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PREVENTING HOMELESSNESS: RENT CONTROL OR RENT ASSISTANCE?

PATRICK J. CARTY*

This White Center symposium on Homelessness¹ marks the tenth anniversary of a most un-American American phenomenon: the new homeless.² In the past, significant increases in the homeless population have tended to coincide with major recessions. Yet today's homeless epidemic is a spiteful irony reminding us that a particular underclass has risen in step with an overall level of material prosperity unprecedented in our nation's history. Estimates of the homeless population range from three hundred and fifty thousand to three million.³ More important than determining the exact number of homeless, however, is an understanding of this group's diverse configuration. Several demographic groups comprise the homeless, suggesting that more than one cause contributes to the problem. Solutions targeting one subgroup, therefore, mitigate just part of the overall problem. Practical necessity demands, however,

* B.A. 1987, Fordham University; J.D. 1990, University of Notre Dame; Thos. J. White Scholar, 1988-90. I would like to dedicate this student article to Eileen T. Carty, a giving mother and a courageous single-parent.

1. The Homeless Assistance Act defines a homeless person as:

(1) an individual who lacks a fixed regular, and adequate nighttime residence; and

(2) an individual who has a primary nighttime residence that is—

(A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) an institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Homeless Assistance Act, 42 U.S.C.A. § 11302(a) (West Supp. 1989).

2. *Callaghan v. Carey*, 188 N.Y.L.J., Dec. 11, 1979, at 10, col. 4 (consent decree filed with N.Y. Sup. Ct. Dec. 5, 1979), began a decade of serious litigation on behalf of the homeless. During this time, the demographics of the homeless population have changed significantly. The author uses the term "new homeless" to capture the rapid demographic changes in the homeless population during this past decade.

3. Lam & Wright, *Homelessness and the Low-income Housing Supply*, Soc. POL'y, Spring 1987, at 48.

that this student article focus on only one subgroup of the homeless. Consequently, this student article will address the effectiveness of rent control and rental assistance in preventing homelessness for single-parent, female-headed households.⁴

Currently, the majority of marginalized, low-income families obtain their housing from rentals.⁵ Accordingly, this student article will focus on the rental housing market and more specifically, two initiatives with significant, consequences for low-income families. The first is rent control⁶ and the second is rental assistance.⁷ Part I will discuss the central values underlying both rent control and rental assistance.

Part II will discuss rent control. Rent control is essentially a locally based political solution to rising rents as diverse in application as the communities that enact it. Rent control attempts to solve the problem of inflationary rents by imposing artificial and often arbitrary ceilings on the market rent. Such controls no doubt give great short-term relief to those tenants fortunate enough to occupy a controlled unit but this student article contends that such ordinances are not specifically tailored to help the marginally homeless. Part II, therefore, discusses to what extent rent controls hinder or assist the low-income population's quest for affordable housing.

Part III discusses a second initiative with major implications for the low-income population, namely, federally funded rental assistance.⁸ Like rent control, rental assistance exists in

4. A review of the statistics justifies the emphasis on female-headed, single-parent families. From 1950 to 1980, family households grew by slightly more than half, but female-headed households almost tripled. Moreover, in comparison to other American households, female households are poor with a median income in 1980 that was less than half of the national figure. Birch, *Women and Shelter: Needs and Issues*, in *HOUSING ISSUES OF THE 1990s* (S. Rosenberry & C. Hartman eds. 1989).

5. A. DOWNS, *RENTAL HOUSING IN THE 1980s* 21 (1983). In this student article, the term marginalized refers to those groups of low-income families who become homeless for economic reasons. To be marginalized, therefore, is to be at a severe competitive disadvantage in the rental housing market.

6. Rent control is also referred to as rent regulation, rent stabilization, price control and also rent restriction. While differences among the individual terms exist, for the purposes of this student article, rent control will be used in its broadest sense to include all these variations provided they allude to the same phenomena of government intervention to restrain prices of rent.

7. Rental assistance is also commonly known as rent certificates, rent supplements, rent subsidies, housing allowances and housing vouchers.

8. For thorough discussions of the theories behind and the practice of rental assistance see generally R. STRUYK & M. BENDICK, *HOUSING VOUCHERS FOR THE POOR* (1981); J. FRIEDMAN & D. WEINBERG, *THE ECONOMICS OF*

many forms. Unlike rent control, however, rental assistance is a federal program. Part III discusses the component parts of both proposed and existing rental assistance programs, evaluating each from the perspective of which is most beneficial to the low-income tenant.

This student article approaches the problem of homelessness from the perspective of preventing it.⁹ At each stage of the analysis the central question is "What are the most effective and reasonable means of preventing homelessness for low-income families?" A rational discussion, normative analysis and qualitative judgment of both rent control and rental assistance will significantly contribute to the aim of preventing homelessness, because it will develop the problem solving aspect of public policy that is needed in this troubled area. This student article does not create an artificial tension between rent control and rent assistance, only then to come down in favor of rent assistance. Rather, it is recognized that designing measures to alleviate homelessness necessarily entails focusing on the rental housing market because it is the primary market for the poor. One third of households in the United States are renters and a strong majority of the poor dwell in such housing.¹⁰ Therefore, this student article proceeds from the assumption that sound policies for preventing a family's drift into homelessness will emanate from a study of the rental housing market and the two public policy initiatives in this area.

