

## The Case for a Right to Housing

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### *Abstract*

America has the resources to guarantee everyone a right to decent, affordable housing, making real the now 50-year-old congressionally promulgated National Housing Goal. The issue is one of values—constantly expanding notions of social, civil, and economic rights—and can only be won through political struggle, as has been true historically of all rights expansions.

The costs of not attaining this right, to those suffering from substandard housing conditions and unaffordable costs as well as to society as a whole, should be acknowledged and offset against the increased government outlays required to attain this goal. Ways in which some housing rights now exist are identified as a basis for wider expansion to a true right to decent, affordable housing.

**Keywords:** Housing; Affordability; Policy

### **Introduction**

Publishing an article advocating a right or entitlement to decent, affordable housing at a time of shrinking support for housing subsidies and a lesser role for public housing,<sup>1</sup> recent congressional proposals to abolish the U.S. Department of Housing and Urban Development (HUD),<sup>2</sup> and widespread abandonment of essential federal “safety net” programs—on top of the rising incidence of poverty, widening income and wealth gaps, and intensifying racial backlash—could well be regarded as futile, quixotic, even bizarre.

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<sup>1</sup> Tens of thousands of units of public housing—vilified by then Senate Majority Leader Robert Dole, in a 1996 speech before the National Association of Realtors, as the nation’s “last bastion of socialism” (Gugliotta 1996)—are in the process of being demolished and privatized; the private-market-directed voucher/certificate program now subsidizes more units than are in public housing projects. See Bryson (1997).

<sup>2</sup> While HUD’s existence now appears secure, downsizing has reduced its staffing enormously, accompanied by a serious loss of technical expertise; the current HUD secretary badmouths his own agency as follows: “HUD is really a metaphor for failed government programs, for failed aspirations” (Dionne 1997; Havemann 1997).

But the fact that establishing such a right does not appear to be immediately feasible in no way detracts from the argument that our society ought to embrace it. I proceed from a normative, philosophical stance that asserts the wisdom and justice of such a right, as well as our society's clear ability to achieve it.

After all, what have "rights" been historically in the United States if not an evolving societal sense of justice and entitlement, won, always, in political struggle (frequently undergirded by various intellectual efforts)? The right of slaves to be free of bondage was won in that way, via armed struggle and political action that produced amendments to our Constitution. The right of women to vote has a similar (albeit less violent) history. Workers won the right to organize, and federal legislation with such guarantees was passed to codify that right. The Civil Rights movement of the 1960s produced a set of legal rights that did not previously exist and changed profoundly at least the public culture and practices with regard to race. In all these instances, the appeal was to a higher sense of justice, to fundamental principles of a democracy, and to foundational documents embodied in the creation of our country.

The content of rights is thus a constantly evolving drama, as those lacking what they perceive as fundamental entitlements, together with their intellectual and political supporters, raise new issues, make new demands, and organize politically to assert and bring into being new elements to society's understanding and acceptance of what everyone should have. This is distinct from, albeit related to, the concept of "needs." Needs, standards, and the demands they generate bear a relation to concepts of and struggles around rights. But rights have an independent life, in origin, rationale, and political dynamic.

There are of course practical, cost-benefit reasons to advocate for a right to decent, affordable housing. For those living in inadequate housing conditions they include, at a minimum, the multiple health and safety problems that arise from lead poisoning, rat bites, fires, asphyxiation (from poorly ventilated heating systems), communicable diseases, asthma (Rosenstreich et al. 1997), other forms of sickness, and electric shock, as well as the occasional dramatic event, such as the collapse of an entire building.<sup>3</sup> Overcrowding (apart from the physical condition of the space) can produce or exacerbate stress and family tensions, as well as disease (Nossiter 1995). Poor neighborhood conditions are often associated with crime and a lack of personal safety. Housing affordability problems clearly have an

<sup>3</sup> See Kennedy (1995) for an account of a building collapse in New York's Harlem, which killed three tenants and injured seven others.

impact on diet,<sup>4</sup> and as a *New York Times* headline put it, for poor Americans, there is “A Growing Choice: Housing or Food” (DeParle 1991).<sup>5</sup> Excessive housing costs also affect one’s ability to secure other of life’s basics, as well as various amenities that most of society takes for granted. Segregation, discrimination, and isolation based on race and ethnicity, as well as on class, deprive residents of access to employment, economic development opportunities, and public facilities, and/or result in less good opportunities and services—a phenomenon Massey and Denton (1993) label “hypersegregation.” Imperfect as the data may be, there are ways of measuring these impacts.

A second issue needing quantification is how these various costs suffered by residents of inadequate housing translate into costs borne by the rest of the community and society. The health problems of poor people caused and exacerbated by poor housing conditions require massive subsidies through Medicaid and other public sources. Emergency fire and police costs, paid for largely via local taxes, are disproportionately high for slum neighborhoods. The human and financial costs of crime affect everyone, directly or indirectly, as victims and potential victims. Homelessness is accompanied by disproportionate violence of various types (Hombs 1994). The productivity lost as a result of the multiple impacts of poor housing conditions negatively affects the standard of living for others. Educational deficits attributable to inadequate housing harm the entire society.<sup>6</sup> The dominant way we now deal with those suf-

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<sup>4</sup> A study by Meyers et al. (1995) comparing nutrition status of children living in subsidized housing with those living in unsubsidized housing—and whose families thus pay a higher proportion of their income for rent—concluded as follows: “Receiving a housing subsidy is associated with increased growth in children from low-income families, an effect that is consistent with a protective effect of housing subsidies against childhood undernutrition.”

