

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

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Abstract

People have often flourished by wandering, so displacement and mobility are not inherently bad. The "hidden" problem is not evictions, but how homelessness has been caused by protections enacted in the name of helping the poor. The effect of eviction protections is to prolong the eviction process, causing income loss and expenses that small property owners, who own much private rental housing used by the poor, cannot absorb. Over the past few decades, a large segment of low-cost private rental housing has been abandoned, and rooming houses have almost entirely disappeared—all coinciding with the enactment of eviction protections and the rise of homelessness.

If rooming houses were made viable once more, as much as 80 percent of the homeless could be housed in private rental housing, allowing public resources to be redirected to the hard-core homeless. Private rooming houses are especially critical for our growing elder population.

Keywords: Evictions; Housing policy; Rental housing

Not all who wander are lost

For well over a million years, human beings wandered in small nomadic packs of hunters and gatherers. Survival during the harsh Ice Ages that occurred in our early hominid history forced us to migrate and adapt to extreme new climates, a process that is believed to have powered our evolution into modern *homo sapiens* and pushed us to develop large, complex brains and a high degree of cooperation (Calvin 2002). In the past 100,000 years, as fully modern *homo sapiens*, we still encountered difficult Ice Ages, only to see our species rapidly develop tool-making, agriculture, and the highly specialized division of labor that supports civilization. In the latest brief chapter, successive waves of us wandered as immigrants to a new land and gave the energy and vitality that very quickly turned the United States into the world's most advanced industrial nation—a process that continues still.

Thus, displacement and mobility, wanted or unwanted, are not inherently or always or even most of the time bad, as Hartman and Robinson assume. Evictions as very broadly defined—clearly the aim of the article—are nearly indistinguishable from the general process of social

mobility among renters. And while mobility may be challenging and stressful at times, in the long run it is often healthy and beneficial to individuals and society alike.

Yet the whole thrust of Hartman and Robinson's discussion seems aimed at creating an immobile, static society that would tolerate and encourage individual stagnation. Neither job loss nor divorce nor money mismanagement nor nonpayment of rent should be allowed, it is repeatedly implied, to throw people out of their homes, so traumatic are the presumed effects of involuntary moves. A strong ideological agenda—eviction-free zones and a right to housing—leads the discussion far afield from any actual housing reality anywhere in the world and confuses the idea of evictions. People can move for the happiest of reasons (marriage, a new baby, or a new job) and still experience resistance and stress, so should they not move? If people stay put in their homes and see the world disintegrate around them, what good is staying put? If the issue of evictions is appropriately framed in the context of social mobility, existing data would not seem so scarce, nor would future research be mired in inadequate theoretical concepts.

Helping the hard-core homeless

We propose that the critical issue is neither evictions nor geographic mobility per se, but whether people remain tied into a social network—as do most people—or become individually isolated—as do the homeless. Nomadic though they were, hunters and gatherers were intensely bonded together through their life cycle in small groups; that stable interpersonal bonding was the key to their evolutionary success. Today, people move to new jobs and reintegrate into new networks. Divorce is traumatic, to be sure, but most parents and children in divided families move on, form new relationships, and even preserve part of their original families. Social networks in modern society are certainly much weaker than those in traditional societies (a broad issue we cannot address here), but the critical concern, we believe, is with those who become so isolated that they do not hook into any social network at all. By and large, these are the hard-core homeless, who are actually harmed by evictions in ways never touched on by Hartman and Robinson.

By hard-core homeless, we mean something quite a bit more restrictive than the usual meaning of homeless. The phenomenon of homelessness in American society began three or four decades ago as the result of several converging trends and has grown ever since. Mental hospitals as long-term residences were closed down. The public housing experiment failed, so funding was cut back. And housing standards rose with

affluent times, leading to the wide-scale abandonment of lower-income housing (Ferguson and Dickens 1999). Among the increasing number of people living on the streets or in shelters, however, are two distinguishable categories. By far the largest category consists of those who would not be homeless if suitable private housing were available: Let us call them the “unhoused homeless.” By some estimates, they constitute roughly 80 percent of the homeless population (Philip Mangano, United States Interagency Council on Homelessness, personal communication, 2000; Massachusetts Executive Office for Administration and Finance 1999). And then there are those who cannot or will not stay in private housing in any form: the hard-core homeless. They are people who have very limited, unpredictable sources of income or whose behavior is chronically problematic *and* who are not tied into any social networks of support. Most often among them are those more difficult cases involving the mentally ill, alcoholics and drug abusers, ex-inmates from prisons, and single mothers with children who need substantial and carefully tailored help—far more than just a place to live.