I. VALUES UNDERLYING THE RENT CONTROL/RENTAL ASSISTANCE DEBATE

Ideally, when formulating public policy, two questions should be considered, What is the policy's objective? and How might planners best achieve that objective? The first question is largely one of ideology—prioritizing values. In a democratic

HOUSING VOUCHERS (1982); I. LOWRY, EXPERIMENTING WITH HOUSING ALLOWANCES (1983).

9. The main focus of this student article is a discussion of rent control and rent assistance from the perspective of measuring their potential for or effectiveness in preventing homelessness. Consequently, this student article will not address the obvious question of whether a right to housing exists at all. For a discussion of whether a right to housing exists see Appelbaum, *A Progressive Housing Program for America*, in HOUSING ISSUES OF THE 1990s, *supra* note 4, at 313-31; C.F. LISTOKIN, FAIR SHARE HOUSING ALLOCATION (1976) (which discusses the doctrine of fair share enunciated by New Jersey courts and implicitly advances the notion of a right to housing).

10. BUREAU OF THE CENSUS, 1985 STATISTICAL ABSTRACTS TABLE 1242 (1989); A. DOWNS, *supra* note 5, at vii, 21.

society, public policy thrives when centered on a consensus of values,¹¹ because the policy takes root in and is supported by a public that understands and affirms the goal of the policy. Only those values sufficiently important enough to be deemed societal values could then anchor public policy. If the first question addresses the problem of priority, then the second question should only be technical. Unfortunately, reality and the decision-making process are not as straightforward. For one, goals and means are not so neatly distinguishable from values. Values not only determine the goal of policy, but its implementation as well. Rent control and rental assistance are excellent cases in point.

A. *Values Underlying Rent Control*

Identifying the values underlying rent control is relatively easy in comparison to measuring the policy's effectiveness. Two values are readily identified: first, rent control directly alleviates rent burden¹² and thus reduces hardship. Second, rent control prevents rent gouging where it may exist and thus promotes equity. The real reasons for which local political leaders enact rent controls are known only to them. Perhaps an ordinance is nothing more than the recognition that tenants and not landlords, possess more political strength in a given community, otherwise known as the brute force method of enacting legislation. Or perhaps a particular ordinance reflects a bold political initiative to alleviate the problem of rent burden. Touting rent control as a valuable policy for assisting low-income families obtain affordable housing has a certain common sense appeal. Moreover, the policy undoubtedly works for the tenants fortunate enough to occupy a controlled unit. Because scholars currently define the low-income housing crisis in terms of affordability, rent control has common sense appeal as a solution because, for some, it directly reduces rent burden.

11. For a discussion of the role of consensus in public policy see J. MURRAY, *WE HOLD THESE TRUTHS* (1960). For an excellent and succinct discussion of the role that values and ideology play in shaping public policy see R. HAYS, *THE FEDERAL GOVERNMENT AND URBAN HOUSING: IDEOLOGY AND CHANGE IN PUBLIC POLICY* 1-15 (1985).

12. Rent burden is the measurement by which housing analysts monitor the degree of shelter poverty. Shelter poverty defines the condition of those persons who cut their spending on basic necessities such as food and clothing in order to meet the inflexible necessity of shelter costs. Typically, those low-income families who spend beyond 20 to 30 percent of their income on rent are shelter poor. Stone, *Shelter Poverty in Boston: Problem and Program* in *HOUSING ISSUES OF THE 1990s* *supra* note 4, at 337-39.

With the practical effectiveness of rent control proven, why is it that no federal statute exists? The answer lies within the nature of rent control. First, the effectiveness of rent control for reducing rent burden for all or most low-income families is hotly debated. Also, there is a concern for fairness. Those who accept that the affordability of low-income housing is a national concern ought to be troubled by the fact that only landlords are asked to shoulder the burden of alleviating the problem.¹³ Such demands are fundamentally unfair¹⁴ because price reduction for some low-income families at the expense of the owners who rent to them is not necessarily an equitable approach to a societal problem. The wisdom of rent control as the primary vehicle for attacking the problem of affordability also faces the problem of being an anomalous solution in terms of our nation's economic history.

Rent control rests on an almost cynical distrust of the market. Yet, the market system of production is deeply embedded in our nation's history. Although housing is a highly regulated area, the production of rental housing in this country has been left primarily to the marketplace.¹⁵ Nevertheless, government activity has been conspicuous and significant.¹⁶ Rent control, despite exemptions for new construction, could threaten the market's ability to produce new rental units available to low-income tenants.¹⁷ Rental assistance, on the otherhand, does not threaten market production. In fact, rental assistance could

13. Kristof, *The Effects of Rent Control and Rent Stabilization in New York City*, in RENT CONTROL, MYTHS AND REALITIES 126 (W. Block & E. Olsen eds. 1981).

