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HISTORICAL AND POLITICAL BACKGROUND OF FEDERAL PUBLIC HOUSING PROGRAMS

ROBERT S. CATZ*

I. INTRODUCTION

Since World War I, the United States has gone through many varied socio-economic periods, all of which have affected this country's public housing requirements. The relationship of public housing to the social, political, and moral fibre of the country emphasizes the desirability of periodic examinations of our public housing policies, administrative machinery, and new proposals. Such examinations are desirable since government intervention and participation in the field of public housing is both extremely complex and highly fluid. A study of the background of public housing programs should disclose something of what this country has accomplished and has failed to accomplish in the past, and should set some guidelines for the future.

The federal government entered the field of public housing during the First World War.¹ This was a very limited effort, mainly designed for the purpose of providing housing for defense workers. Five thousand housing units were constructed. The project was curtailed immediately after the war, and losses to the federal government ranged into millions of dollars. This "fiasco" convinced many that the construction of public housing should be left to the private entrepreneurs who were familiar with the housing-construction industry.²

The next significant steps taken to provide solutions to the critical housing shortage flowed from the chaos of the depression,

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1. Friedman, *Public Housing and the Poor: An Overview*, 54 CALIF. L. REV. 642 (1966) [hereinafter cited as Friedman].

2. Ledbetter, *Public Housing—A Social Experiment Seeks Acceptance*, 32 LAW AND CONTEMP. PROB. 490, 491-92 (1967) [hereinafter cited as Ledbetter].

by way of the National Industrial Recovery Act of 1933.³ This Act created the Public Works Administration which included a housing division. Secretary of Interior, Harold Ickes, was designated by President Roosevelt to administer the program which was authorized a \$3 billion appropriation.⁴ The construction of low-rent housing units was justified on several grounds. First, it provided expanded employment opportunities for the millions of unemployed workers in the stagnant construction industry and increased the overall demand for materials and supplies.⁵ Opposition to federal participation in "public housing" led to court rulings that temporarily hampered national policy by holding that the federal government could not use the power of eminent domain to acquire property for low-rent housing sites.⁶ However, in 1936, the Court of Appeals in New York held that local government could utilize the condemnation power to obtain property for public housing projects.⁷ As a result of this litigation, the Public Works Administration began to encourage greater local participation in public housing construction. This policy was effected by making available, through local governments, very attractive loans and "public grants."⁸ However, it soon became abundantly clear that the instability of private capital during the depression made it impossible for the non-federal sector to undertake large scale low-rent housing programs. On the whole, the program failed, but recognition was achieved that the concept of massive inexpensive public housing required not only the involvement of the federal government, but active participation by local government and the private sector.⁹

II. THE EVOLUTION OF A PUBLIC HOUSING POLICY

The genesis of public housing legislation as it is known today can be traced to the Housing Act of 1937.¹⁰ In 1935, through the efforts of United States Senator Robert Wagner, a bill was introduced in Congress to establish a permanent low-rent public housing administration. Proponents of the bill proclaimed that its passage would abolish "the spawning places of crime and immorality."¹¹ The opposition contended that it was "atrocious, rank, collectivism, and

3. Act of June 16, 1933, ch. 90, § 1, 48 Stat. 195, as amended 15 U.S.C. 701 *et seq.* (1971).

4. REPORT OF THE NATIONAL COMMISSION OF URBAN PROBLEMS, BUILDING THE AMERICAN CITY 108-33 (1968).

5. Riesenfeld & Eastlund, *Public Aid to Housing and Land Re-development*, 34 MINN. L. REV. 610, 620-21 (1950).

6. *United States v. Certain Lands in the City of Louisville*, 9 F. Supp. 137 (W.D. Ky. 1935), *aff'd*, 78 F.2d 684 (6th Cir. 1935); *United States v. Certain Lands in the City of Detroit*, 12 F. Supp. 345 (E.D. Mich. 1935).

7. *New York Housing Authority v. Muller*, 270 N.Y. 333, 1 N.E.2d 153 (1936).

8. Friedman at 646-47.

9. *Id.*

10. Act of Sept. 1, 1937, ch. 896, 150 Stat. 888, as amended 42 U.S.C. § 1401 *et seq.* (1971).

11. Ledbetter at 493.

government intrusion on a purely local problem.”¹² Nevertheless, the bill passed, and on September 1, 1937, the United States Housing Act became law. The national policy of the federal government as applied to public housing was to promote:

[T]he general welfare of the Nation by employing its funds and credits, as provided in this Act, to assist the several states and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary (*sic*) housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families at low income, in rural and urban communities, that are injurious to the health, safety, and morals of the citizens of the Nation.¹³

The Housing Act of 1937 was designed to provide housing to families of low income which the Act defined as “families who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use.”¹⁴ The Act was a significant departure for the federal government in that it removed itself from the direct management and construction of public housing. The national housing policy became one of federal-local government cooperatism. Local government decided whether to participate in the program. Although the public housing units were managed and owned locally, the United States Housing Authority retained powers of review to insure property management consistent with the statutory purposes of the Act. This relationship of federal supervision-local administration of public housing continues as the major thrust of the Act.¹⁵

When the legislation was enacted, the opponents of the public housing policy were much the same as of those today.¹⁶ A significant difference is that today, these goals must apply to a politically less appealing cross-section of people. Originally, the intent behind the policy was to benefit the “submerged middle class.”¹⁷ These people were not the so called permanent “problem poor,” but in fact were family members of the middle class of the 1920’s. Although the depression brought them poverty, “[t]hey retained their middle

12. *Id.*

13. Act of Sept. 1, 1937, ch. 896, 50 Stat. 888, as amended 42 U.S.C. § 1401 (1971).

14. 42 U.S.C. § 1401 (1971).