<sup>5</sup> An intriguing and instructive twist on this dilemma was featured in a front-page *New York Times* story about one Gangaram Mahes, a homeless New Yorker whose *modus operandi*—a real-life, albeit more successful version of the gentleman portrayed in O. Henry’s delightful short story “The Cop and the Anthem”—is to slip on his best donated clothes as winter arrives, eat a good meal at a nice restaurant, and then allow himself to be arrested after he announces his penniless state upon arrival of the check. He has done this at least 31 times, so as to spend the next 90 days with a guaranteed three meals a day and a clean bed. Legal aid lawyers, according to the account, report a growing number of people who commit petty crimes with the intent of going to prison. While possibly a rational strategy from the individual point of view, “it costs taxpayers \$162 a day to feed, clothe and house Mr. Mahes at Rikers Island. His 90-day sentence will cost them \$14,580 to punish him for refusing to pay a \$51.31 check. In five years he has cost them more than \$250,000” (Bragg 1994). However, some localities now are proposing charging jail inmates for food (Pan 1998).

<sup>6</sup> Homelessness has proven to be a barrier to adequate education for children. See Dohrn (1991) and National Law Center on Homelessness and Poverty (1997b) for

fering the most extreme housing problem, homelessness—overnight shelter and emergency services—requires public expenditures that far exceed the costs of a more rational and humane housing approach, a conundrum explainable only in complex sociological and political terms.<sup>7</sup>

The costs of poor housing and neighborhood conditions—to those directly experiencing them as well as to the broader community—have never been fully assessed or taken seriously as a matter of public policy. Tracing the immediate and long-range impacts of these housing and neighborhood defects—on health, family life, crime, education, incomes, and employment, as well as more subtle issues such as self-concept—is a huge and complex task. Likely there are limitations on what can be reliably and accurately quantified, but an important step toward building more widespread support for a right to decent, affordable housing would be to carry out whatever studies can be done in describing and attaching dollar amounts to these costs, as a way of recognizing the direct and indirect costs of not fulfilling a right to decent, affordable housing, and identifying what financial offsets should be made against the significant costs of providing for such a right. That at least will provide a starting point for some hard-nosed thinking about housing policy and programs.

Beyond these mostly tangible, and in theory measurable, practical impacts lies the notion that political participation and political rights, particularly in a democratic society, are closely dependent on satisfaction of basic economic rights.<sup>8</sup> As Michael Stone (1993, 314)

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reports, respectively, on the failure to meet federal McKinney Act requirements that homeless children in shelters receive an “adequate education” and barriers to preschool education for homeless children. See also National Law Center on Homelessness and Poverty (1990a, 1990b, 1991). For housed and homeless children in low-income households, frequent school changes (as often as three, four, and five times a year) due to housing instability clearly are detrimental to learning.

<sup>7</sup> An advertisement headed “Which Would You Invest In?,” placed in the May 28, 1995, *New York Times* by the New York City advocacy group Almost Home and signed by several dozen senior executives of corporations and financial institutions, such as Lehman Brothers, Lazard Freres, Merrill Lynch, Goldman Sachs, and Bankers Trust, and well-known individuals (including Cyrus Vance, Vernon Jordan, and Felix Rohatyn), cited the comparative annual costs in New York City of a psychiatric hospital bed (\$113,000), a prison cell (\$60,000), a shelter cot (\$20,000), and a permanent home with supportive services (\$12,500). Holloway (1996) reports annual shelter bed costs as between \$18,000 and \$23,000 in New York City; by comparison, per-unit HUD subsidies for public housing and Section 8 certificates/vouchers are in the \$6,000–8,000 range. See also footnote 5.

<sup>8</sup> In recent years a growing number of human rights organizations have expressed interest in initiating work on economic, social, and cultural rights, expanding their legal theories and activism efforts more broadly and creating theoretical, legal, and

writes, a right to decent, affordable housing “builds as well upon recognition that the political and civil rights for which we have struggled and continue to struggle have little practical meaning or utility for those among us whose material existence is precarious.” The issue here is dignity as well, in the sense of asserting and receiving full respect for membership in one’s community and in the society at large (Miller 1993). Suffrage in the United States has had a history of property ownership prerequisites—a situation not unrelated to the disenfranchisement of homeless persons for lack of a “real” address, an issue that has recently been successfully fought in the courts.<sup>9</sup>

### Supportive documents

It is significant that some of the most powerful statements supporting a right to housing have come from religious bodies (the same sources that provided leadership in the abolition and civil rights movements), highlighting the deep moral connections noted above. A 1975 statement from the U.S. Catholic Bishops asserts, “We begin with the recognition that decent housing is a right” and quotes the Second Vatican Council: “There must be made available to all men everything necessary to live a life truly human, such as food, clothing and shelter” (U.S. Catholic Conference 1975). A 1985 document from the U.S. Catholic Bishops asserts, “[T]he rights to life, food, clothing, shelter, rest and medical care . . . are absolutely basic to the protection of human dignity. . . . These economic rights are as essential to human dignity as are the political and civil freedoms granted pride of place in the Bill of Rights of the U.S. Constitution.”