At the present time, very significant public resources from all levels of government are ostensibly devoted to helping the unhoused homeless without solving their problem, which is simply the lack of low-cost *private* housing. Meanwhile, the hard-core homeless scarcely get what they really need—assistance (probably public assistance) into stable social networks. Substantial new public resources for the hard-core homeless seem unlikely in the present fiscal atmosphere, but if we successfully address the lack of low-cost private housing, then public resources could be shifted to the hard-core homeless. Prevailing thought among many housing activists, as exemplified in Hartman and Robinson, would tighten existing eviction protections even further in a bid to hold people yet more tightly in private housing once they get into it. We believe that such an approach would only exacerbate homelessness further. Paradoxical though it may seem, eviction protections destroy important forms of private housing and create homelessness.

Slow evictions cause homelessness

The dramatic loss of low-cost private housing over the past few decades, for the first time eliminating a sufficient private supply for the poor, has occurred in two housing types: family-sized apartments and rooming-house units or SROs suitable for one or two persons. Their loss is primarily and directly attributable to the economic and social impacts of eviction protection measures widely implemented since the 1960s. Ironically, the War on Poverty was followed by even more devastating poverty in the form of homelessness and a major new gap at the low end of the housing ladder.

The mid-20th-century shift from self-help evictions to court-ordered evictions in most parts of the country was not unwelcome—especially by small property owners, who have no desire to confront tenants personally in forced move-outs. Letting the courts intervene reduced aggression levels on both sides, but exposed the eviction process to further legal interventions, which tenant advocates promptly succeeded in achieving, most strongly in the major metropolitan areas of the East and West Coasts. What was originally supposed to be a quick “summary” court process to regain possession of one’s property has been turned into a potentially very lengthy one by letting tenants or their lawyers file counterclaims against the owner as part of the eviction process itself, letting them demand pretrial answers to lengthy “discovery” questions about those counterclaims, and letting them repeatedly postpone trial dates. Most or all of any tenant claims against an owner had historically been handled in separate legal proceedings that allow all necessary due process. By folding these claims into the eviction process itself, the principal effect is to greatly slow down or stop many evictions. In 1972, in *Lindsey v. Normet* (405 U.S. 56), the U.S. Supreme Court, ruling against such a delaying intervention, noted exactly this issue of speed in evictions:

The Court has twice held that it is permissible to segregate an action for possession of property from other actions arising out of the same factual situation....The objective of achieving rapid and peaceful settlement of possessory disputes between landlord and tenant has ample historical explanation and support.

Delaying interventions, tactics used by tenants being evicted, have nevertheless prevailed in many jurisdictions, and the reason that the owner sought eviction in the first place—nonpayment of rent in at least 80 to 90 percent of the cases (Harvey Chopp, Boston Housing Court Administration, personal communication, September 2003) or nuisance or criminal behavior—is allowed to continue for long periods or indefinitely.

The ability of tenants to prolong the eviction process is the primary aspect of current eviction practices that endangers low-cost private rental housing. The chief elements in this housing-destructive process associated with evictions include the following:

1. The right of tenants to claim that they are withholding rent for code violations, a claim usually made after receiving an eviction notice for nonpayment of rent (Rent withholding is nonevictable. Rent nonpayment is evictable.)

2. The lack of a corresponding obligation for tenants to escrow the unpaid “withheld” rent
3. The inability of owners to collect unpaid “withheld” rent rightly owed to them after tenants move out
4. Increasingly stringent housing habitability codes that demand code-perfect apartments at all times
5. The lack of multitiered habitability codes that would sequentially require safety first, housing preservation next, and cosmetic amenities last, in a time frame that takes the property’s rental income into account

The combined impact of these elements prolongs evictions and brings disaster to low-cost rental housing.

Low-cost apartments

Prolonged evictions upset an otherwise delicate economic balance in low-cost apartments. Because tenant incomes are low, rents must be low. The apartments that are available at low rents are inevitably in older, often wood-frame housing that has all the basic requirements of good shelter, but has endured long periods of low maintenance and has not been updated to the latest standards. The owners of this housing are frequently small-scale, working-class owners, typically just one to two steps above their tenants on the income scale, who do their own maintenance and repairs and often delay costly capital improvements as long as possible. They will nurse a leaky roof and old plumbing along to squeeze out a few more years of life before spending big bucks. This management style is inherently economical, and tenants will often help by doing their own repairs or overlooking minor inconveniences and cosmetic defects. Ideally, the housing is at least maintained or very slowly improved.