14. The Supreme Court has continuously upheld the constitutionality of rent control, on fairness grounds, most recently in *Pennell v. City of San Jose*, 813 F.2d 198 (9th Cir. 1987), *aff'd*, 108 S. Ct. 1120 (1988). Because the Court declined to address the takings issues, some commentators see this issue as potentially a successful challenge to rent regulation. See Salins, *Reflections on Rent Control and the Theory of Efficient Regulation*, 54 BROOKLYN L. REV. 775, 776-77 n.10 (1989).

15. A. DOWNS, *supra* note 5, at 19. For a discussion of the possibilities of socializing the production and distribution of housing see Appelbaum, *supra* note 9, at 313-21.

16. While the government may not be a major player in the production arena, this is not to suggest that government is a minor player in the housing industry. Rather, the government's position, at the federal, state and local level is very significant. For instance, tax laws, housing codes, rent controls and zoning ordinances show the range of possible ways that government plays a significant role in the housing industry.

17. See *infra* notes 38 & 39 and accompanying text.

enhance market production, at least in theory, by increasing effective demand.¹⁸

From the second practical effectiveness of rent control, combatting rent-gouging, one can distill the value of equality. Rent control is certainly effective in this regard, but political leaders should be aware that any attempt to reduce rent-gouging should address three important concerns. First, the degree to which rent-gouging exists in the given political entity. Second, whether rent control could be tailored in such a fashion that it could "surgically" attack rent-gouging without penalizing honest landlords attempting to earn modest returns on their investments. And third, whether rent-gouging, to the extent that it exists, actually effects the low-income population. Without addressing these concerns before drafting legislation, rent control advocates run the very real risk of enacting the wrong type of legislation for a community that would otherwise benefit from a well-honed rent control ordinance. A poorly drafted rent control ordinance would run the risk of dampening new construction and potentially causing disinvestment and eventual decay through lack of maintenance. Just as those who cultivate a diverse garden understand that success in the final outcome comes from individual attention to the differing needs of various plants, so must legislators understand that not all residential rentals will thrive or even survive under an ordinance that is uniformly, and therefore indiscriminately, applied.

B. *Values Underlying Rental Assistance*

Rental assistance promotes two important values that are central to American political and economic history: liberty and efficiency.¹⁹ Rental assistance allows individual families a greater choice of where to live by enhancing their buying power.²⁰ John Stuart Mill said that "If it were only that people have diversity of taste, that is reason enough for not attempting to shape them after one model."²¹ Rent control does not give people a choice. Rather, it tends to lock people into neighbor-

18. See *infra* note 61.

19. The notion of efficiency as a value is taken from Cooter, *The Best Right Laws: Value Foundations of the Economic Analysis of Law* 64 NOTRE DAME L. REV. 817 (1989).

20. One should note that while rental assistance alone allows recipients greater choice than they would have otherwise, this is subject to the participation of landlords.

21. J. MILL, *ON LIBERTY* 83 (R. Blackwell ed. 1946).

hoods.²² Rental assistance goes beyond the more important goal of housing low-income people by allowing them the opportunity to move out of less safe neighborhoods. Maintaining a roof over the heads of a single-parent, low-income family in a safer neighborhood furthers another important societal value—family stability. Whereas rent control has a tendency to lock people in, rental assistance has the potential to give poor families greater freedom. By increasing a participant's freedom of choice, rental assistance reduces the problem of affordability thereby facilitating the ability of low-income families to compete in an already competitive rental housing market.

As well as increasing an individual's ability to choose, rental assistance promotes efficiency. Efficiency is a value underlying public policy in the sense that few publicly advocate wasting money.²³ From the perspective of how best to allocate taxpayer dollars, one may find support for rent control as a means of fighting the problem of low-income housing affordability. After all, it is not taxpayers but landlords who pay for rent control. But others argue very strongly that rent control is wasteful, inefficient and very harmful to the property tax base in the long-run.²⁴ In response to the popular appeal of rent control, these critics would assert that rent control causes society, as well as landlords, to pay a real cost in terms of negative consequences for the property tax base, quality and quantity of the rental housing stock and tenant mobility.

The debate over the efficiency of rental assistance as a means of alleviating rent burden pales in comparison to rent control.²⁵ As will be discussed further, rental assistance is a national solution to a national problem; rent control represents a pot luck political initiative with only hit or miss application to low-income families.

II. RENT CONTROL

Generally, rent control is any government intervention in the rental housing market to regulate rent. Communities began introducing rent controls in this country immediately

22. Note, *All in the Family: Succession Rights and Rent Stabilized Apartments*, 53 BROOKLYN L. REV. 213, 215 (1987).

23. Cooter, *supra* note 19, at 821.

24. *See infra* note 40.

25. The debate over the efficacy of rent control is far from settled. For a favorable treatment of rent control see J. GILDERBLOOM & R. APPELBAUM, *RETHINKING RENTAL HOUSING* (1988); *but see* RENT CONTROL, MYTHS AND REALITIES, *supra* note 13. For a more balanced discussion of the issues see generally P. NIEBANCK, *THE RENT CONTROL DEBATE* (1985).

after World War I, when a massive influx of returning troops strained their rental markets, causing prices to shoot upward.²⁶ Subsequent controls, up until World War II and its aftermath, were typically enacted under conditions of a housing "emergency."²⁷ These earlier controls are commonly called "first generation" and are usually more restrictive and more violative of the market by making rents relatively inflexible to changes in demand or operating costs.

