219</sup> Federal programs inched toward this goal until the 1980s.<sup>220</sup> Today, despite its apparent shortcomings, public housing "emerges as the only alternative for millions of poor people."<sup>221</sup> The problems undermining previous public housing projects can be avoided, and Congress should renew its commitment to a public housing program. Such a program would preserve existing public housing,<sup>222</sup> provide adequate operating subsidies and modernization funds, and increase tenant participation.<sup>223</sup>

Current federal policy presumes that the public housing experiment failed; however, "many of the problems with the public housing program are attributable to successful efforts by opponents of the program to hamstring it through inadequate subsidies and arbitrary restrictions."<sup>224</sup> Previous public housing programs' flaws demonstrate that public housing is not unrealistic but requires adequate funding and design.<sup>225</sup>

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219. Housing Act of 1949, Pub. L. No. 81-171 § 2, 63 Stat. 413, 413 (1949).

220. Hartman, *supra* note 15, at 362.

221. Bratt, *supra* note 85, at 358.

222. The Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-645, §§ 601-613, 104 Stat. 4734 (amending 42 U.S.C. § 11302(b)) (West Supp. 1990), will attempt to preserve existing privately-owned affordable rental housing. Congress implemented the Act to protect over 360,000 units of federally assisted housing that may be withdrawn from the market by their owners through the prepayment of mortgages insured under the National Housing Act (§ 236 and § 221 (d)(3) programs). — Cong. Rec. H11646 (daily ed. Oct. 22, 1990).

223. Bratt, *supra* note 85, at 356-57.

224. Hartman, *supra* note 15, at 364.

225. See *infra* notes 225-226 and accompanying text.

The financial structure of public housing doomed it to failure in the 1960s. Federal assistance covered only the construction costs of public housing through annual payments to bondholders;<sup>226</sup> operating expenses were to be covered by rents. The program made no provision for capital expenses necessary for remodeling and maintenance.<sup>227</sup> Tenant rents, based upon income, fell behind inflation during the 1960s. Physical deterioration of public housing inevitably followed from lack of capital to make repairs.<sup>228</sup>

Low-income people, particularly the homeless, desperately need housing that only the federal government can provide. Public housing, although more expensive than the Section 8 Existing Housing Program, is no more expensive than programs creating new housing through the private housing industry.<sup>229</sup> In order to avoid the mistakes of the past, a revised public housing program should provide sufficient subsidies for maintenance and remodeling, as well as subsidies for operational costs.

#### IV. Conclusion

The chronic affordable housing shortage in the United States, in conjunction with other factors, precipitated wide-scale homelessness in the past decade. Today, women, children and unskilled workers constitute a significant percentage of the homeless. The homeless are not victims of their own pathologies but are victims of a polarized economy and a conservative federal housing policy. Growing awareness of homelessness is politicizing a previously disparate group.<sup>230</sup> Community support for assistance<sup>231</sup> and homeless persons' political lobbying<sup>232</sup> substantially increase the pressure to reform federal housing policy. A pragmatic federal program that combines demand and supply-side approaches must be implemented. Federal policies should create programs to con-

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226. Bratt, *supra* note 85, at 338, 340-41.

227. Hartman, *supra* note 15, at 365.

228. Bratt, *supra* note 85, at 339.

229. *Id.* at 353.

230. Ropers, *supra* note 22, at 198-209.

231. See L.A. Times, Dec. 4, 1988, § 1, at 2, col. 1; see also National Coalition for the Homeless, *supra* note 18, at 67 (Roper Organization Poll found that sixty-eight percent of Americans support increased federal aid to the homeless).

232. See generally Piven & Cloward, *supra* note 27; Ropers, *supra* note 22, at 212. The solution of the homeless crisis is ultimately political, because the reallocation of resources necessary to provide the homeless with what they need involves the utilization of economic, social, and political power. Nothing less than a major shift in priorities at the federal level will do. *Id.*

serve existing low-income rental stock, create tax credits for renters, and construct and manage public housing.