Likewise, the Massachusetts Episcopal Diocese’s Episcopal City Mission (1986) issued the following statement:

Shelter in decent, affordable housing is not a luxury. It is a necessity upon which access to other necessities and the development of healthy, productive families and communities most often depend. Nothing is more essential to the welfare of men, women and children. Nothing is tied more directly to the recognition of the dignity, worth and values of persons. Because housing is so closely related to the welfare of persons and to recognition of their value as persons, nothing is a more basic right than the opportunity, regardless of income or class, to live in that

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advocacy links between the two areas of concern. See International Human Rights Internship Program (1997).

<sup>9</sup> See National Law Center on Homelessness and Poverty (1996) and case citations therein. A bill to codify these rights (the Voting Rights of Homeless Citizens Act of 1997 [H.R. 74, Senate version S. 1503]) has recently been introduced.

kind of housing which supports the welfare of the family and community. . . . Whether persons of limited income have access to adequate shelter is thus for us at its heart both a question of justice, and a religious and theological question of central importance.

A December 1987 resolution from the General Board of the American Baptist Churches states, "We proclaim that each person being created in the image and likeness of God possesses an inherent dignity from which stems a basic human right to shelter." Pope John II, in his 1997 Lenten message, asserted, "The family, as the basic cell of society, has a full right to housing adequate to its needs, so that it can develop a genuine domestic communion. The Church recognizes this fundamental right and is aware of her obligation to work together with others in order to ensure that it is recognized in practice."

There is wide assertion or recognition of a right to housing in a great many other countries, often embodied in constitutional or statutory language, although the legal, economic, social, and political conditions in each country are so different as to render this dimension of interest and utility only as a general context, not for any detailed application to the situation in the United States.<sup>10</sup> And the

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<sup>10</sup> Among the important international documents wherein the right to adequate housing is explicitly recognized are the Universal Declaration on Human Rights (1948); the International Covenant on Economic, Social and Cultural Rights (1966); the Convention on the Elimination of All Forms of Racial Discrimination (1965); the International Convention on the Rights of the Child (1989); the International Convention on the Elimination of All Forms of Discrimination Against Women (1979); and the International Labor Organization Recommendation No. 115 on Workers Housing. For example, the Universal Declaration on Human Rights, to which 130 states are bound as parties, states in Article 11(1), "The State parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." (See, generally, Centre on Housing Rights and Evictions [1994].)

The June 1996 UN Conference on Human Settlements (Habitat II) in Istanbul produced little progress and featured the depressing, embarrassing spectacle of the United States delegation at first giving in to State Department instructions that it "must make clear for the record that the U.S. does not recognize the international human right to housing" (Habitat II Brings Victories 1996). Then, under great pressure from nongovernmental organizations and other governments, it acceded to a weak assertion of the "full and progressive [as opposed to prompt] realization of that right in the context of other international documents." The various UN-sponsored mega-conferences on related issues—the United Nations Conference on Environment and Development (Rio de Janeiro, 1992), the World Conference on Human Rights (Vienna, 1993), the Population Summit (Cairo, 1994), the Social Development Summit (Copenhagen, 1995), and the Women's Summit (Beijing, 1995)—may provide some fuel for movement in the direction of housing rights.

limitations of simply expressing such a right rhetorically, even in official documents and pronouncements, are obvious. A recent review of the international housing rights situation notes the following:

The right to adequate housing finds legal substance within more than a dozen international human rights texts . . . and has been reaffirmed in numerous international declaratory and policy-oriented instruments. More than fifty national constitutions enshrine various formulations of housing rights and other housing-related state responsibilities . . . and a plethora of domestic laws in nearly all countries have a bearing upon one or more of the core elements of housing rights. Without exception, every government has explicitly recognized that adequate housing is a right under international law. Though on the surface a favorable situation, such legal recognition at the international level has rarely been transformed into effective domestic legislative and policy measures seeking to apply and implement—in good faith—international obligations relevant to housing rights. . . . No government could realistically proclaim that housing rights exist as much in fact as they do in law (Leckie 1994, 14–15; see also Herman 1994).

In short, because housing is so central to one's life, it merits attaining the status of a right. It is at the core of one's social and personal life, determining the kinds of influences and relationships one has and access to key opportunities and services (education, employment, health care). Housing also is an outward sign of status and affects the health and well-being of the surrounding community. Probably only those who have experienced how hard it is to have personal and family stability or land a job without a home, how hard it is to keep up with schoolwork in an overcrowded apartment, how much the sheer pressure to make the rent can overwhelm the rest of one's life—experiences largely foreign to the housing policy analysts, academics, and bureaucrats who read and write articles such as this—can fully comprehend just how central decent, affordable housing is, or might be, and how limiting and burdensome is its absence.

### **Why just housing?**

The question may be raised: Why housing? Why not a right to decent, affordable food? To health care? Why not guarantee people enough income so that, like the majority of Americans, they can purchase the housing, health care, and other basics they need in the market? I would answer as follows.