The so-called "second generation" rent control ordinances attempted to come to grips with serious problems of restrictive controls.²⁸ A leading reason for reform of rent control legislation over the years was a recognition by lawmakers that strict rent controls led to owner disinvestment and subsequent abandonment. What follows is a brief discussion of each generation in turn, concluding with an assessment of rent control as a strategy for helping low-income tenants.

A. *The First Generation Controls*

A central feature of the first generation controls was the emergency justification for enacting them.²⁹ For example, the rent control statute enacted in New York in 1946 was typical of its generation.³⁰ To the extent that an emergency justification underlay those ordinances, the lawmakers understood them as short-term, stop-gap measures to deal with the shortage of rental housing.³¹ Although the 1946 ordinance was initially thought to be temporary, New York City has been under various forms of rent control continually since 1946. Critics argued that by keeping prices artificially low and therefore

26. M. LETT, RENT CONTROL I (1976).

27. *Id.* at 4. Emergency is usually defined as a vacancy rate at or below 5%. Vacancy rates are reflective of the number of apartments for rent in a given geographical location.

28. See Gupta & Rea, *Second Generation Rent Control Ordinances: A Quantitative Comparison*, 19 URB. AFF. Q. 395 (1984) which constructs a typology of moderate and restrictive rent control features and concludes that legislation enacted since the early seventies is more moderate than previous years.

29. *See supra* note 27.

30. The law begins with the statement: "An act in relation to the regulation, control and stabilization of rents in housing accommodations during an emergency, creating a temporary state housing rent commission, prescribing its powers and duties and making an appropriation therefor." Emergency Housing Rent Control Law, 1946 N.Y. Laws Ch. 274.

31. Achtenberg, *The Social Utility of Rent Control*, in HOUSING URBAN AMERICA 490 (J. Pynoos, R. Shafer & C. Hartman 2d ed. 1980).

demand artificially high, controls would create and perpetuate a constant shortage in rental housing.³²

The degree to which an ordinance can be determined to be restrictive would depend upon how it dealt with such issues as vacancy decontrol,³³ rent rollbacks to some previous level,³⁴ condominium conversion restrictions,³⁵ eviction controls,³⁶ and application to new construction.³⁷ The most serious criticism levelled against first generation controls (from the lower income tenants' perspective) was that they caused abandonment of the properties.³⁸

Critics of rent control argue that the cure is worse than the disease.³⁹ In other words the solution to the low-income rental housing lies not in keeping rents artificially low. The argument runs that while rent control may have the short-term effect of keeping rents affordable for some people, it has the longer-term effect of destroying the housing stock otherwise available to the low-income tenant.⁴⁰ The causes of this destruction would be owner disinvestment in the property until it is eventu-

32. Walker, *Alternatives*, in RENT CONTROL, MYTHS AND REALITIES, *supra* note 13, at 271-73.

33. Many localities have vacancy decontrol provisions in their ordinances. The most common of these provisions allows the landlord of a controlled unit to charge incoming tenants the market price upon vacancy. Once the vacated apartment is leased again at the market price, the apartment will again be subject to controls. Baar, *Guidelines for Drafting Rent Control Laws: Lessons of a Decade*, 35 RUTGERS L. REV. 723, 826-29 (1983).

34. Rent rollbacks are restrictive features of a rent control ordinance because their purpose is to fix a base rent while also offsetting rent increases imposed in anticipation of the ordinance's enactment. *Id.* at 766.

35. Although varieties of condominium conversion restrictions exist, the general goal of such provisions seeks to prevent landlords from subverting the purpose of the ordinance by taking units out of the rental market. *Id.* at 835.

36. Eviction controls are restrictive because of the requirement of good cause justifying the landlord's evictions. Eviction controls become more necessary where the landlord has a vacancy decontrol provision so that eviction controls might stifle the landlord's incentive for increased turnover in unit occupancy. *Id.* at 833.

37. A lack of a new construction exemption is harsh only in the sense that it is thought to provide a disincentive for potential landlords. *Id.* at 835.

38. For authors sympathetic to this argument see Block & Olsen, *supra* note 13; *but see* P. SALINS, THE ECOLOGY OF HOUSING DESTRUCTION 58 (1980) (pointing out the fact that residential abandonment in New York is conspicuously confined to slums despite the fact that virtually the entire city is under some form of rent control).