15. The Housing Act of 1959, 73 Stat. 679, amended Section 1 of the United States Housing Act of 1937 by the “local autonomy amendment,” which provides:

It is the policy of the United States to vest in local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program, including responsibility for the establishment of rents and eligibility requirements (subject to the approval of [HUD] with due consideration to accomplishing the objectives of this Act while effecting economies.

Id. at 679-80.

16. Ledbetter at 495.

17. Friedman at 646.

class culture and their outlook, their articulateness, and their habit of expressing their desires at the polls."¹⁸ These people, who were in great need of good housing were a political force to be considered as evidenced by other policies of the New Deal. Politicians throughout the country took cognizance of this fact, which, in turn, led to great popularity of the Act.

During this early period rents were extremely low. The high vacancy rate posed a potential danger for the program, that of over-supply. The Act was careful to avoid the problem by providing that no units were to be built without destroying dwellings of a number substantially equal to the number of newly constructed dwellings.¹⁹ This was designed to achieve two goals. First, it neutralized potential opposition by landlords, the real estate lobby, and the housing industry by removing the danger of over-supply.²⁰ In addition, the Act provided for slum clearance appealing to those whose desire for comprehensive public housing stemmed from their dislike of slum conditions.²¹ The Act initially emerged as a program geared to the needs of a submerged middle class, tied to slum clearance, and devoid of any aspects of competition with the private business sector.

With the establishment of the Housing Assistance Administration (HAA), the federal agency that now administers public housing, the program showed conspicuous success in the early years until the defense and war needs of the nation temporarily halted its progress.²² However, in 1940, an amendment to the Housing Act of 1937²³ authorized the diversion of funds for housing low-income families whose wage earners were involved in defense or war production. The Act required the reconversion of the developments built thereunder to low-rent housing projects at the end of the war.²⁴ Of the housing

18. *Id.* at 645-46.

19. 42 U.S.C. § 1410 (a) (1971) provides as follows:

The Authority may make annual contributions to public housing agencies provides that . . .

The Authority shall not make any contract for loans (other than preliminary loans) or for annual contributions or for capital grants pursuant to this chapter with respect to any low-rent housing project initiated after March 1, 1949, unless the governing body of the locality involved has entered into an agreement with the public housing agency providing that, subsequent to the initiation of the low-rent housing project and within five years after the completion thereof, there has been and will be elimination, as certified by the local governing body, by demolition, condemnation, effective closing, or compulsory repair or improvement, of unsafe or insanitary dwelling units situated in the locality or metropolitan area substantially equal in number to the number of newly constructed dwelling units provided by such projects.

20. Robinson & Altman, *Equivalent Elimination Agreements in Public Housing Projects*, 22 B.U. L. Rev. 375, 376-79 (1942).

21. Friedman at 647.

22. REPORT OF THE NATIONAL COMMISSION ON URBAN PROBLEMS, *supra* note 4, at 105. Together with completion of public Works Administration housing, the United States Housing Act of 1937 accounted for 160,000 housing units between 1939 and 1943. Many of these units are still in operation. Of these 95,000 were completed in 1940 and 1941, or prior to the outbreak of World War II, and another 50,000 in 1942 and 1943.

23. Act of Oct. 14, 1940, Pub. L. No. 76-849, 54 Stat. 1125. An Act to expedite the provision of housing in connection with national defense.

24. Act of June 28, 1940, Pub. L. No. 76-671, 54 Stat. 681.

built under the Lanham Act, only a small part could be reactivated after the war because of rising building costs and shortages of materials.²⁵

The end of World War II brought the country out of its economic difficulties and the chaos of the Depression. As the submerged middle class began to prosper and leave public housing, new tenants arrived whose socio-economic background was far different from their predecessors. These new tenants did not view public housing as a stepping stone to the suburbs.²⁶ Instead, they viewed it as the only means of obtaining a permanent, safe, and clean dwelling place.²⁷ They were not as educated, not as articulate, and foremost, they did not represent a potent political force. They were the "permanent poor."²⁸

Most of the early critics of public housing could be classified as special interest groups such as the building industry, or "conservatives" who considered it as one of the more abhorrent forms of socialism.²⁹ Today, there appears to have been an erosion of political strength for public housing programs. The critics have become more prevalent, and "liberals" have become disillusioned with the program because of its failure to realize the ambitions of the Act. Early supporters have become outspoken critics. One ardent supporter turned critic is Catherine Bauer, who assisted in the formulation of the Housing Act of 1937. Ms. Bauer contends that public housing is not like most social experiments in a democratic society.³⁰ Usually, such experiments begin as an abstract idea, frequently in the atmosphere of theoretical debate, and then either die off or are modified and adapted to actual conditions to become an integral part of the ordinary scheme of things. In contrast, "public housing, after more than two decades, still drags along in a kind of limbo, continuously controversial, not dead, but never more than half alive."³¹

An object of much controversy in the public housing program is the physical appearance of the structures. Architects and city planners become upset at the sight of the projects. Politicians refer to them as "barracks," while at the same time opposing any ex-

25. During the war it became increasingly more difficult to obtain satisfactory material for the housing needed to accommodate the war workers who poured into the production centers. Emergency and temporary housing which skimmed on both space and materials was constructed. Of these, only 10,000 units of low-rent public housing are presently being used which were built in the four years between 1944 and 1948. REPORT OF THE NATIONAL COMMISSION IN URBAN PROBLEMS, *supra* note 4.