We certainly should have a right to decent, affordable food<sup>11</sup> and health care (in the latter case, the costs, it should be noted, would be somewhat lower were housing-related detriments to good health eliminated); our recent failure to pass single-payer health reform legislation or otherwise provide these guarantees is a tragedy of massive proportions. It is not an either/or proposition, and movements for basic rights must coalesce into a more potent political force.

Housing has a special character, not only because it consumes so large a portion of the household budget, especially for lower-income families, but because it is, as noted above, the central setting for so much of one's personal and family life as well as the locus of mobility opportunities, access to community resources, and societal status (Hartman 1975).

It would be wonderful if everyone in the United States had enough income to satisfy his or her needs in the market, but that goal is even less likely to be achieved than is the goal of decent housing for all. Widening income inequality and the structure of the job market make it hard to imagine how everyone could have enough income to pay for housing and other necessities. In fact, an increasingly large number of Americans are unable to attain a decent standard of living as prices outstrip incomes (Stone 1993). Moreover, that approach misreads the nature of the housing market. The profit-maximizing behavior of all actors in that market—landowners, developers, builders, materials suppliers, real estate brokers, landlords, even homeowners—at all points works against assuring that everyone has decent, affordable housing, absent a legally enforceable right to housing and explicit commitment of resources to its realization.

### **America's progress on housing**

To state the obvious, with respect to housing, we have never even come close to providing all Americans with decent, affordable housing. A recitation of statistics on how far we are from this goal is unnecessary here.<sup>12</sup> We certainly will not move toward this goal in the

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<sup>11</sup> Two other basic necessities—food and clothing—are easier to come by than is housing, via various free or very inexpensive official, nonprofit, and informal surplus and giveaway systems (food banks, secondhand clothing stores, hand-me-downs, yard sales, etc.).

<sup>12</sup> See, for example, Joint Center for Housing Studies (1998); HUD (1998); Lazere (1995); National Low Income Housing Coalition (1997); DeParle (1996).

In his second Inaugural Address (1937), President Franklin Roosevelt offered his famous lament that “one-third of the nation is ill-housed, ill-fed, and ill-clothed.”



current era of cutbacks and givebacks, turning our backs on past approaches. The anti-safety net political climate in Congress can only make matters worse. While it would be foolish to maintain that we can or will move toward establishing a right to decent, affordable housing in the immediate future, there is need and wisdom in keeping alive the assertion of and advocacy for such a right. We must not lose sight of what a society needs and can provide as basic standards of decency simply because achieving these goals does not seem possible at the moment. This might be regarded as a preparation period: engaging in the systematic thinking, research, and scoping out of details as to how such a right might be defined and implemented—issues that will be itemized below—during a “dark” period. As framed by Margery Turner of the Urban Institute, “If you’re going to advocate for a right to housing, . . . I’d urge you to take the broadest approach to that concept that you possibly can. . . . [L]et’s think about it in an ambitious way, and maybe whatever headway is made will be more ambitious headway” (Turner 1991, 132).

As all housing policy experts and many nonexperts well know, Congress in its preamble to the 1949 Housing Act promulgated the National Housing Goal of “the implementation as soon as feasible of a decent home and suitable living environment for every American family.” That goal was reiterated in the 1968 Housing Act and, in slightly different versions, in the 1974 and 1990 Housing Acts. The word *affordable* is not mentioned in this formulation, but the post-war context was “slum clearance”: The dominant and most widely recognized housing problems were substandard conditions and the lack of enough decent housing. However, affordability now is the nation’s dominant housing problem, and it is self-evident that unless decent housing is affordable it either is unobtainable by lower-income persons or can be secured only at the cost of slighting other basic necessities. Yet a goal is not a right. Although Congress promulgated this goal, it never followed up with the programs or resources to attain it. Nor do the statutory declarations provide the basis for litigation to compel allocation of the needed resources. The 1968 Housing Act took the brave step of setting forth a 10-year nu-

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While enormous progress has unquestionably been made with respect to clothing and food, it can easily be shown that one-third of American households still are ill-housed, when physical condition, overcrowding, and affordability are toted up. And likely the trajectory is toward even larger numbers and proportions. Although there are no data comparing Depression-era homeless with the current situation, we are gradually realizing the full dimensions of that problem. A recent study (Link et al. 1994) reported that over the five-year period from 1985 to 1990, 5.7 million people were literally homeless at one time or another (sleeping in shelters, bus and train stations, abandoned buildings, etc.), while 8.5 million people reported some type of homelessness (staying with friends or relatives). Lifetime homeless figures were 13.5 million people (literal homelessness) and 26 million people (all types of homelessness).

merical target: 26 million units, 6 million of which were to be for low- and moderate-income households, and year-by-year progress reports were mandated. But it failed by a considerable margin, and never again was Congress foolish enough to risk such embarrassment.

