

Comment on Chester Hartman and David Robinson's "Evictions: The Hidden Housing Problem"

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Abstract

Evictions and involuntary moves negatively affecting poor renters present a significant problem. Creating a national database to comprehensively document the magnitude of the problem, however, presents serious difficulties. Most local courts do not publish data on court actions involving evictions. To do this on a national level and to obtain all of the data needed by the authors would require special funding and the cooperation of courts; these are unlikely to materialize. To obtain comprehensive data on involuntary moves beyond the court system would present even greater difficulty.

Improvements can be made in existing protections for tenants vulnerable to displacement without compiling comprehensive national data. Previous examples include the debates over displacement and homelessness. Since legislative and administrative reforms are more likely at the state and local levels, reform efforts, including any data collection, should be primarily focused there.

Keywords: Evictions; Housing policy; Rental housing

Chester Hartman and David Robinson have identified a housing issue that has not been given much attention—the eviction of renters. As they document, the available data are fragmentary and incomplete. These data do not include what the authors term an “involuntary move,” that is, a consequence of a landlord-generated change or threat of change in the conditions of occupancy of a housing unit. They see the following generalizations about evictions as important:

1. “[R]enters, who have far less security of tenure than homeowners, are disproportionately represented among involuntary movers” (467)(as are minority and poor tenants).
2. “[T]he economic, social, and psychological impact of forced displacement can be severe” (468).
3. “[F]orced displacement frequently results in outright homelessness” (468).
4. “[D]isplacement can trigger negative changes in related elements of the lives of those displaced” (469).

5. “[V]arious costs are imposed on society as a result of forced displacement” (469).
6. “[O]n occasion, the eviction process can lead to violence” (470).

On the basis of these observations, Hartman and Robinson then analyze the shortcomings of the state legal systems that process eviction cases brought by landlords and also discuss examples of the weakening of tenant protections against eviction. The authors call for a national database aimed at creating remedies to prevent and limit the number of evictions and minimizing the damaging effects of involuntary moves. They cite five existing remedies that could be expanded and strengthened:

1. Community organizing
2. Eviction prevention programs
3. Governmental rental subsidy and emergency assistance programs
4. Government regulation of rents
5. Just-cause eviction laws

In this article, I will discuss the eviction problem, the call for a national eviction database, and the status of existing remedies.

The eviction problem

The first major issue is a definitional one. Hartman and Robinson state that “any honest treatment of this issue must take into account all the ways tenants leave their homes involuntarily” (466). They cite the following types of involuntary moves beyond court-ordered evictions:

1. Various notices from landlords, including notice of an eviction, rent increase, or nonrenewal of a lease, that result in tenants moving without any court action resulting in a judgment against them or their forcible removal by a sheriff or marshal
2. Harassment of tenants by landlords (for example, to pave the way for conversion of their units for other uses or to make the landlords eligible for rent increases allowed upon vacancy under some rent regulations)

3. The sale or conversion of mobile home parks
4. Secondary displacement resulting from rent increases attributable to gentrification
5. Utility shutoffs resulting from nonpayment

With the possible exception of moves resulting from landlord claims of tenant violations of a lease other than nonpayment of rent, conflicts over the habitability of the unit, and personal conflict between tenants and landlords or their agents, most of these types involve the inability or unwillingness of tenants to pay the rent (including utility charges) or rent increases. The authors state that in New York City, approximately 90 percent of eviction cases are for nonpayment of rent. However, it must be noted that not all tenants want to stay under these circumstances, and in the case of poor tenants, some may actually require proof of eviction to be eligible for publicly assisted housing.

Problems with collecting data on evictions

In view of the authors' expressed belief that obtaining data to illustrate the magnitude of evictions on a national scale could lead to reforms to reduce their number and impact, I must confess considerable skepticism as to how likely that would be. As Hartman and Robinson state in their conclusion:

The most effective way to avoid forced evictions (at least those linked to rent- and utility-paying problems, which almost certainly are responsible for the vast majority of such actions) would be to increase the supply of decent, modestly priced units and/or to increase tenants' incomes through social policies such as a higher minimum wage, so-called "living wage ordinances," and increased employment opportunities. (493)

While data on the number of evictions might be helpful, presumably these data must somehow be linked to nonpayment of rent and the evicted tenants' rent-to-income ratio in order to reflect their ability to pay. Even though most eviction actions in court involve a claim of nonpayment, that does not automatically mean that the tenant cannot afford the rent. There are often special circumstances that complicate this issue. If such data are to be collected, then it would be important to attempt to substantiate the argument that poverty and unemployment are indeed the primary causes of nonpayment of rent leading to eviction actions.