26. Ledbetter at 496.

27. Bauer, *The Dreary Deadlock of Public Housing*, 106 ARCHITECTURAL FORUM 40 (1957) [hereinafter cited as Bauer].

28. By 1956, 43.6 per cent of all tenants in public housing were black. STATISTICAL ABSTRACT OF HAA OPERATIONS, (Jan., 1968).

29. Mulvihill, *Problems in the Management of Public Housing*, 35 TEMP. L.Q. 163, 165 (1962).

30. Bauer at 140.

31. *Id.* at 140.

pansion of the program, and the occupants themselves are apparently less than pleased with the stigma attached to the projects.

The design requirements for public housing are based on the principle of "modular measure."³² This is a system of design in which each housing unit has standard dimensions and architectural characteristics which are the same as those of all units in the project. Each project unit must have identical rooms. The use of this modular unit throughout a project results in a purposefully repeated pattern. In the view of the Department of Housing and Urban Development, this system of design best fulfills the Congressional intent as contained in the Housing Act:

Every contract . . . shall require that such plans, drawings, and specifications follow the principle of modular measure in every case deemed feasible by the public housing agency, in order that housing may be built by conventional construction, on site fabrication, factory precutting, factory fabrication, or any combination of these construction methods.³³

Within this limitation, project planning and design are responsibilities of the local housing authority. When it is decided to build a project, the local housing authority retains an architect. The architect discovers that the framework within which he must work is quite complicated. Throughout the design process, HUD's low-rent housing manual must be adhered to. When an issue is unclear, or when an architect may want a variance, lengthy consultations and negotiations are necessary.³⁴

An architect in order to design a housing project must abide by the following procedures: First, the architect is retained by the local authority for a feasibility study. He is told the number of units that are desired and the site of the proposed project. After the study, any revisions in the local housing authority's original plan are made, and the revised plan is sent to HUD's regional office for approval. If approved without further changes, the architect next draws up a detailed preliminary sketch. The federal low-rent manual requires greater specificity than a designer would ordinarily use for a private project. This drawing, in turn, is screened by the regional office which may reject it, approve it, or approve it with modifications. If the architect has attempted to employ his ingenuity and has thereby deviated from the traditional patterns, the regional staff of accountants and draftsmen may balk; if, however, the regional office is attuned to the current emphasis on aesthetics, a conference may be called at which the architect and the local authority

32. LOW-RENT HOUSING HANDBOOK, RHA 7410.1, ch. 3, § 1.

33. 42 U.S.C. § 1415 (5) (1971).

34. Ledbetter at 497.

officials will be expected to support the sketches with a persuasive argument and a good faith showing of confidence in the plan, after which approval will be given. The architect then produces a "working drawing" to be used by the contractor during construction. During the construction process, the architect sees that the contractor complies with the plans. Changes require the advanced approval of the architect and the local housing authority, involving complicated "change orders."³⁵

In the design of a public housing project, miles of red tape, and the required observance of federal standards prove to be great obstacles in the path of the designers. The housing manual regulates the arrangement of the rooms within the unit, shapes and sizes of the rooms, placement of doors and windows, and general location of all interior facilities.³⁶ Thus, the architect has little flexibility with new ideas or innovations. The design of the building involves the layout of the various units within the structure; the location of stairways, corridors, and elevators; and design of the exterior. Because the federal government wants to cut costs as much as possible on each structure, these items are also specified in the low-rent housing manual.³⁷ This cost cutting is a result of Congress' annual demands for production of more units per dollar amount appropriated. This attitude creates a certain size limitation and a certain density within the structures, factors when combined with cost limitations give the designer little latitude. The architect has some degree of freedom concerning the structural arrangement of the buildings on the project. Even this freedom is limited by the fact that playgrounds and parking facilities must be provided, and only a minimum amount of financing is available for trees, shrubs, and ornaments.

Many experts of public housing claim that the evil in design is due to high density.³⁸ Confusion arises from the fact that this type of construction is gaining favor in urban areas for higher income families. But, this concept cannot be applied to low cost housing without becoming distorted. It is suitable for middle and upper income families for several reasons. First, in the upper income brackets, families can take advantage of their mobility to frequently break the monotony of the acres of concrete. Second, since the rents are higher, the projects can be aesthetically appealing and the facilities can be comparatively luxurious. Thirdly, there is no stigma attached to the developments. Thus, it is not the concept of high density and high rise that makes the projects "drab, ugly blocks of cement standing like soldiers,"³⁹ but rather a combination of those

35. *LOW-RENT HOUSING HANDBOOK*, RHA 7410.1, ch. 3, § 2.