By contrast, in the health and education areas the nation recently has set very specific goals and timetables. A U.S. Department of Health and Human Services publication (1993; McGinnis 1995) lays out specific objectives in 22 areas of health and health promotion to be achieved by the end of the century for the population as a whole as well as for different age groups, racial and ethnic minorities, and low-income persons. In April 1994, Congress enacted the "Goals 2000: Educate America Act," which identified eight national educational goals pertaining to the following: school readiness; school completion; student achievement and citizenship; teacher education and professional development; mathematics and science; adult literacy and lifelong learning; safe, disciplined, and alcohol- and drug-free schools; and parental participation. Among other features, the act calls for the high school graduation rate to increase to at least 90 percent by the year 2000, a dramatic reduction in the drop-out rate, and elimination of the gap in high school graduation rates between students from minority backgrounds and their nonminority counterparts (Goals 2000 1994).<sup>13</sup>

### *Existing entitlements*

As of 1998, we still have a number of entitlements in our economic and social system: the earned income tax credit, food stamps, Medicaid, Medicare, school breakfasts and lunches, Social Security, and supplementary security income (SSI).<sup>14</sup> And of course, free public education has long-standing status as a basic right in the United States (although it is under attack in some quarters, most notably for immigrant children).

Thus, the United States has a long history of providing a series of rights that prepare and assist individuals to participate in the nation's economic order. Throughout the nineteenth century, educational and land reforms provided citizens with an expanding horizon of social and economic opportunities. For example, the 1862 Homestead Act, under which any settler could receive 160 acres of surveyed land after five years' residence and payment of a

<sup>13</sup> Overseeing this project is an intergovernmental Education Goals Panel, with eight governors, four members of Congress, four state legislators, and two members appointed by the president. See the Web site: [www.negp.gov](http://www.negp.gov).

<sup>14</sup> A general discussion of the entitlement concept is found in Edelman (1991).

\$26 to \$34 registration fee, exemplifies America's willingness to directly transfer material resources to ordinary people (Robbins 1976; Warner 1972). As the twenty-first century approaches, we need to consider what equivalent economic and material rights an individual is entitled to.

In the meantime, there remains no entitlement to any of the direct government housing programs: public housing,<sup>15</sup> Section 8, Section 202, and so on. (This is true for civilians. The military's family housing program does incorporate, as part of the benefits structure, and only for those eligible by terms of pay grade and length of service, an entitlement to either free housing or a housing allowance [Hartman and Drayer 1990].) Something approaching a right to housing exists in other government programs, albeit hidden and largely unexplored in the literature. The temporary housing assistance offered under the disaster aid programs of the Federal Emergency Management Administration (FEMA), although not that much money is involved and much of it is reimbursed by insurance proceeds, is in effect an entitlement.<sup>16</sup> Federal aid for foster care—in effect a houser of last resort for children from troubled families<sup>17</sup>—may also be legitimately described as an entitlement; almost 80 percent of the federal government's \$4.7 billion child welfare expenditures go to foster care (Russakoff 1998.) Finally, and perhaps most important, the significant portion of Medicaid (an entitlement) expenditure set aside for nursing home care constitutes a quasi-right to housing based on age (Redfoot 1993).

Our housing system does, at various levels of government, incorporate some rights (or quasi-rights) with respect to housing.<sup>18</sup> A partial list of these includes the following:

<sup>15</sup> For an argument that there should be a right to public housing, see Roisman (1971).

<sup>16</sup> The Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93–288), as amended, provides for residents of areas where the president declares a major disaster, among other benefits, temporary relocation housing for up to 18 months; funding for emergency repairs to damaged homes; long-term (up to 30 years), low-interest Small Business Administration (SBA) loans (up to \$240,000) for home repair and repair/replacement of furniture and personal possessions); and cash grants of up to \$13,400 (a ceiling that is periodically increased via inflation indexing) for those who do not qualify for a loan (see FEMA n.d.; Suchocki 1998; U.S. General Accounting Office 1997; SBA n.d.). While not explicitly labeled an entitlement program, in fact, if proper application procedures are followed and eligibility criteria are met, such aid is given to all who apply.

<sup>17</sup> “Through foster care, the government is now mother of last resort to a record 502,000 children nationally, almost double the number in 1980” (Russakoff 1998, part 1, p. A1).

<sup>18</sup> It has been ironically, and not entirely facetiously, suggested that the new em-

1. Local housing codes (which vary enormously with respect to coverage and standards) provide something of a right to decent conditions—although in practice enforcement is problematic and attempting to enforce these quality standards may result in loss of the unit, eviction, or a rent increase (Hartman, Kessler, and LeGates 1973).
2. In many jurisdictions, there are, by statute or case law, “warranty of habitability” and rent-withholding provisions—but these, too, fall short of being a guarantee of decent housing conditions<sup>19</sup> and do not consider at all the issue of affordability.
3. In localities with rent control ordinances, rent increases are limited, under certain circumstances—although this is no guarantee of affordability.
4. Rights to quiet enjoyment of residential premises exist via nuisance statutes, case law, and other legal documents.
5. The right not to be discriminated against in the purchase or rental of housing on the basis of race and other personal characteristics is embodied in a large number of decades-old federal, state, and local laws; additional rights based on disability were contained in 1988 Fair Housing Act Amendments (Mental Health Law Project 1989).
6. Due process must be followed in eviction and foreclosure procedures. Beyond this, a “right to stay put” (Hartman 1984) exists in various local condominium conversion ordinances and in “just (or good) cause” eviction laws, which stipulate legitimate reasons for eviction, rather than allowing eviction for virtually any (or no stated) reason; the existence of many loopholes in even the most tightly drawn ordinances substantially weakens this right. Residents of public and many other forms of government-assisted housing have due process rights with respect to eviction. (Military personnel receive special consideration. In an effort to deal with housing problems when people are suddenly yanked out of civilian life and called up for military service, the Soldiers and Sailors Relief Act of 1940 originally provided that any person serving in World War II

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phasis on prison building and such punitive measures as “three strikes and you’re out” laws have created a “right” to affordable shelter with total security of tenure. See also footnote 7.