Obtaining such data from the courts would most likely be a daunting task. While New York City's rent regulation system is unique in providing considerable data on the rent-to-income ratio of tenants in regulated rental units, the New York City Housing Court does not require income statements from tenants. Nor does any other U.S. court handling eviction cases. The only exception could be identifying tenants with federal housing rental assistance or living in conventional public housing projects who are presumed to pay 30 percent and no more of their income for rent under the U.S. Department of Housing and Urban Development's (HUD's) guidelines and who are evicted through the civil court system.

Even if it is assumed and accepted that the overwhelming majority of tenants who are evicted or move involuntarily are poor, I am not sure whether that would have much effect on campaigns for more affordable rental housing or increased income and employment for poor tenants. Instead of a national database, perhaps a more likely and feasible undertaking would be to attempt to answer some of the issues raised by the authors by studying tenants whose cases are heard by the very few specialized housing courts that do exist in the United States. The housing courts in Boston and Cleveland come to mind. These two courts have had long-serving judges and have been especially sensitive to addressing the problems raised by Hartman and Robinson.¹ However, it should be noted that the authors point to arbitrary handling of evictions by the landlord-tenant and housing courts in cities like Baltimore, Chicago, New York, and Philadelphia.

The situation can be even more unfair to tenants where there are no specialized landlord-tenant or housing courts to handle evictions, which is the prevailing pattern in the United States. In most of the country, there is no special section of the municipal court system that handles all landlord-tenant cases, including evictions. Rotating judges hear

¹ In his 1999 midterm report, Cleveland Housing Court Judge Raymond L. Pianka discussed the eviction problem as follows:

Evictions, under the law, are cut and dry....Social aspects of evictions, however, are not so cut and dry. Many evictions indicate deep social ills that are not being addressed within a community. Substandard wages, sudden illness in a working family without health care benefits, drug or alcohol addiction, lack of education in basic life skills—all of these factors contribute to the often tragic end result—eviction from one's home. The Court is well aware of the effect evictions have on families—particularly elderly tenants, the physically challenged, and children. (3)

His counterpart George E. Daher, the longtime Chief Justice of Boston's Housing Court, has made similar statements.

these cases, there is no expert support staff to assist these judges, and often no data are kept on the eviction caseload. Given their dockets, the current lack of data, and the cost of collecting the data Hartman and Robinson seek, it seems unlikely that most municipal courts would cooperate unless they received special funds for this purpose. If a once-only snapshot survey (similar to the decennial census) were involved, many courts might be uncooperative even with such funding because of the additional administrative burden.

By way of example, Cleveland's Housing Court, created in 1980, heard 10,706 civil actions in 2002, of which 10,676 were eviction actions brought by landlords. Of the eviction cases, 1,300 went to mediation before a magistrate or hearing officer and 150 involved rent deposits legally withheld by tenants protesting substandard housing conditions as a defense for nonpayment.² This court does keep data on its caseload, including evictions. A knowledgeable observer notes that approximately half of the judgments were by default due to the nonappearance of the tenants, leaving their situation unknown. Of the tenants who did appear, few denied nonpayment or offered a defense.³ Of course, as Hartman and Robinson note, few of those tenants who do appear in court are represented by attorneys. Only 1.4 percent of tenants facing eviction in Cleveland in 2002 attempted to use rent deposit as a defense for nonpayment. In this court, many more tenants went to mediation with their landlords. Mediation is typically offered either where a landlord is willing to consider a compromise in the method or timing of payment of rent or in an attempt to delay the eviction to allow the tenant time to find alternative housing.

To obtain the type of data Hartman and Robinson seek to support their goals (e.g., breakdown of those eviction actions involving nonpayment and what percentage of eviction hearings result in default judgments because of the nonappearance of the tenant, whether that person had insufficient income to pay the rent, whether the landlord and tenant were represented by attorneys, and what impact, if any, that had on the outcome, etc.) would require considerable changes in the court's record-keeping and data collection and analysis. And this is the only one of Ohio's eight major cities that has such a specialized municipal court with an elected judge and a sizable staff with comprehensive jurisdiction to handle cases involving housing (Keating 1987; White 1981). To

² Data provided to the author by the Cleveland Housing Court, August 2003. Note that rent withholding is a remedy that can result in withheld rent being put into repairs until there is compliance with municipal housing code requirements.

³ Interview by the author with Frederic White, Cleveland-Marshall College of Law, Cleveland State University, August 21, 2003.

support the policies Hartman and Robinson advocate, it would also be very useful to know the impact of being evicted on tenants, that is, whether they found replacement housing and its cost and condition. These would be beyond the ability of a court to track.