But in the legal environment of eviction protections, this housing is at risk. Typically, during prolonged evictions, low-income tenants stop paying their rent and make formal or informal legal counterclaims designed to forestall or prevent eviction, including (per Hartman and Robinson) demands on “landlords to make needed repairs on deteriorating housing” (489). In reality, landlords have no choice but to place top priority on evicting nonpaying tenants in order not to lose their property. Thus, money that could go into maintaining and preserving the low-cost housing of low-income tenants gets diverted to high

eviction costs, a complete waste. The housing, other low-income tenants, and the neighborhood all suffer from the loss of already scarce financial resources extracted by long evictions, and a downward spiral often ensues. When small property owners with limited resources finally get sufficiently squeezed by no rent, unevictable tenants, and inspectors' demands for high-cost repairs, the inevitable outcome is abandoned housing, which turns tenants onto the streets and dramatically reduces the housing supply at the low end.

In 1992, the city of Lawrence, MA, blazed into national headlines as “The City of Flames” after fire and arson wreaked havoc on whole lower-income neighborhoods dotted with abandoned housing. The city’s inspections chief, who had grown up in this housing, complained bitterly of the unchecked rent withholding by tenants and the “Catch-22” situation that owners were placed in: forced repair with no income (“Why Abandoned Housing?” 1999). Similarly, Cushing Dolbeare, a long-time advocate with the National Low-Income Housing Coalition and chair of the National Lead-Based Paint Hazard Reduction and Financing Task Force, complained fervently about all the abandoned housing she had seen across the country that “was in good condition when it was abandoned,” largely because of strict and costly lead paint laws (1997). While invasive lead paint abatement is now known to be ineffective and even dangerous (U.S. Environmental Protection Agency 1995), just the presence of lead paint has been a powerful counterclaim by families against eviction for not paying their rent, except that too often the strategy causes owners to simply walk away from their properties.

Rooming houses

The impact of prolonged evictions on rooming houses (we use the term to include SROs, lodging houses, transient hotels, and all similar housing types) has been more social than economic, but even more disastrous than the impact on low-cost apartments. Massachusetts, a state with rigorous tenant protections, has lost 96 percent of its rooming house units in the past three decades, the largest drop in the nation (Massachusetts Executive Office for Administration and Finance 1999). At the same time, Massachusetts spends more than any other state on homelessness services, from which we will infer that it has a proportionately large homeless population. Massachusetts is undoubtedly similar in these respects to many densely populated regions of the country.

The convergence of these three factors—legally prolonged evictions, a sharp decline in rooming-house units, and a sharp increase in homelessness—is easy to explain, as we learned by interviewing black

rooming-house owners on the verge of being forced out of business (“No. 1 Cause of Homelessness: Rooming Houses Outlawed” 2000; “Who Is Willa Mae Brothers?” 1999). Rooming houses have historically served a range of functions—as housing for newcomers, job seekers, students, the elderly, the divorced, and the evicted—but also as the housing of last resort for alcoholics, drug addicts, drug dealers, ex-inmates, prostitutes, and others living on the fringes of society. Even the most vigilant owner cannot always succeed in screening out undesirable tenants before renting. So when a problem tenant surfaces for any small owner without ample resources, the long, arduous eviction process effectively blocks that tenant’s removal. The problem tenant’s behavior forces other tenants out, more problem tenants move in, and the housing spirals down and out of the owner’s control. Of course, some owners may decide to cooperate with tenants in illegal activity to ensure their income and avoid high eviction costs. In any event, the outcome is the same: unkempt housing that draws illegal activity. Neighbors complain, inspectors shut down existing rooming houses, and community residents resist the legal creation of new ones. Many of those once well served by rooming houses have become the unhoused homeless.

Rooming houses are the private market’s naturally most affordable housing type, uniquely affordable to the very poor and profitable for owners in even the costliest housing markets. Our informal survey of homeless men on Cambridge (MA) streets revealed universal agreement that they would be able to pay the going rooming-house rate (about \$450 to \$550 a month in the Boston area) and still have enough money left for food and clothes. Their income sources were typically pan-handling, bottle-collecting, Social Security and disability benefits, pensions, and relatives, yielding \$25 or more a day (“Stories of Homeless Men” 2000).