<sup>19</sup> In a 1972 case, *Lindsay v. Normet* (405 U.S. 56), the Supreme Court ruled that there is no constitutional right to shelter—but see the discussion below of temporary shelter for the homeless. For an earlier, general discussion of the right to housing, see Michelman (1970).

could not be evicted from an apartment renting for less than \$150 a month. During the Gulf War, that act was amended to increase the level of protection to apartments costing \$1,200 a month or less, and also to offer some protection against mortgage foreclosure [Raskin 1991].)

7. Tenants receiving public housing and Section 8 assistance have the right to be charged no more than 30 percent of their (adjusted) income for rent (a figure the government has revised upward in the past and may again raise, but that, whatever the extant figure, embodies in principle a similar right).
8. If they meet eligibility criteria, veterans purchasing housing are entitled to U.S. Department of Veterans Affairs (VA) loans, in the form of government guarantee of private loans or, in some cases, direct government loans (a feature introduced at the end of World War II).
9. The Community Reinvestment Act provides what in essence are certain rights (geographically, not individually, oriented) to housing finance.
10. Various federal, state, and local laws give existing occupants of rental housing rights of first refusal regarding purchase of their units.
11. The various homeowners' income tax deductions provide the federal government's only true (civilian) housing entitlement "program": All homeowners are entitled to deduct from their taxable income base virtually all mortgage interest and all property tax payments and can, under recently passed legislation, in most cases avoid capital gains taxes altogether.<sup>20</sup> While not all homeowners actually use this feature, it is available to all. When this "right" is challenged, the howls from the (largely upper-income) beneficiaries<sup>21</sup> and their advocates in the real estate world are deafening—and politically potent.<sup>22</sup>

<sup>20</sup> The 1997 tax reform legislation sweetened the capital gains feature for homeowners enormously, providing a windfall likely to benefit mostly affluent homeowners to the tune of some \$6 billion over the next nine years. See Harney (1997).

<sup>21</sup> Seventy percent of the mortgage interest deduction and 65 percent of the homeowners' property tax deduction went to taxpayers in the \$75,000-and-above income class in 1997 (U.S. Congress Joint Committee on Taxation 1997).

<sup>22</sup> A Housing Trust Fund bill—H.R. 1016—crafted by the National Low Income Housing Coalition (see author acknowledgments at the end of this article) and introduced in 1994 on its behalf by Representative Major Owens and other cosponsors—called for limiting use of the homeowner deduction among upper-income taxpayers in order to deposit these new tax revenues in a Housing Trust Fund to be

Other legal steps that move in the direction of a right to housing concern the issue of homelessness—although here the issue has been “shelter,” not in its generic meaning of housing, but temporary, overnight accommodations. In Washington, DC, voters in 1984 passed by a 72-to-28 percent margin an initiative (placed on the ballot by the Community for Creative Non-Violence [CCNV], headed by the late Mitch Snyder), which stated, “All persons in the District of Columbia shall have the right to adequate shelter. Adequate shelter is that which to a reasonable degree maintains, protects, and supports human health, is accessible, safe, and sanitary, and has an atmosphere of reasonable dignity.” While on the surface a clearly established right, in fact it had a sad history.<sup>23</sup>

In New York City, a similar right to decent temporary shelter for the homeless was won, but in this instance the route was litigation: A suit was brought under the state constitution to compel the city to guarantee decent shelter for any homeless man; the case never went to trial but achieved its goal via a consent decree. A later step in the litigation expanded this right to homeless women.

As in Washington, DC, however, New York City has been dragging its feet for over 17 years (the case was brought in October 1979). Advocates for the homeless have been back to court many times seeking to require the city to meet its obligations. Exemplifying this dereliction, a judge in 1996 held Mayor Rudolph Giuliani and two city agencies in contempt of court and levied more than \$1 million in fines against the city after she made an unannounced visit to the city’s homeless processing center and discovered 254 people sleeping on chairs and desks, even though “for more than a decade, the courts have barred the city from housing homeless people overnight in the offices to which they go seeking shelter” (Swarns 1996).

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used to supplement existing low-income programs. Under the parameters set in this legislation, some \$20 billion a year would have been generated. The bill never received serious consideration.

<sup>23</sup> The city government never took it seriously. Proponents had to take the city to court in order to get action, with severe sanctions and fines imposed on the city to get a response. In June 1990, the city council “amended” the initiative law to remove its effectiveness. In response, CCNV took the issue to voters again in 1990, this time losing, 49 to 51 percent, partly the result of what has been labeled “compassion fatigue.” An attempt to secure a constitutionally grounded right to shelter in Washington, DC, yielded a positive ruling at the trial court level but was subsequently overturned by the U.S. Court of Appeals for the D.C. Circuit (Locy 1997).