36. *Ledbetter* at 498-99.

37. *LOW-RENT HOUSING HANDBOOK*, RHA 7410.1, ch. 3, § 1.

38. *INSTITUTE ON PUBLIC ADMINISTRATION, REPORT OF STUDY GROUP (1966)*.

39. *Friedman* at 652.

factors with the low cost features and the stigma attached to living in the projects.

Many designers and planners in recent years have recognized the need for change in project design. Ms. Bauer described the program as the "bare bones of . . . New Deal theory, not yet covered with the solid flesh of present day reality."⁴⁰ Characterizing the interior design as deficient in space and in privacy; she stated that the projects "were too large, with high densities and few amenities; thus, fostering the island concept which reinforced a charity stigma."⁴¹ While most Americans prefer one story dwellings, public housing continues to be high rise. Her proposals for change recognized the need for more public housing, but focused on the possibility of abolishing the public landlord concept and allowing private enterprise to build the projects with rents subsidized by the government.⁴²

Racial discrimination in public housing has been a considerable problem since the inception of the Act. Under the original Housing Act of 1937, little consideration was given to the question of segregation in public housing units. As a result of the Act, the local housing authorities were given the ultimate responsibility of administering the programs.⁴³ Development of projects in black and white neighborhoods were carried out, but no efforts were made to integrate housing projects. However after the holdings in *Shelley v. Kraemer*⁴⁴ and *Brown v. Board of Education*,⁴⁵ the policy of permissiveness of segregation in theory became restrictive. One basic reason for the lack of federal restrictions against segregated public housing units, besides political considerations, was the non-acceptance of low rent housing by local government. Low-rent housing programs have traditionally faced organized opposition; as such there was no incentive for federal officials to impose desegregation policies on local housing authorities. As a result of this policy, the first 25 years of the program's operation resulted in the creation of either all-white or all-black projects despite the fact that judicial decisions held segregation in public housing violative to the Constitution.⁴⁶

A shift in policy can be traced to Executive Order No. 11063 issued in 1962.⁴⁷ The Order indicated that blacks were being denied public housing and since the federal government provided funds for

40. Bauer at 140.

41. *Id.* at 143.

42. *Id.*

43. See generally Comment, *The Public Housing Administration and Discrimination in Federally Assisted Low-Rent Housing*, 64 MICH. L. REV. 871 (1966).

44. 334 U.S. 1 (1948).

45. 347 U.S. 483 (1954).

46. *Heyward v. Public Housing Admin.*, 238 F.2d 689 (5th Cir. 1956); *Detroit Housing Comm. v. Lewis*, 226 F.2d 180 (6th Cir. 1955).

47. 3 C.F.R. 261 (1962).

said housing, it was supporting segregation.⁴⁸ While a positive step, the Order was limited in its application in that its reach did not affect all housing programs in which the federal government was involved. In addition, the Order did not apply to housing provided through federal assistance prior to November 20, 1962. Both Title VI⁴⁹ of the Civil Rights Act of 1964 and Title VIII⁵⁰ of the Civil Rights Act of 1968 are the progeny of the 1962 Executive Order.

III. A NEW DIRECTION IN PUBLIC HOUSING

The passage of the Housing and Urban Development Act of 1965⁵¹ indicated that public housing advocates were aiming their efforts in a new direction. As a result of the Act, the federal government agreed to provide decent housing for low income families by increasing, through subsidies, the amount which they could afford to pay for housing already available in the private markets. Thus, pre-existing private housing is used to meet the needs of low income families, replacing the traditional public housing project. Among other things, this Act provides two programs for utilizing private low-rent housing by increasing the purchasing power of low income tenants: the leasing of private housing by public housing agencies ("Section 23 leasing")⁵² and the rent supplement.⁵³

Under the rent supplement program, the owner of the building is paid the amount by which the rent for the unit exceeds one-fourth of the tenant's income. Despite the fact that Section 23 leasing encountered little resistance in Congress, the rent supplement program met with vehement congressional opposition. Vigorous opposition to the rent supplement program resulted in such a watered down version of the plan that it has had little impact. Congress also has been quite unwilling to appropriate funds for rent supplements, thus, the program has never reached its vast potential. In a contrary fashion, the leasing program made its way through Congress causing little conflict and resulted in much congressional support for the program. Under the leasing program, public housing authorities are authorized to lease suitable apartments from private owners who voluntarily agree to make some of their units available to low income families.⁵⁴ The housing agency subleases these units to selected

48. 3 C.F.R., § 101 (1962) reads as follows:

All departments and agencies in the executive branch of the federal government, insofar as their functions relate to the provisions, rehabilitation, or operation of housing and related facilities, to take all action necessary and appropriate to prevent discrimination because of race, color, creed or national origin.

Id. at 262.

49. 78 Stat. 252, as amended 42 U.S.C. §§ 2000d-2000d-4 (1971).

50. 82 Stat. 81, as amended 42 U.S.C. §§ 2000d-2000d-4 (1971).

51. 79 Stat. 451, as amended 42 U.S.C. §§ 1401, *et seq* (1971).

52. 42 U.S.C. § 1421b (1971).

53. 12 U.S.C. §1701s (1971).

54. 42 U.S.C. § 1421b(c) (1971).

tenants. The property owner receives the full rental from the public housing agency while the agency collects a lower rent from the tenant.