39. See Epstein, *Rent Control and the Theory of Efficient Regulation*, 54 BROOKLYN L. REV. 741 (1988).

40. Kiefer, *Housing Deterioration, Housing Codes and Rent Control*, 17 URB. STUD. 53, 62 (1980).

ally unfit for human habitation, at which point the landlord abandons it altogether.⁴¹

This argument has force with respect to first generation controls. If a statute was considered to be restrictive with respect to the previously mentioned criteria, then an owner would face unreasonable pressures to cut costs. The argument has merit, especially because maintenance and repair costs are at the discretion of the landlord, unlike other fixed costs which he must pay.⁴² A landlord can, and often does, choose not to pay his taxes, resulting in an eventual threat of foreclosure. But when a landlord chooses not to maintain his property properly, he destroys the housing stock that might otherwise have been open to low-income tenants. At its most insidious extreme, therefore, harsh rent controls contribute to the physical destruction of low-income housing and prevent construction of replacement units. Thus, the argument concludes, rent control not only keeps demand high through artificially low prices, but also heightens the shortage through a reduction of the supply. One should note that the argument has less force with respect to second generation controls.

B. *Second Generation Controls*

In New York City, the so-called second generation controls attempted to come to grips with the problem of restrictive first generation controls. Implicit in such reform was a recognition of the link between abandonment and rent control.⁴³ The driving policy goal was to close the rent gap,⁴⁴ thus ensuring a "fair return"⁴⁵ for the landlords of controlled properties.

The most attractive feature of a moderate system of controls is the focus on allowing rents to rise in step with costs annually. Where the annual increases are inadequate, however, the landlord can obtain an additional percentage increase for "hardship."⁴⁶ Also, the landlord can pass along legitimate cap-

41. *Id.*

42. Achtenberg, *supra* note 31, at 468-69.

43. Gupta & Rea, *supra* note 28, at 395.

44. Rent gap refers to the difference in price between the controlled versus uncontrolled rent. From the landlord's perspective, therefore, rent gap measures his loss per unit as a result of imposing controls.

45. A consensus on the definition of a fair rate of return is elusive. For a good discussion of fair return which proposes a definition see Note, *Rethinking Rent Control: An Analysis of Fair Return*, 12 RUTGERS L.J. 617, 640-48 (1981).

46. Hardship provisions are especially necessary where rent increases according to a set formula such as annual across the board percentage

ital costs to the tenant. At best, moderate controls of the type outlined above strive to prevent sharp or erratic increases which could hurt low-income tenants while acknowledging the real needs of the landlord who must cover his fixed costs and receive a fair return.

The debate over whether rent control prevents homelessness depends, in part, on what one considers to be the real needs of the landlord. Generally speaking, moderate ordinances reflect the understanding that maximizing the landlord's cash-flow in light of the restrictions is a legitimate goal. Therefore, moderate provisions are considered to be vacancy decontrol, exemption of newly constructed rental units and no condominium conversion restrictions;⁴⁷ all of these items would directly or indirectly increase a landlord's cash-flow in a rental market subject to controls.

Of course, the more moderate an ordinance, the less relief from rent burden a tenant will receive. Clearly, rent control pits the landlord against the tenant by compelling the landlord to subsidize the tenant's housing costs. The benefits that the tenant population as a whole receives in both the short and long terms are less clear. The next section will discuss the overall efficacy of rent control in light of the landlord-tenant struggle. To a large extent, rent control is a zero-sum proposition for both landlords and tenants. While individual tenants of controlled units stand to gain, rent control affects tenants as a whole by creating less opportunities for tenant mobility.⁴⁸

C. *Rent Control and Homelessness*

For political as well as economic reasons, federal policies should rely on the market to provide housing.⁴⁹ This is not to suggest that the government should never intervene on behalf of low-income families facing the spectre of homelessness. Rent control, even in the moderate form outlined above, attempts to provide part of the solution.⁵⁰ But even staunch supporters of rent control must concede that it is not designed

increases. Hardship clauses allow greater flexibility in the application of rent control ordinances. See M. LETT, *supra* note 26, at 108.

47. See *supra* notes 33-37.

48. Ault, *The Presumed Advantages and Real Disadvantages of Rent Control*, in RENT CONTROL, MYTHS AND REALITIES, *supra* note 13, at 70.

49. Salins, *America's Permanent Housing Problem*, in HOUSING AMERICA'S POOR 12 (P. Salins ed. 1987).

50. For a theoretically persuasive discussion of the efficacy of rent control in a gentrifying market see Note, *Reassessing Rent Control: Its Economic Impact in a Gentrifying Market*, 101 HARV. L. REV. 1835 (1988).

specifically to alleviate the rent burden of low-income families. By indiscriminately freezing prices, rent control has only haphazard application to low-income families. Moreover, while ostensibly containing the power to alleviate rent burden, it may actually accentuate such difficulties because of its short range and essentially "adversarial character."⁵¹ The problem with opposing rent control is that it seems to be the most logical response to situations where rent rises faster than income.⁵² But rent control is of dubious help, and should not be touted as a panacea for the lack of affordable housing facing low-income families.