Recent years have seen a backlash against the homeless, which possibly bodes poorly for support of a right to decent housing. Throughout the country, a range of ordinances and police practices aimed at homeless persons are being enacted and carried out as a general trend toward the criminalization of homelessness. See National Law Center on Homelessness and Poverty (1994, 1997a).

In Massachusetts, a 1995 Superior Court ruling in a class action case reaffirmed that state law gives homeless families a “right to shelter,” striking down a rule by Governor William Weld’s administration that denied shelter to families evicted from public or subsidized housing for falling behind in rent (Lakshmanan 1995). But the Weld administration appealed and obtained from the Supreme Judicial Court a reversal of the Superior Court decision (*Dowell v. McIntire*, 424 Mass. 610 [1997]).

In several cities, what might be labeled a “right not to freeze to death” has been enacted in the form of ordinances requiring public buildings to be opened to homeless persons when the temperature goes below a certain level.

In short, the concept of some housing rights is by no means foreign to our legal system or to prevailing standards of justice. To this existing bundle we must add meaningful additional elements.

### **How would a right to housing work? Some preliminary thoughts**

Beyond the analytical issue of whether there should be a right to decent, affordable housing, a great variety of concrete questions must be answered with respect to how such a right should be defined and implemented.<sup>24</sup>

What are the components of this right? I would include affordability, physical quality of the unit, and the social and physical characteristics of the neighborhood environment.

What should the affordability standard be? Some version of Michael Stone’s (1993) “shelter poverty” standard is best, taking into account household size, household income, and the cost of nonshelter basics, as opposed to a fixed percentage of income.<sup>25</sup>

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<sup>24</sup> This list of issues is drawn from discussions and background papers of the National Housing Law Project/Legal Services Homelessness Task Force Working Group (see the author’s acknowledgments at the end of this article).

<sup>25</sup> “Shelter poverty” is a term and concept originated by Michael Stone, referring to the relationship between the cost of nonshelter basics and the cost of housing. In brief, Stone argues that since housing tends to make the first claim on a household’s disposable income, the most a household should be required to pay for housing is that which leaves it able to meet nonshelter basics at a minimum level of adequacy. The larger the family, the more it has to pay for nonshelter basics, and thus the less it can afford for housing; similarly, the lower the family’s income, the less it can afford to pay for housing, since nonshelter basics take up a higher percentage of household income. Using this concept, updated Bureau of Labor Statistics model budgets, and actual data on household incomes and expenditures, Stone calculates that some 15 million U.S. households cannot afford a penny for housing and still have enough funds remaining for nonshelter basics. See Stone (1993).

What standards should be used for housing and neighborhood conditions? Local housing codes vary enormously in coverage, detail, and standards. The best of these might form the basis for a national code, or HUD's Housing Quality Standards might be used. There are few usable neighborhood quality standards at present, and serious work must be undertaken to develop these. Overcrowding standards must guard, on the one hand, against cultural bias (Myers, Baer, and Choi 1996; Pader 1994) and, on the other hand, against accepting dramatically lower standards for the poor. Provision must be made for changing or rising standards.

Antidiscrimination requirements should permit choice of neighborhoods: the option of in-place as well as dispersion remedies for badly impacted inner-city neighborhoods.

Secure tenure should be a key element. Provision should be made, however, for legitimate changes in land use and for an owner's business reasons that require removal of residents. Defined behavioral infractions can constitute grounds for eviction. Willful nonpayment would be grounds for eviction or foreclosure, but systems should be established to provide needed emergency and longer-term subsidies if incomes are inadequate to pay contracted housing costs, in order to avoid loss of one's home.

### *Can we afford a right to housing?*

To begin with, the costs of providing everyone with decent, affordable housing are greatly affected by the ways in which such a program would be carried out. Relying on the profit-motivated system that currently dominates the U.S. housing scene is by far the most expensive way to go. A vastly expanded social sector, with radically different financing, development, ownership, and management arrangements—as put forward in Institute for Policy Studies (1989) and Stone (1993)—would make the task far less costly.

Beyond that, the question must be partly answered in terms of the costs—to those directly affected as well as to society as a whole—of maintaining the existing inadequate housing system. In other words, can we afford not to have a right to decent, affordable housing?

But given that government budgetary outlays must be far higher than current levels if the National Housing Goal is to become a reality, is the money there? That, I submit, is not a fiscal question but a political one. We do not have any wholly reliable estimates of what realizing a right to decent, affordable housing would cost, but a recent approach can offer an order-of-magnitude estimate. For



example, the detailed 10-year program put forth by the Institute for Policy Studies' Working Group on Housing (1989) has a first-year price tag of between \$29 and \$88 billion (in 1989 dollars), depending on what mixture of its differently priced elements is chosen; over its life, required outlays are reduced annually.