This leasing program has many economic and social advantages. Almost every community has or will have the problem of an overly large population of low income families living in a relatively small, crowded, unsafe area. Many communities have failed to cope with this problem. Under the leasing program, no concentration of public housing is necessary. Therefore, cities which had previously failed to build additional units or even to establish a housing authority are encouraged to at least participate in the leasing program because of the advantage which it offers to local property owners. Of primary importance to the tenant is the fact that the subsidy does not terminate when a tenant's income reached a certain level. The subsidy decreases in proportion to the tenant's increased income.⁵⁵ Thus, a tenant under this program is not forced out when his earning power increases above a prescribed maximum. As a result, a more stable housing pattern is likely to develop.

Another beneficial aspect of this program is in the opportunity it gives low income families to escape their economic ghetto and live in better neighborhoods, attend better schools, and, ideally, integrate themselves into middle class society. The Act, in order to assure some economic and social integration, provides that only ten per cent of the units in any building be leased to the public housing agency.⁵⁶ However, this ten per cent limitation is only a guideline designed to discourage the creation of a quasi-housing project by the concentration of poor and lower income tenants.

When rents are guaranteed to the landlord by the government agency, a new element is interposed in the landlord-tenant relationship which did not exist in the slum landlord situation. That is, incentive for the landlord to repair the premises exists when he knows he will be paid in full for rental property. Also, lease agreements can be entered into for up to five years. This long term lease enables a landlord to obtain a loan in order to bring his building up to health and safety code standards. An expanded leasing program could produce an increase of low-rent housing through new construction. The combination of higher rents and the reduction of risk to the landlord because of the guarantees made by the agency could make investment in such housing profitable.

In spite of aforementioned advantages and high potential, the leasing program, since its inception, has not had complete success. The explanation for this partial failure lies in the limitations which

55. 42 U.S.C. § 1421b(2) (1971).

56. 42 U.S.C. § 1421b(c) (1971).

engulf the program. First, the Act which gave the program its vitality also limited the rents which the local housing agency may pay for private housing. The housing authority's subsidy for accommodations in private housing must not exceed the fixed annual contribution which the federal government would have granted the agency for the construction of new housing.⁵⁷ Another limitation has even more severely limited the effectiveness of the program. The Federal Housing Assistance Administration has not allowed the local housing agency to enter the private housing market where there is a high vacancy rate in the community. No leasing program is permitted to reduce the city-wide vacancy rate to lower than three per cent.⁵⁸ Apparently, the fear of competition with the private sector has outweighed the need for low cost housing.

Segregation practices have also restricted the ability of local housing authorities to obtain decent housing. The housing agency does not possess the power of condemnation in order to compel landlords to participate in the program. Thus, all private housing is made available on a voluntary basis. As a practical matter, landlords who would refuse to rent to middle income blacks would hardly be induced by the limited subsidy offered by the local housing authority to accept low income black tenants. Perhaps the best opportunity for overcoming existing segregation patterns is for the leasing authorities to take advantage of their natural economic power. If vacancy rates in the white community are high, landlords will be forced to weigh the opportunity to rent otherwise unoccupied units or to follow segregation patterns and thereby maintain empty buildings. While segregation practices hinder the full implementation of the leasing programs, the very program itself has as one of its key objectives the end of income and race segregation "by making possible 'an economic and social mix among subsidized and unsubsidized tenants'."⁵⁹

There are several methods utilized by the leasing program to achieve economic and racial integration. One method which was alluded to earlier is the policy of not leasing more than ten per cent of the units in a given building. However, this ten per cent figure is nothing more than a guideline to avoid socio-economic concentration. Its purpose is to prevent projects being created from leased housing. The percentage has no application to small unit buildings and is often ignored when larger apartments are involved. A better method which the leasing program may use in order to achieve economic and racial integration is in placing low income

57. 42 U.S.C. § 1421b(e) (1971).

58. HUD, THE LEASING PROGRAM FOR LOW-INCOME FAMILIES 2 (1966).

59. Friedman & Krier, *A New Lease on Life: Section 23 Housing and The Poor*, 116 U. PA. L. REV. 611, 618 (1968) [hereinafter cited as Friedman & Krier].

tenants in apartments and houses scattered throughout the city. This approach, however, has built-in pitfalls. The housing authorities are quite aware that not all low income families or individuals are "acceptable" under the leasing program. Agencies attempt to place the better educated and "rich-poor" into subsidized middle income housing. This selectivity is accomplished with the belief that it will be easier for unsubsidized middle income families to identify with at least the upper fringe of assisted tenants. To aid in the placing of the "rich-poor" under this program, maximum income and asset limitations have been much higher than limits set for conventional public housing. Selectivity also occurs because the housing agency itself is concerned with its own image. Thus, agencies engaging in tenant selectivity tend to favor the submerged middle class, that is, those on social security, old age pensions, and veterans pensions. The dependent or problem poor, those on public assistance, are lost in the discrimination which favors those in the higher brackets. Thus, the fault concept which permeates welfare benefits generally, is also manifest in the area of housing.