However, if all Hartman and Robinson seek is the total number of court-related eviction actions, this information is already available, at least in the state of Ohio. The Ohio Supreme Court annually publishes a composite administrative judge report for the state. In 2002, the state's municipal courts, including the Cleveland Housing Court, reported handling a total of 153,996 landlord-tenant eviction cases, of which 62,463 were pending at the end of the year (Ohio Supreme Court 2003). This report and total do not distinguish between commercial and residential leases and cases. Since reform to prevent or ameliorate displacement focuses primarily on state and local laws and policies, it makes more sense to focus on eviction data that are generated statewide (e.g., Ohio) or locally (e.g., Cleveland Housing Court) than on a national evictions database.

Legal representation of tenants in eviction cases

While Ohio's landlord-tenant law, like that in the rest of the United States, saw reform decades ago, that does not mean that many tenants avail themselves of legal defenses or remedies that might defeat eviction actions in court or illegal actions on the part of landlords. Despite the efforts of tenant organizations, it is certainly true that many tenants threatened with eviction do not know their rights and are not represented by attorneys. In their discussion of tenants' legal rights and remedies, the authors correctly point out that U.S. citizens are not entitled to housing under the Constitution.

Nor are they guaranteed legal representation in civil proceedings, even if they are indigent and unable to afford legal counsel. Except for free Legal Aid and Legal Services attorneys, who are few in number and have heavy caseloads because of inadequate funding, most low- and moderate-income tenants have little chance of obtaining private legal counsel unless they are represented on a *pro bono* basis. As Hartman and Robinson themselves note, this is well known, even in the absence of national data on the legal representation of tenants in eviction cases. The authors in fact refer to multiple studies substantiating the striking imbalance in the representation of landlords and tenants. It is unclear how additional data would therefore lead to increased funding to provide free legal representation to indigent tenants in eviction actions or require that all tenants be represented in such actions. Instead,

conservative opposition to increased funding for free legal representation of indigents, including tenants, must be overcome politically.

Problems with collecting data on involuntary moves

What seems even more problematic is the call for obtaining data on involuntary moves beyond the legal system. The authors suggest “a series of sample interview studies in representative areas, urban and rural, to ascertain the reasons for the forced change, the characteristics of those affected, and what happens to them, in the short and long run” (492). While this is definitely possible, using such studies to create a national database to obtain a “rough estimate of the magnitude of the problem, both nationally and in subareas” (492) would undoubtedly be challenged as unreliable.

This would be very much like past debates over the magnitude of displacement and homelessness, which occurred as those concerned with these problems, including the authors and me, sought government action at all levels, but especially at the federal level, to address these social problems. In the case of both phenomena, the Reagan administration in the early 1980s disputed estimates of the magnitude of these problems made by advocates and argued through HUD, that in any case the federal government was not responsible for addressing them (Hays 1995).

In the case of displacement, the inflation in housing prices in the late 1970s and the conversion of rental housing to condominiums in many urban areas led to a debate over the magnitude of displacement and what, if any, actions should be taken by government at all levels to prevent or reduce it. To take just one study, the National Urban Coalition (NUC) surveyed 65 neighborhoods in 44 cities in 1977 in an effort to determine the scale, rate, cost, and social implications of the neighborhood revitalization movement and to identify those urban areas that needed public policy intervention. NUC did not attempt to calculate the number of those displaced, although it did identify the lower-income elderly population as most likely to be affected. Nevertheless, it urged that governments at all levels “devise strategies to minimize the adverse effects of private market housing rehabilitation... (and) that government develop and strengthen programs which provide financial assistance for housing rehabilitation by and for low income residents” (NUC 1978, 23). Likewise, without having reliable national data on displacement, in 1982, Chester Hartman, Richard Legates, and I published a primer on displacement, explaining policies and programs designed to address the issue. In 1979, under the Carter administration, HUD published a report on displacement that both noted the unavailability of reliable

national data and the difficulty of producing such data: “Even if the available neighborhood displacement case studies agreed with each other, it would be impossible to use case-study data to estimate the national incidence of displacement, because no reliable data are available on the incidence of the causes of displacement” (1979, 8).