Both proponents and opponents of rent control can be quite vigorous in advocating their positions, oftentimes at the expense of reason. For instance,

Proponents argue that it will prevent rent-gouging, protect the poor, reduce mobility, restore equity, and lead to a more progressive government — without harm to the housing stock or the housing provider. Opponents reply that rent control will exaggerate present inequities, discourage investment, reduce the quantity and quality of housing, interfere with tenant-landlord relationships, and inhibit community improvement. Proponents will declare: "The real estate speculators are robbing us blind, and rent control will put an end to it!" Opponents will offer the rejoinder, "If you want slums in this city, rent control will give you just what you want!" Claims such as these are clearly overstatements of the case and are at times full of self-serving righteousness. They are neither well documented as description nor accurate as predictions. Although each statement seems to have some truth in it, there seems to be no way to measure that truth. Moreover, the arguments of either side pass each other, as proverbial ships in the night. The debate becomes a hollow clash of extremes, and the results are an uninformed electorate, rash policy and a divided community.⁵³

While room for debate over the efficacy of rent control exists, such a policy is not specifically designed to promote the needs of the marginalized, low-income tenants on the verge of homelessness. Moreover, rent control is inefficient under

51. P. NIEBANCK, *supra* note 25, at 44-46.

52. *Id.* at 9.

53. *Id.* at 106.

Pareto analysis.⁵⁴ Clearly, the landlord is left worse off with rent control than without it.⁵⁵ Also, no mechanism exists to provide for a transfer from tenant to landlord where tenant gains exceed landlord losses. Rent control does not spread the wealth among all eligible low-income tenants and therefore is unable to overcome the inequitable distribution of benefits that it creates.

III. AN ALTERNATIVE SOLUTION: RENTAL ASSISTANCE

The 1970s saw a significant increase in shelter poverty, and the spiral remains unabated in the 1980s.⁵⁶ It is precisely this failure of incomes to keep abreast of rents that pushes low-income families into the ranks of the homeless. As long as shelter poverty is on the rise, homeless families will continue to be with us. The policy question that law-makers should address is simply one of means—given the fact that we can identify a particular subgroup of the homeless who are homeless only for economic reasons, what is the best way to help them? Policies furthering income maintenance, such as rental assistance, are effective measures for preventing homelessness because they address the problem of low incomes directly.⁵⁷

Federal solutions to the low-income housing problem have not been consistent.⁵⁸ Additionally, some argue that rent control and rental assistance work against each other.⁵⁹ What follows is a discussion of federal policies aimed at rental assistance, concluding that these policies ought to be the centerpiece of the federal effort to prevent homelessness among single-parent, low-income families.

54. Pareto efficiency defines the economic condition whereby no one person in a given society can be made better off, by reallocating goods and services, without making someone else worse off. Epstein, *supra* note 39, at 760.

55. *Id.*

56. Some argue that America's low-income housing crisis is a function of low incomes. See Hartman, *A Radical Perspective on Housing Reform*, in AMERICA'S HOUSING CRISIS—WHAT IS TO BE DONE? 8 (C. Hartman ed. 1983). See also Stegman, *The Model: Rent Control in New York City*, in P. NIEBANCK, *supra* note 25, at 45 (citing facts that indicate that between 1970-81 in New York City, real rents increased by 12 percent while real income fell by nearly 30 percent). *But see* Salins, *supra* note 49, at 7 (asserting that homelessness is much more a function of the growing number of mentally ill than it is a housing crisis).

57. Shelter poverty is the phenomenon of increased rent burden. See *supra* note 12 and accompanying text.

58. Bendick, *Comment*, J. AM. PLAN. A. 475 (1985).

59. Tucker, *America's Homeless: Victims of Rent Control*, BACKGROUNDER 8 (1989).

A. Federal Experiments With Rental Assistance

In the early 1970s, the federal government began in earnest to shift housing policy away from public production and toward various forms of individual housing subsidies.⁶⁰ In part, the switch from increasing supply through new construction to raising demand through income assistance reflected a recognition that demand-side strategies for solving the low-income housing problem were more consistent with market operation and therefore less disruptive.⁶¹ Moreover, "tying subsidy to family rather than [to] dwelling units permits a flexible response to changing local market conditions."⁶² The less regulated a market, the more responsive it should be, theoretically, to changes in either supply, demand or both. The economic argument for rental assistance conveys a certain confidence in the market's ability to increase supply by increasing demand.

But the argument for rental assistance need not rest on the model described above. Rather, with or without significant market effects, rental assistance retards homelessness by reducing the incidence of shelter poverty. To the extent that low-income tenants are afforded relief from rent burden, government housing policy acts to prevent homelessness.⁶³ While the government could attempt to increase supply through public production (which in theory should lead to a price reduction) history has shown that supply-oriented approaches are more costly and less efficient than income transfers.⁶⁴ Additionally, rental assistance provides stability in the rental market for two important reasons. First, increased cash-flow encourages landlords to maintain and repair their properties. Rent control not only stifles this incentive, but could actually force a landlord to cut back maintenance and repair costs.⁶⁵ Secondly, housing allowances further tenant mobility into areas in which they would otherwise not venture.⁶⁶ Rent control, on the other hand induces tenants to stay put, causing a range of problems.

60. The federal government began, in earnest, to shift from construction to rent subsidies with the Housing and Urban Development Act of 1965, Pub. L. No. 89-117, 79 Stat. 451 (codified as amended in scattered sections of 12, 15, 38, 40 and 42 U.S.C.).

61. A. SOLOMON, *HOUSING THE URBAN POOR* 191 (1974).

62. *Id.* at 185.