While economic integration is having its difficulties under the leasing program, racial integration is fairing much better. However, it must be remembered that owners who are prejudiced will not offer their buildings to the program. Landlords who enter the program will be those who expect and are willing to accept black tenants. To assure compliance with the federal policy of integration, each agreement between the local authority and the private owner must contain a nondiscrimination clause.⁶⁰ The local authority makes several tenant selection patterns available to the landlord. The landlord can choose tenants himself, subject to authority approval. He can select from a list supplied by the authority or, if the owner prefers, the authority can select tenants without owner approval. However, if the owner reserves the right to personally select or approve tenants, the local authority does not have to pay rent while the unit is vacant. In addition, the agency may cancel its agreement with the owner if the owner refuses three consecutive tenants referred to him by the authority.⁶¹ Hence, a landlord who desires a guaranteed rent for empty units between rentals must yield control over tenant selection to the local housing authority.⁶²

In the last analysis, neighborhood objections are perhaps the greatest obstacle to racial and economic integration through leasing. Because of the fears and prejudices of white, middle income families, the housing agencies must resort to secrecy. Housing authorities

60. 81 PHA CIRCULAR § 10 (1965).

61. LOW-RENT HOUSING LEASED HANDBOOK, RHA 7430.1, ch. 1, § 1.

62. Friedman & Krier at 623.

have been quite careful to conceal the identity of subsidized tenants. However, many times the identity of a tenant can be concealed only if the tenant is no more than marginally different from his neighbors. Although integration is sought and secrecy is used to achieve partial integration, by its very nature secrecy is best accomplished when the individuals involved are members of the submerged middle class. Therefore, the problem poor are deprived of the many benefits to be gained by this program. As a practical matter, landlords generally have not been induced to participate in the leasing program unless they are having difficulty in renting their units. To this extent the program is vulnerable to the economic conditions in the housing market. The need to be in a lessee's market is a weakness of this program. However, if a lessee's market does exist, the monetary value of the rental payments does not reflect the true value to the landlord of participating in the leasing program. The guarantee of rentals and the assurance of recovery for damage done by tenants provide economic incentives for the landlord. In addition, the liability of the housing authority, as sub-lessor, for apartment damages will, in turn, force the authority to educate the tenant as to his responsibilities.

Another public housing program which has received a great deal of attention is the Turnkey Project.⁶³ Although this program is not directly geared to achieving economic or racial integration, it does do something the leasing and rent supplemental programs do not—it provides new public housing. Under the Turnkey Project, private industry joins with local and federal governments in the building of low-rent housing.

There are essentially three Turnkey programs. Turnkey I provides for the purchase by the local authority of an entire development from the builder.⁶⁴ This approach reverses the traditional method of producing public housing whereby the local authority purchases a site, has its own architect design plans, and awards the construction job to the lowest bidder. Under Turnkey I, a developer who has an appropriate site or structures in need of rehabilitation, makes a proposal to the local authority for permission to build or rehabilitate some housing in accordance with his own plans and specifications. If the proposal is accepted, the developer and the local authority enter into a letter of intent followed by a contract of sale under which the authority agrees to purchase the completed housing.⁶⁵ The letter of intent and contract of sale are backed up by the financial commitment of HUD to both the developer

63. Comment, *Turnkey Public Housing in Wisconsin*, 1969 WIS. L. REV. 231.

64. See HUD CIRCULAR 8-12-68. This program is based on HUD's statutory authority found in the Housing Act of 1937, as amended, 42 U.S.C. § 1402(5)-(8).

65. LOW-RENT HOUSING HANDBOOK, RHA 7420.1, app. 10.

and the local authority. This commitment assures the lender of the availability of the purchase money upon completion and assures the developer that if the local authority fails to carry out its duties under the contract, HUD will take over the rights and obligations of local authority under the contract.

Turnkey I has many attractive features. It results in substantial savings of cost and time since the project is not tied up by the administrative red tape which characterizes most government construction. Perhaps the most significant advantage of Turnkey I is that it adds extreme flexibility in design and construction to public housing. Thus, the psychological stigma which comes from living in prison-type public housing is potentially eliminated. The time saving aspect of this program should not be understated. With the need for adequate housing growing more crucial each day, it has become imperative to complete a housing project in the shortest time possible. Projects built under Turnkey I have resulted in a seven to nine month period between approval of an application by the local authority and the beginning of construction.⁶⁶ In comparison, the average period for conventional public housing between application and start of construction ranges from three to four years.⁶⁷

In many cities urban renewal programs have cleared slums. However, in their place, developments for middle and upper income groups have been built. Thus, in many cities, urban renewal programs have actually decreased the supply of low income housing. It is said that urban renewal is synonymous with black removal. Turnkey I offers a way out of this situation. When combined with Section 23 leased housing programs, *supra* Turnkey I give the necessary incentive to begin and maintain public housing projects in various areas of the city. The two programs complement each other by utilizing available housing vacancies and creating vacancies where they did not previously exist. Turnkey I, however, has one major drawback when compared to the leasing program. It is more costly per unit than conventional housing. These costs are passed on to the tenants in the form of higher rents. As a result, the probable effect will be that tenants of moderate income will be more able to afford the rent in Turnkey I units. Though this may not solve the housing problem for low income tenants, it will relieve the difficulties experienced by the marginal welfare tenants who will be able to successfully integrate into non-welfare communities.