By contrast, at the same time, HUD did conduct a national study of condominium and cooperative conversions and concluded that in the decade 1970–79, approximately 366,000 rental units throughout the United States, representing 1.3 percent of all occupied rental units in 1977, were converted to ownership (1980). HUD noted that most conversions took place between 1977 and 1979 and then calculated that 18 percent of all households that moved from converted buildings experienced the adverse effects of displacement (that is, movement to rental housing of similar or lower quality at an equivalent cost (1980). HUD also noted state and local government regulation of conversions then in existence. These regulations were often triggered by estimates of the adverse effects on residents who could not afford to purchase their units. However, the national pattern documented by HUD did not affect prior state and local government action where it was taken.

More recently, a 2001 report on gentrification by the Brookings Institution and PolicyLink (Kennedy and Leonard) concluded, “Efforts to characterize the gentrification trend are severely hampered by a dearth of hard data and a reliance on anecdotal information” (2001, 7). The report noted:

Displacement of low-income residents is one of the defining components of gentrification, and is also by far the most serious consequence of gentrification. As noted earlier, estimates of displacement in the '70s and '80s vary widely, depending upon whether the researcher takes a place-based or people-based approach. There is little comparable research for gentrification in the 1990s. (Kennedy and Leonard 2001, 15)

Yet, as in the earlier debate on this issue, the lack of data has not prevented at least some local responses to gentrification-caused displacement where the problem was considered sufficiently serious to address and political support was forthcoming.

Hartman and Robinson are concerned about evictions that result in homelessness, noting the 1996 national survey of providers and clients cited by Burt (2001) and other local studies. Major cities that have claimed undercounts, including those of the homeless, have challenged the last two censuses on this basis, leading to controversies in Congress and the courts over census counts and the methodology used to count

the homeless. I would predict that the same type of controversy would be true for what Hartman and Robinson's proposal would produce in the form of estimates from samples and local case studies. Yet disputes over measuring the magnitude of homelessness, whether nationally or locally, have not prevented advocates from successfully gaining support for national and local legislation creating programs to serve the homeless, including housing shelters and transitional housing, HUD's comprehensive care approach under the Clinton administration, and social services to enable the homeless to obtain jobs and housing (Culhane 2002). In Cleveland, an active homeless advocacy organization (working with a statewide housing coalition) promotes preventive action to reduce the likelihood of homelessness resulting from eviction. The Cleveland Housing Court, the local public housing authority, and the Cleveland Housing Network (of community development corporations providing below-market housing) all have policies intended to achieve this goal.

The status of existing remedies

Hartman and Robinson's purpose in calling for a national database on the magnitude of evictions and involuntary moves is to support the case for expanded and improved remedies to prevent or lessen the impact of evictions. They cite several examples of the weakening of existing remedies. I agree with them that there have been setbacks and would add other examples:

1. In 1995, a landlord-supported statewide referendum in Massachusetts eliminated rent control in the three cities (including Boston) that had enacted municipal rent controls. The attempt of Mayor Thomas Menino in 2003 to revive a form of rent regulation to address the shortage of affordable housing in Boston failed.
2. In 1999, the California legislature preempted municipal rent controls and mandated that they must include vacancy decontrol, leading to fears that this would eventually result in the elimination of most of the more affordable housing subject to municipal rent regulation in California.
3. In August 2003, a closely divided California Supreme Court ruled that under state law, landlords can evict based on their right to go out of the rental housing business, even though the tenant may raise a defense of retaliatory eviction.⁴

⁴ *Drouet v. Superior Court of the City and County of San Francisco* (86 Cal. App. 4th, 1237, 2003).

4. In 2000, the state of Washington's supreme court ruled that state law preempted a first right of refusal claimed by tenants of mobile home parks threatened with displacement as a result of a sale for the purpose of converting them to other uses.⁵

These are examples from states where tenants have successfully organized in the past at the state and local levels but still lack enough political clout to preserve past legislative gains or break new ground in tenant rights. By contrast, the best-protected tenants living in unsubsidized rental housing in the United States are undoubtedly found in New Jersey, where the right to housing is recognized under the state's constitution, just cause is required for eviction, controls on condominium conversion protect the tenants most vulnerable to displacement, and municipal rent controls are widespread. These reforms resulted not so much from documentation of tenants' problems, but rather from the political power of the New Jersey Tenants Organization, whose members over the past three decades successfully lobbied the state legislature and local governments for these protections and then fought to preserve them (Baar 1998). However, even in New Jersey, this does not mean that tenants are always aware of their rights and exercise them when threatened with eviction or an involuntary move, and poor tenants are still not entitled to legal representation in eviction cases.