While the figure sounds high, such expenditures represent a tiny percentage of the current federal budget. Funding B-2 bombers ("that notorious lemon" [Lewis 1995] unrequested by the Pentagon), at \$1.4 billion each, at a time when the possibility of large-scale wars is at its lowest in the century, is but one illustration of politicized budgetary choices that reveal no shortage of financial resources. The above figure appears to be in line with the amount of subsidy the government grants under the mortgage interest deduction. According to U.S. Congress (1997) Joint Committee on Taxation estimates, the mortgage interest deduction alone will amount to \$232.6 billion over the period between fiscal years 1998 and 2002. For the same five-year period, the deduction of property taxes on owner-occupied residences is estimated to cost \$89.9 billion, and exclusion of capital gains on the sale of principal residences is estimated at \$29.6 billion. In sum, it's not that we don't have the money to fund a right to housing; rather, it's how we choose to spend it.

### *Strategic approaches*

How might one get there from here? Laying out a detailed plan to establish a right to decent, affordable housing is a later step. The initial step is to set forth the rationale for establishing such a right and to challenge those who disagree to assert their arguments and counterarguments. Some preliminary thoughts along these lines are, however, appropriate.

Community/housing organizing and its political activism component is one major tool. There clearly is a need for more housing organizers to work with and bring together tenant groups, homeless advocacy organizations, community-based nonprofit developers, church-based institutions, neighborhood associations, and civil rights and minority groups. "There are probably more housing lawyers for the poor than there are organizers," observed John Atlas, president of the National Housing Institute (Atlas 1991). Useful thoughts on the strengths, weaknesses, and potential of the country's housing movement are offered by Stone (1993) and Dreier (1997).

It is likely that a right to decent, affordable housing can be advanced only if coalitions are established that involve organic connections with other groups fighting for progressive reform and ad-

vancement of rights in health, food, education, and income support programs. Alliances also must be made across class and race lines, revealing the housing system's inability to provide for the basic needs of an ever-growing portion of the population, connecting the problems of the poor with the problems of the middle class, the problems of homeowners with the problems of renters.

The housing question touches deeply on issues of race and racism. A right to decent, affordable housing inevitably will involve a far greater degree of residential integration than now is the case. Major resistance to dealing with the fundamental flaws in the nation's housing system may stem from society's resistance to dealing with race issues. President Clinton's new Race Initiative and its advisory board, chaired by the distinguished historian John Hope Franklin, may help us deal with that resistance constructively (see Hartman 1997).

There needs to be a recognition, and public education to bring about that recognition, that attaining a right to decent, affordable housing requires major changes in the current housing system with regard to ownership, financing, and production. Merely throwing more money at the problem under the existing system—as with Section 8—can have only limited results. The existing system of production, ownership, and finance has shown itself incapable of meeting the needs of an ever-growing portion of the population. We must ask honestly whether the for-profit system of production, management, and finance that overwhelmingly dominates the way housing is provided in the United States is consistent with a right to decent, affordable housing; or whether, alternatively, this goal can be reached only through conscious and large-scale development of public and other nonprofit (nonmarket), permanently affordable units—both new and units converted from the existing stock to this system. Part of this public education process involves stressing the ways in which and extent to which virtually all housing in the United States currently benefits from some kind of indirect or direct government subsidy. Op-eds, study groups, yearlong education projects such as those done by the League of Women Voters, and many other creative ways of teaching the American public about good and bad housing policy are a necessary foundation for basic change of the type advocated in this article.<sup>26</sup>

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<sup>26</sup> The Media Advocacy Project of the National Low Income Housing Coalition is using a variety of research techniques—analysis of current affordable housing messages, focus groups, polling—to ascertain public attitudes toward affordable housing, housing subsidies, and an array of other community development activities, with the aim of creating more persuasive social policy messages, efforts that may assist in moving toward a universal right to decent, affordable housing.

Selective litigation can be of assistance, although the courts (in particular, the federal courts, following the Reagan and Bush judicial appointments) are not presently as amenable to advancing economic and social rights as they were in the 1960s and 1970s. Major rights advances have been made this way, from ending legally sanctioned racial segregation in public schools, to abolishing the poll tax, to facilitating receipt of welfare support by eliminating bars based on interstate movement and requiring due process hearings before aid is terminated. Housing attorney Florence Roisman has put forward a series of imaginative approaches to housing rights, using then-existing public benefit, child welfare, and mental health laws (Roisman 1990).

### **A challenge**

Those who reject a right to decent, affordable housing must ask themselves what future there is for owners and renters—middle-, moderate-, and low-income—if existing trends continue, as they surely must absent serious and radical intervention.

And so, I end with a challenge. Let those who do not believe that decent, affordable housing should be a right in American society as we approach the end of the twentieth century put forward their views and what they are based on. Let them also play out the scenario of current conditions and trends: What happens to our society if present levels of inequality, discrimination, and deprivation are allowed to continue and intensify? Let them answer why it is better to have tax breaks for the rich and B-2 bombers we don't need, rather than a society where fundamental economic and living standards, as well as political and civil rights, are guaranteed to all. Responses to some of the detailed considerations as to what this right should and would mean in practice, as well as how we might move in this direction, also are welcome. But the dialogue at the first level should be about the concept itself. Let it begin.

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ing Group convened by the National Housing Law Project (NHLP) and the Legal Services Homelessness Task Force (see the reference list for the NHLP's document as well); and the Housing Trust Fund Committee of the National Low Income Housing Coalition, which produced the legislation cited in footnote 22.

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