The second Turnkey project is concerned with the management

66. Burstein, *New Techniques in Public Housing*, 32 LAW AND CONTEMP. PROB. 528, 529-30 (1967) [hereinafter cited as Burstein].

67. *Id.* at 535.

of such housing.⁶⁸ Turnkey II was established with the view of having private management firms operate public housing projects. The purpose of Turnkey II is to improve the administration of public housing. Hopefully, this program could result in reduction of cost, lessening of prejudice against public housing, and the introduction of flexible, professional management techniques.⁶⁹

Perhaps the greatest innovation in public housing is Turnkey III, providing ownership opportunities for the tenants.⁷⁰ Under this plan, the tenants are given lease-purchase contracts when they have earned, out of the self-maintenance of their units, an equity of at least \$350.00.⁷¹ While the family in this project initially has only a lease-purchase contract and not full title, its right to purchase is fully protected if it meets its obligations and maintains its property. The family's equity becomes a vested interest. The earned equity is available to enable the family to acquire title sooner and belongs to the family if it should wish to be compelled to leave the project. Eligibility for Turnkey III is determined by the same criteria as other public housing programs. Families pay 20 per cent of their income to the local housing authority for rent and, in addition, are responsible for routine repairs and general maintenance.⁷² There is however, a minimum rental. It must at least equal the family's share of all operating expenses and reserves, including the budgeted cost of the repair and maintenance the family must provide. Since the family is obligated to provide the repair and maintenance, the budgeted amount paid in for that purpose is credited to the tenant's Homebuyer's Ownership Reserve. This reserve equals a dollar amount that would otherwise be allocated by the local housing authority for maintenance of the unit. It is applied to the tenant's amount which is intended to lead to eventual ownership.⁷³

With financial aid from HUD, the local housing authority makes payments on the tenant's unit in accordance with a schedule that will assure payment in about 25 years. When the amount in its Homebuyer's Ownership Reserve is sufficient to cover the balance of the allocable debt, the family can take title to its unit. While occupying a Turnkey III project, families will be receiving a subsidy covering an amount beyond that which they can afford, plus an amount required to meet its homeownership debt.⁷⁴ A tenant under this program can become an owner in a short time by paying more than the normal 20 per cent monthly rent or by purchasing his unit

68. HUD CIRCULAR 6-4-68, "GUIDELINES FOR PILOT PROGRAMS—PRIVATE MANAGEMENT OF LOW-RENT PUBLIC HOUSING."

69. Burstein at 537.

70. 42 U.S.C. § 1415(9) (1971).

71. Burstein at 538.

72. HUD CIRCULAR, 12-17-68.

73. Burstein at 538-40.

74. HUD CIRCULAR, 12-17-68.

at any time for the unpaid balance of the project's capital debt attributable to his unit.⁷⁵ However accelerated ownership is only feasible for the "rich-poor."

Under Turnkey III, tenants are obliged to build up a credit of \$200.00 in their Homebuyer's Ownership Reserve within their first two years of occupancy. After this credit is built up, the family is given the status of homebuyer.⁷⁶ If the tenant's financial position does not enable him to retire the unpaid balance due on his unit in a lump sum, he will acquire ownership when the portion of the project's capital debt allocable to the unit is reduced to an amount equal to his reserve. However, if the family income should increase to the point where the family becomes ineligible for public housing, the family must purchase the unit for the balance then remaining unamortized, to which will be applied the amount in its equity account. The family, theoretically, at that point should be able to obtain a private loan for the balance. When the unit reaches that stage, it would no longer receive a federal subsidy and would then be placed on the tax rolls. Of course, if a family does surpass the eligibility standards, it does not have to buy the unit. Should it choose not to do so, the family can keep the amount remaining in its equity account. It cannot, however, retain the amount represented by a reduction of the debt on the unit as a result of the rent payments and the federal subsidy.⁷⁷

The greatest advantage of Turnkey III is that with basically the same subsidy as in conventional public housing (even less, in fact, due to the savings which result from the self-interest of the tenants in their own property and the more rapid amortization of the federal debt covering the capital cost), low income families can become property owners. An additional advantage to the family is the fact that at the least it will be able to continue living in the unit as a renter at the minimum rent. Yet, if the family does nothing more than pay for administrative expenses and fulfill its maintenance obligation, the tenant will still acquire ownership at the end of the amortization period.

The Housing and Urban Development Act of 1968 signed into law by President Johnson on August 1, 1968,⁷⁸ represents this country's most massive commitment to the concept of universal housing since the original Act was passed. The legislation is designed to provide 26 million new and rehabilitated housing units over a ten year period, with six million units specifically earmarked for moderate

75. *Id.*

76. NATIONAL INSTITUTE FOR EDUCATION IN LAW AND POVERTY, HANDBOOK ON HOUSING LAW, ch. IV, pt. IV, at 2-4 (1970).

77. *Id.* at 3-10.