Eviction as social control

Whether the unhoused homeless could stay in rooming houses and control their behavior sufficiently not to bother their neighbors is a valid question. But the threat of speedy eviction and losing a roof over their head would likely induce self-control in many. Drug dealers facing certain eviction have been known to stop their illegal activity (Greenberg 1992). Speedy eviction is an efficient, very local mechanism of social control that preserves neighborhoods as well as housing, not because bad tenants will actually be evicted to work their harm elsewhere (which is what happens now), but because many potentially bad tenants will decide to become good ones. To rely on the courts or the

police, their limited personnel, and their laborious procedures instead of the many watching eyes and common sense of people with a large stake in the community is to foolishly cast aside an invaluable resource for building communities and social networks and tying individuals into them.

Freedom and the biggest littlest business

Many tenant advocates would undoubtedly raise the specter of “unjust” evictions or tenants having to accept “deplorable” conditions. But rental housing is the most *un-monopolistic* market in the country, especially for the poor. No business sector in the country has as many owners, with holdings inversely small, since the nature of housing is to be widespread but small scale. By our own rough calculation using U.S. Bureau of the Census data from the mid-1990s, about 75 percent of all private rental housing is owned by what we call small property owners, who operate as a family business, part-time or full-time, without paid employees. At the same time, 75 percent of the nation’s poor live *unsubsidized* in private housing (Ferguson and Dickens 1999), where small owners predominate even more. We fully admit to the heterogeneity of practices among small property owners. But if a tenant household is “unjustly” evicted by one owner, or if one owner will not respond to legitimate requests for repairs, many, many other owners with a wide variety of units are there to take them in, if the tenants themselves are not a problem. The natural searching and matching of owners to tenants in such a highly diversified market is freedom itself, with the desire to find good owners/good tenants constraining both sides to behave themselves.

Nor should we forget that large shares of America’s multifamily housing was built by small property owners in the late 19th and early 20th centuries, when few laws restricted what they built or how they rented. Yet the result was an ample supply of low-cost housing with space, amenities, and architectural beauty far beyond any other working-class housing in the world; Boston’s “three-decker” is a classic example (Husock 1990). Even today, this historic housing stands in bold contrast to the smaller-scale, low-ceilinged, boxy structures that pass for standard modern construction.

A housing tradition at risk

The consequence of restrictions on eviction, directly or indirectly, is to destroy this multifamily housing, the social fabric that produced and

maintains it, and the sole economic opportunity it represents for many working-class American families to gain financial security. Initially, prejudice against immigrants drove early zoning efforts to stop multi-family housing (Husock 1990). Then beginning in the 1960s, radical leftists aimed to socialize rental housing through regulation, an agenda clearly articulated in *The Right to Housing: A Blueprint for Housing the Nation* (Institute for Policy Studies 1989): “These regulations...will, without a doubt, make rental housing less attractive to many landlords as an investment” (31) and cause the “transfer of privately-owned apartment buildings and other rental stock to social ownership” (29), that is, ownership by the government or tax-subsidized nonprofit entities. These regulations are virtually identical to those proposed by Hartman and Robinson: “just-cause” eviction, rent control, strict habitability standards, bans on condominium conversion, expedited foreclosure, condemnation powers, right of first refusal to “social owners” (34), and deed transfer taxes designed to take all profit out of “both multi-family and single-family housing” (Institute for Policy Studies 1989, 33). The true goal is the elimination of all private ownership of property. So massive and out of step with the times is this agenda that its proponents must, as one long-time eviction-free zone activist admitted (Stephen Meacham, in a Harvard Law School Housing Law and Policy course, 2001), justify their program in the name of aiding the poor, as indeed Hartman and Robinson argue.

As we have seen, however, this agenda does the exact opposite, depriving the poor of housing that would naturally be available in the private market.

Rescuing rooming houses

The relative success in vilifying small property owners as if they were large, greedy landlords and destroying much low-cost housing, especially rooming houses, has been possible precisely because rental property ownership is such a small-scale business whose owners have been almost totally unorganized. But the social cost in terms of homelessness is unconscionable.