63. R. STRUYK & M. BENDICK, *supra* note 8, at 415; J. FRIEDMAN & D. WEINBERG, *supra* note 8, at 7.

64. J. FRIEDMAN & D. WEINBERG, *supra* note 8, at 142.

65. *See supra* note 42 and accompanying text.

66. *See* A. SOLOMON, *supra* note 61, at 186.

For instance, less mobility invariably means underutilization of apartments.⁶⁷ Thus, many elderly in New York remain in large apartments long after children have grown and moved out. Tenants as a whole become locked in, and only those who can afford the inordinate cost of moving do so. Tenants leaving a controlled unit will, in all likelihood, face more expensive housing options. Rental assistance positively influences tenant mobility because it increases a tenant's ability to buy his way out of controlled markets.

Several forms of rental assistance exist. Typically rental assistance provides direct cash either to a landlord or a tenant for the purpose of rent abatement.⁶⁸ In 1970, the federal government augmented the Experimental Housing Allowance Program (EHAP).⁶⁹ EHAP was divided into three experiments: Demand, Supply and Administrative. Pittsburgh, Pennsylvania and Phoenix, Arizona were the sites of the Demand experiment. The purpose was to study the impact of assistance on consumption demand.⁷⁰ Green Bay, Wisconsin and South Bend, Indiana hosted the Supply experiment, which attempted to determine whether an unrestricted, open-enrollment allowance program would precipitate rent inflation in such markets.⁷¹ The Administrative experiment, designed to find the most efficient system for managing the program, involved many cities and agencies.⁷² In short, EHAP represents the largest and most complex social research project ever conducted.⁷³

EHAP's findings provide many interesting points for discussing rental assistance, and are less contentious than the debates surrounding rent control. Although EHAP was not specifically envisioned as a device to alleviate homelessness, the EHAP experiment can be readily applied towards preventing homelessness. For instance, showing that housing allowances could alleviate the burden of rent for low-income people was

67. *C.f.* Ault, *supra* note 48, at 70 (author concludes that restrictions on tenant mobility have other negative consequences such as dampened new construction).

68. J. FRIEDMAN & D. WEINBERG, *supra* note 8, at xi.

69. R. STRUYK & M. BENDICK, *supra* note 8, at xvii. EHAP was started because of the growing recognition of and political support for income maintenance as opposed to construction subsidies.

70. *Id.* at 35.

71. *Id.* at 38-39.

72. *Id.* at 40-41.

73. *Id.* at 295.

EHAP's single greatest achievement.⁷⁴ Moreover, unlike traditional government housing programs that served moderate and low-income people together, EHAP was successful in meeting the needs of the very poor, such as racial minorities, female-headed households, welfare recipients, large families and the elderly.⁷⁵

The current federal rent supplement has also had a measure of success in this regard.⁷⁶ Simply stated, rental assistance enables the otherwise hard to house to compete in tight United States markets.

B. *Existing Allowances: Section 8*⁷⁷

The federal government began disbursing rent supplements on a small scale in 1965 as part of its War on Poverty program.⁷⁸ The 1974 Housing and Community Development Act,⁷⁹ however, solidified the shift away from supply-oriented programs.⁸⁰ The fact that Section 8 was enacted before the conclusion of EHAP indicates the very strong political support behind rental assistance at the time. While Section 8 and EHAP have marked similarities, significant differences exist between the two. Chief among them are:

1. A Section 8 household cannot participate in the program if such a unit costs more than the "fair market rent" (FMR). FMR is the HUD established price for a given unit. EHAP had no such restrictions. Thus, Section 8 tenants are more limited in terms of choice.
2. With Section 8 the landlord receives a voucher representing the difference between FMR and the tenant's ability to pay, whereas with EHAP the tenant receives the benefits directly.
3. Finally, Section 8 and EHAP differed significantly in determining income eligibility.⁸¹

74. Frieden, *Housing Allowances: An Experiment that Worked*, 54 PUB. INTEREST 15, 24 (1980).

75. *Id.* at 23.

76. *Id.*

77. HUD Act of 1965 created the rent supplement program and the Section 23 Leased Housing Program. Both were revised by the Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (codified as amended in scattered sections of 5, 12, 20, 40, 42 and 48 U.S.C.), and are commonly known as "Section 8 Existing."

78. *See supra* note 77.

79. Pub. L. No. 93-383, 88 Stat. 633 (codified as amended in scattered sections of 5, 12, 20, 40, 42 and 48 U.S.C.).

80. *See supra* note 64 and accompanying text.