78. 82 Stat. 505, as amended, 42 U.S.C. §§ 1401, et seq (1968). See generally, Freilich & Seidel, *Recent Trends in Housing Law: Prologue to the 70's*, 2 URBAN LAWYER 1 (1970).

and low income families. The basic thrust of the 1968 Act is to extend housing to low income families by providing mortgage payment subsidies (Section 235 Housing)⁷⁹ and rental and cooperative housing (Section 236 Housing).⁸⁰

Under Section 235 Housing, families whose incomes satisfy the financial criteria outlined by the Department of Housing and Urban Development are eligible to purchase homes and receive a federal subsidy.⁸¹ The exact amount of the subsidy payable varies according to the income and needs of the homeowner. One of the positive features of the program besides the obvious salutary effects of private homeownership is the preference given to applicants who reside in public housing, particularly those families who marginally qualify for public housing because of increased income.⁸² Initially the program was quite popular with low income families, however, the program has developed into a literal "rip-off." In 1970, the House Committee on Banking and Currency uncovered program abuses particularly involving improper appraisal methods and inadequate housing inspection standards by the Federal Housing Administration.⁸³ In 1971, Secretary of HUD, George Romney, briefly suspended the program in order to tighten the operation of the Section 235 Housing. Unfortunately, this housing is being abandoned by unprecedented numbers of low income families for a variety of reasons, but principally because of structural deficiencies in the units.

Under Section 236 HUD is authorized to contract periodic interest reduction payments on behalf of an owner of a private housing project that provides housing for low income families.⁸⁴ These interest reduction payments are made with respect to a mortgage on rental property or cooperative housing owned by a nonprofit corporation, a cooperative housing corporation.⁸⁵ The housing can be new or rehabilitated but does not extend to public agencies. The corporation that participates in this program takes out an F.H.A. mortgage at regular market interest rates and receives a subsidy in the form of direct contributions to the mortgage payments under a contract with HUD.⁸⁶

On March 2, 1972, the United States Senate passed a bill designed to be the Housing and Urban Development Act of 1972.⁸⁷ The

79. Act of August 1, 1968, Pub. L. No. 90-448, 82 Stat. 477, as amended 12 U.S.C. § 1715z (1971).

80. Act of August 1, 1968, Pub. L. No. 90-448, 82 Stat. 498, as amended 12 U.S.C. § 1715z-1 (1971). See also Edson, *Sections 235 and 236—The First Year*, 2 URBAN LAWYER 14 (1970).

81. 12 U.S.C. § 1715z(b)(2) (1971).

82. *Id.*

83. CCH Pv. L. Rptr. 3666.81.

84. 12 U.S.C. § 1715z-1(a) (1971).

85. 12 U.S.C. § 1715z-1(b) (1971).

86. 12 U.S.C. § 1715z-1(j) (1971).

87. S. 3248, 92nd Cong., 1st Sess. (1972).

Act has not yet been favorably considered by the House of Representatives. The Public Housing Assistance Program (Chapter II) bill⁸⁸ would supplement and revise the Housing Act of 1937. The bill provides that rental required of public housing tenants could not exceed one-fourth of the family income. The Secretary of HUD is authorized to make loans to public housing authorities to finance or refinance the acquisition, development, or operation of housing projects to the extent of \$1.5 billion. Additional provisions include authorizations for debt service subsidies to public housing authorities, operating cost subsidies, lease housing, homeownership, and cooperative housing.⁸⁹ While this extensive legislation is pending, the present administration has issued a moratorium on a number of programs under HUD's jurisdiction.⁹⁰

IV. CONCLUSION

In closing, it should be clear from the foregoing that there is no shortage of housing programs in the United States. Some programs in the past have been abject failures, while a few operating today have some potential for success. The point of all these efforts must be that more proposals are not what is needed to ameliorate the problems of the poor. What is needed is a new awareness, a new understanding of the psychological forces which can be utilized to improve the status and self-esteem of the poor. Thus rather than allowing an individual to be put "on the dole," housing programs must be aimed at eliminating the self-demeaning atmosphere which has characterized housing projects in the past. Stated differently, if middle class values are regarded as the norm in our society, low income tenants must be allowed to share those values. Specifically, the low income tenant should be allowed to *feel* what ownership is like rather than to be *told* what it is like. Therefore, proposals in this area are superfluous. The purpose of this review has been to illustrate the evolution of public housing in America and to be instructive in the necessary elements for a successful housing program. In the last analysis, any new housing program must be designed not to perpetuate itself, but to eradicate the need for its

88. *Id.*

89. *Id.*

90. As of January 5, 1973, the following HUD programs have been suspended or terminated; new rent supplements, impounding \$38.0 million; new Section 235 and 236 housing, impounding a total of \$392.5 million; new public housing and new Section 106 nonprofit sponsored housing, impounding \$67 millions; new college housing, impounding \$10.2 million; open land and space programs, impounding \$50 million; water and sewer, impounding \$100 million, and public facility loans, impounding \$20 million, Neighborhood facilities; model cities; urban renewal, 312 rehabilitation loans, and public housing modernization are to be phased out commencing June 30, 1973. However, United States District Court Judge Charles Richey permanently enjoined the Secretary of HUD from suspending and impounding monies authorized by the Congress for these and other federal programs under HUD's control. See *Pennsylvania v. Lynn*, 362 F. Supp. 1363 (D.D.C. 1973).

existence. Unfortunately, public housing reflects a growing American attitude that help should be provided only to the "deserving poor." Public housing is forced to gear itself to these attitudes and the realities of politics. Since legislators are under attack more than ever before for over-spending, the shift in emphasis will be towards an efficiency of real estate operations rather than the desirability for social reforms.