As government at all levels grapples with this social cost and also confronts the need to economize on public expenditures for the homeless, it will likely see the resurrection of private rooming houses as a key opportunity to rehouse the unhoused homeless and shift tax resources to the hard-core homeless. But to make rooming houses once again acceptable in marginal or improving neighborhoods, critical steps are

needed to control tenant behavior and preserve the owner's financial resources for the housing:

1. Speedy, “no-fault” evictions, with a three-day or seven-day notice to quit
2. Prompt rent escrowing whenever rent withholding is claimed
3. Multitiered habitability codes, so that marginal housing can fund its own improvements in stages
4. No rent control, since nothing destroys housing faster, and since rent control stops the development of new rental housing cold (Alston, Kearl, and Vaughan 1992; Samuelson and Nordhaus 1992)

Resurrecting private rooming houses will not only help to rehouse those homeless who can take care of themselves, but it will allow another cost-saving option: supplying assistance services to private housing rather than supplying it only in conjunction with tax-subsidized or institutional housing. At any given level of quality, private housing managed by small property owners is generally much more economical to operate than government- or nonprofit-run housing (Schloming and Schloming 2000). Disentangling the housing and assistance components, whenever possible, in services to the mentally ill, the disabled, and the elderly can reap substantial cost benefits—or much better and more widely available services. Innovative self-help options can also arise, such as the pioneering “virtual retirement community” created on Boston’s posh Beacon Hill, where the elderly organized a group to “bring senior services to their doorsteps” (“A Self-Help Way to Assisted Living” 2003, B1).

Anticipating that our elderly population will soon grow very large, with shrinking government resources set aside to help, the rooming-house option in all its possible permutations seems especially attractive. But it simply will not happen if a vulnerable population such as the elderly cannot directly or indirectly control who lives next door.

Rethinking regulation

The last half of the 20th century saw an unprecedented intervention of the courts in the eviction process in the name of helping the poor. Yet the consequences of these developments have been decidedly negative, since they contributed to the sharp rise in homelessness and the loss of important sectors of private housing that served the poor or people in

transition. Just as the government's heavy investment in public housing has undergone serious reevaluation recently, so also should eviction regulation. By creating, or recreating, a healthy and viable regulatory environment for rooming houses and lower-cost private housing, public resources can be directed not to providing shelter, but to serving the special needs of those who truly need help.

Authors

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References

Alston, R. M., J. R. Kearl, and M. B. Vaughan. 1992. Is There a Consensus among Economists in the 1990s? *American Economic Review* 82:203–09.

Calvin, William H. 2002. *A Brain for All Seasons: Human Evolution and Abrupt Climate Change*. Chicago: University of Chicago Press.

Dolbeare, Cushing. 1997. Keynote Speech, Conference on Lead Paint Abatement. Springfield, MA, November.

Ferguson, Ronald F., and William T. Dickens, eds. 1999. *Urban Problems and Community Development*. Washington, DC: Brookings Institution Press.

Greenberg, Reuben M. 1992. Less Bang-Bang for the Buck: The Market Approach to Crime Control. *Policy Review* 59:56–60.

Husock, Howard. 1990. Rediscovering the Three-Decker House. *Public Interest*, Winter, No. 98, 49–60.

Institute for Policy Studies. 1989. *The Right to Housing: A Blueprint for Housing the Nation*. Washington, DC.

Massachusetts Executive Office for Administration and Finance. 1999. *Homelessness in Massachusetts: Are State-Funded Resources and Services Allocated and Coordinated Effectively?* Boston.

No. 1 Cause of Homelessness: Rooming Houses Outlawed. 2000. *Small Property Owners Association Newsletter*, March, pp. 1–2.

Samuelson, Paul A., and William D. Nordhaus. 1992. *Economics*. 14th ed. New York: McGraw-Hill/Irwin.

Schloming, Skip, and Lenore Monello Schloming. 2000. The Road Home: Working with Small Property Owners to Preserve and Create Affordable Housing. In *Ideas into Action: Better Government Competition 2000*, ed. Kathryn Ciffolillo, 19–31. Boston: Pioneer Institute for Public Policy Research.

A Self-Help Way to Assisted Living. 2003. *Boston Globe*, August 16, p. B1.

Stories of Homeless Men. 2000. *Small Property Owners Association Newsletter*, December, pp. 4–5.

U.S. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances. 1995. *Review of Studies Addressing Lead Abatement Effectiveness*. Washington, DC.

Who Is Willa Mae Brothers? 1999. *Small Property Owners Association Newsletter*, March, pp. 1–3.

Why Abandoned Housing? 1999. *Small Property Owners Association Newsletter*, February, pp. 1–4.