Conclusion

I agree with the immediate goals that Hartman and Robinson advocate: to reduce the displacement of the most vulnerable tenants through the eviction process and involuntary moves. I also recognize the shortage of affordable rental housing and support the efforts of dedicated advocates like the National Low-Income Housing Coalition to convince Congress to provide more funding for affordable housing programs and create a national housing trust fund (Bernstine and Saraf 2003) modeled on the many existing state and local housing trust funds. In its most recent report on the state of the nation's housing, the Joint Center for Housing Studies (2003) stated:

[Rental] housing problems fall most heavily on those in the bottom fifth of the income distribution, who can barely afford to pay enough to cover the cost of utilities, property taxes, and maintenance on even modest units in less desirable communities. Yet only 34 percent of the renters in this quintile receive housing assistance.

⁵ *Manufactured Housing Communities of Washington v. Washington* (13 Pac. 3d 183, 2000).

With government deficits ballooning, the prospects for expanding this share are grim. (4)

The Bush administration's most recent HUD budget for fiscal year 2004, which proposed cutbacks in Section 8 housing assistance for lower-income renters, reinforced this gloomy outlook.

My conclusion is that attempting to create a national eviction database as a way to promote the reforms Hartman and Robinson advocate would be extremely difficult and likely ineffective. Instituting programs to document the eviction problem in the state court systems and also and even more so these actions outside those systems that constitute involuntary moves would be extremely costly and practically impossible logistically. Even if the data were available, it would be insufficient, absent a change in political will, to effect the sought-after reforms.

A more realistic strategy would still seem to be continued organizing at the state and local levels to improve the legal system that processes evictions and to create policies to reduce the impact of involuntary moves, whether they involve court-ordered evictions or not, on the most vulnerable tenants. This would include such structural reforms as housing courts that can address at least to a certain extent the problems of poor tenants and legal protections like just-cause eviction statutes. It also includes obtaining funding for emergency assistance to prevent evicted tenants from becoming homeless. These efforts can include attempts to estimate the magnitude of evictions and involuntary moves that cause hardship for poor tenants, but gaining legislative enactment, adequate funding, and responsible judicial administration is much more heavily dependent on the forging of political coalitions.

Author

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References

Baar, Kenneth K. 1998. New Jersey's Rent Control Movement. In *Rent Control: Regulation and the Rental Housing Market*, ed. W. Dennis Keating, Michael B. Teitz, and Andrejs Skaburskis, 142–150. New Brunswick, NJ: Rutgers University, Center for Urban Policy Research.

Bernstine, Nancy, and Irene Basloe Saraf. 2003. New Rental Production and the National Housing Trust Fund Campaign. *Journal of Affordable Housing* 12(4):389–405.

- Burt, Martha R. 2001. Homeless Families, Singles, and Others: Findings from the 1996 National Survey of Homeless Assistance Providers and Clients. *Housing Policy Debate* 12(4):737–80.
- Culhane, Dennis P. 2002. New Strategies and Collaborations Target Homelessness. *Housing Facts & Findings* 4(5):1, 4–7.
- Hartman, Chester, Dennis Keating, and Richard LeGates. 1982. *Displacement: How to Fight It*. Berkeley, CA: National Housing Law Project.
- Hays, R. Allen. 1995. *The Federal Government and Urban Housing: Ideology and Change in Public Policy*. Albany, NY: State University of New York Press.
- Joint Center for Housing Studies. 2003. *The State of the Nation's Housing 2002*. Cambridge, MA: Harvard University.
- Keating, W. Dennis. 1987. Judicial Approaches to Urban Housing Problems: A Study of the Cleveland Housing Court. *Urban Lawyer* 19(2):345–65.
- Kennedy, Maureen, and Paul Leonard. April 2001. Dealing with Neighborhood Change: A Primer on Gentrification and Policy Choices. Discussion paper prepared for the Brookings Institution, Center on Urban and Metropolitan Policy, and PolicyLink.
- National Urban Coalition. 1978. *Displacement: City Neighborhoods in Transition*. Washington, DC.
- Ohio Supreme Court. 2003. *Ohio Courts Summary*. World Wide Web page <<http://www.sconet.state.oh.us/publications>> (accessed 2003).
- Pianka, Raymond L. 1999. Beyond Broken Windows: Housing Court and the State of Housing in Cleveland. Unpublished report, March 1.
- U.S. Department of Housing and Urban Development. 1979. *Displacement Report*. Washington, DC.
- U.S. Department of Housing and Urban Development. 1980. *The Conversion of Housing to Condominiums and Cooperatives: A National Study of Scope, Causes, and Impacts*. Washington, DC.
- White, Frederic. 1981. The Cleveland Housing Court Act: New Answer to an Old Problem. *Cleveland State Law Review* 30(1):41–56.