81. R. STRUYK & M. BENDICK, *supra* note 8, at 33.

These differences have direct consequences for the extent to which assistance can help prevent homelessness. Specifically, evidence suggests that Section 8's FMR provision actually acts as a rent inflation and not a rent control provision.⁸² Implicit in the FMR rent ceiling is the government's willingness to pay up to the FMR. Therefore, landlords have every incentive to charge at least the maximum the government allows, and sometimes beyond, where authorized.⁸³ Yet EHAP, which had no similar rent ceiling, encountered no problems of rent inflation.⁸⁴

Current economic wisdom would suggest that large increases in demand for a given product must lead to inflation, absent other market interferences. But EHAP's Supply experiment, designed precisely to measure the market's reaction to substantial increases in effective housing demand, showed no such feared inflation over the first years of the experiment's operation.⁸⁵ Thus, housing allowances are not vulnerable to the most serious criticism levelled against rent control: namely, that the cure is worse than the disease. Housing allowances are structured to alleviate rent burdens. If such assistance contributed to price inflation, then it would amount to a very costly government entitlement with minimal effectiveness. But the facts do not support such conclusions. And, to those who evaluated it "Section 8 was a well structured and successful program."⁸⁶ By successfully targeting the poor, Section 8 represents a potentially vital weapon in the government's arsenal for preventing homelessness.⁸⁷

82. Khadduri & Struyk, *Improving Section 8 Rental Assistance*, 5 EVALUATION REV. 197 (1981).

83. *Id.* at 196.

84. *Id.*

85. R. STRUYK & M. BENDICK, *supra* note 8, at 221.

86. Khadduri & Struyk, *supra* note 82, at 201.

87. The Housing and Community Development Amendments of 1981, Pub. L. No. 97-35, 95 Stat. 384-431 (codified as amended in scattered sections of 12, 40 and 42 U.S.C.), requires families under federally administered rental assistance to pay up to 30 percent of their income on rent instead of the previous 25 percent. However, this revision ignores the very real problem of shelter poverty and rent burden discussed *supra* note 12. In fact, the amendment only increases the hardship many families face. From 1981-87, the Reagan Administration slashed HUD's budget from \$32 billion a year to just over \$7.12 billion a year. Statistics provided by the NATIONAL COALITION FOR THE HOMELESS, HOMELESSNESS IN AMERICA: A SUMMARY, at 2 (1988).

V. POLICY PROPOSALS

The current HUD requirement that only those households paying at least 30 percent of their incomes on rent can be eligible for Section 8 is too high. Congress should lower this figure to 25 percent, the original standard.⁸⁸ Also, HUD should eliminate FMR ceilings in its rental assistance package. As argued, this provision is a failure as a rent cap and even has a tendency to cause rent inflation. Additionally, the federal government should continue the trend begun twenty years ago towards rent assistance and away from housing construction. Public money is too scarce for it to be devoted to the public production of housing. The recently revealed HUD scandals including patronage and kick-backs with new construction contracts underscore the potential for abuse in public production. The private market does a better job at producing housing units, and rent assistance can potentially reach more persons than public housing. Finally, HUD should undertake a detailed review of current housing standards with a view towards streamlining current standards to include only essential health and safety concerns.⁸⁹ This opening-up of the requirements would allow program recipients a wider range of housing opportunities, thereby increasing their chances of finding a decent apartment.

The proposals are modest revisions of existing federal housing law that are practical and attainable. By simplifying the housing code and relying, in earnest, on demand-side strategies, the federal government would give a major impetus to rental assistance and the fight against homelessness. By reducing the eligibility standard to 25% and restoring recent cuts, the federal government can make major inroads towards preventing homelessness among single-parent low-income families.

VI. CONCLUSION

Homelessness is a major problem in the United States. Many large cities in the United States have a serious homelessness problem.⁹⁰ Moreover, since the late 1970s, the composition of the homeless has changed dramatically: from white to

88. See *supra* note 87.

89. Carliner, *Homelessness—A Housing Problem?*, in HOMELESSNESS IN CONTEMPORARY SOCIETY 127-28 (R. Bingham, R. Green & S. White eds. 1987).

90. See NATIONAL COALITION FOR THE HOMELESS, *supra* note 87.

black, older to younger and from individual to family.⁹¹ The presence of women with children in the shelters and on the streets is growing. In fact, such a subgroup is the fastest growing population among the homeless and conservative estimates put them at 20 percent.⁹² Also, other facts suggest that single-parent, female-headed households are in for a rough future absent increased assistance. For instance, some argue that no-fault divorce laws in 48 states have materially affected socioeconomic status of women in the U.S.A.⁹³ In addition, from 1970-1984 the number of female-headed households grew by 74 percent and from 1970-1982, the number of children with divorced mothers doubled.⁹⁴ Moreover, in 1984, two out of every three poor adults in the United States were women — the phenomenon known as the feminization of poverty — and one out of every five children lived under the poverty line.⁹⁵ Cuts in the Section 8 housing program during the 1980s have only heightened the threat of homelessness for many.

The problem of homelessness among families is not intractable. Solutions must address the problem directly. Rental assistance payments address the problem of shelter poverty directly. Rent control does not. For those families marginalized and facing the threat of homelessness for solely economic reasons, Section 8 rental assistance payments could be the one factor keeping them off the streets and out of the shelters.

91. Sullivan & Damrasch, *Homeless Women and Children*, in HOMELESSNESS IN CONTEMPORARY SOCIETY, *supra* note 89, at 81.

92. Steff, *The New Homeless*, in HOMELESSNESS IN CONTEMPORARY SOCIETY, *supra* note 89, at 46.

93. Sullivan & Damrasch, *supra* note 91, at 85.

94. *Id.* at 83.

95. *Id.* at 91.

