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Two Cheers for Gentrification

J. PETER BYRNE*

INTRODUCTION

The very word “gentrification” implies distaste.¹ Advocates for the poor and ethnic minorities see affluent whites bidding up the prices for urban housing to levels that force poor families out, depriving them of affordable housing, perhaps rendering them homeless, and changing the character of a neighborhood from one that reflects distinct ethnic and class needs and cultural traditions into a bland emporium for expensive consumer goods. Sometimes historic preservation laws are indicted as particular culprits in setting this dynamic in motion. A result of these perceptions is that the legal literature on gentrification, in general, and historic preservation both reflect a distinctly negative strain.

This essay takes issue with this negative judgment about gentrification. That a number of individuals have lost affordable apartments that were home to them cannot be denied.² Yet, increases in the num-

* Professor of Law, Georgetown University Law Center. Thanks for useful comments go to Michael Diamond and to participants at a Summer Research Workshop at Georgetown University Law Center, and to Tom Chance for research assistance. The essay is dedicated to the memory of Cathy Pfeiffer, friend, neighbor, public school librarian, and tireless catalyst for community and individual improvement.

1. The term itself seems to have been coined by an English writer, Ruth Glass, in 1964 to describe the process of middle-class people moving into working class neighborhoods in London and refurbishing modest houses into “elegant and expensive residences.” The author noted, “Once the process of ‘gentrification’ starts in a district it goes on rapidly until all or most of the original working class occupiers are displaced and the whole social character of the district is changed.” Neil Smith, *Gentrification*, in *THE ENCYCLOPEDIA OF HOUSING* (Willem van Vliet ed., 1998) (quoting Ruth Glass, *ASPECTS OF CHANGE* xvii (1964)). A colleague informs me that in community discussions in his gentrifying neighborhood, the term is scrupulously avoided; terms referring to physical structures are used, such as “renovation” or “rehabilitation.”

2. An ordinary and unself-conscious account of this can be found in a recent *Washington Post* article about the renovation of a sixty-unit apartment building near downtown Washington, D.C. A developer bought the building in a dilapidated state from a bankruptcy sale in 1999 and substantially renovated the units, which were rented promptly by white-collar workers eager to move downtown. In the process, drug dealers and a prostitution ring were evicted, but so were many decent, working class Hispanics who could not afford the higher rents. One resident re-

ber of affluent and well-educated residents is plainly good for cities, on balance, by increasing the number of residents who can pay taxes, purchase local goods and services, and support the city in state and federal political processes.³ My contention here goes somewhat further: gentrification is good on balance for the poor and ethnic minorities. The most negative effect of gentrification, the reduction in affordable housing, results primarily not from gentrification itself, but from the persistent failure of government to produce or secure affordable housing more generally. Moreover, cities that attract more affluent residents are more able to aggressively finance affordable housing. Thus, gentrification is entitled to “two cheers,”⁴ if not three, given that it enhances the political and economic positions of all, but exacerbates the harms imposed on the poor by the failures of national affordable housing policies.

Despite the negative connotation, I prefer to use the term “gentrification” rather than anodyne jargon such as “neighborhood revitalization.” Like other popular terms of reproach (“political correctness” comes to mind), gentrification uniquely describes a complex social phenomenon rooted in a specific time and place. I use gentrification to refer to the process by which people of higher incomes move into lower income urban areas and seek to change its physical and social fabric to better meet their needs and preferences. Students of gentrification have debated whether displacement of lower income residents from their homes is a necessary element of its definition.⁵ My view, clarified below, is that our understanding of the extent and centrality of displacement is sufficiently problematic that it should not be considered definitional. Some neighborhoods have been gentrified by converting industrial lofts to residences and shops, causing only minimal displacement of existing residents. Some cities,

marked, “The whole demographic of the building had changed. Families were gone. It was really sad.” Ruben Castenada, *What a Difference a Rehab Can Make*, WASH. POST, June 29, 2002, § 5, at 7.

3. Gentrification also promotes “smart growth,” the encouragement of new housing closer to urban centers and in greater densities in order to prevent sprawl. It is noteworthy that advocates for low-income housing sometimes also oppose smart growth restrictions on new suburban development because it raises the cost of housing. This also seems wrong-headed because of the region-wide environmental benefits of more compact growth and because the adoption of restrictive growth measures on a regional or state level makes obvious the public’s responsibility to provide affordable housing.

4. . See E.M. FORSTER, *TWO CHEERS FOR DEMOCRACY* (1951).

5. See Maureen Kennedy & Paul Leonard, *Dealing with Neighborhood Change: A Primer on Gentrification and Policy Choices*, 2001 BROOKINGS INST. CTR. ON URB. & METRO. POL’Y 5-6, available at <http://www.brook.edu/dybdocroot/es/urban/gentrification/gentrification.pdf>.

Detroit and Cleveland for example, have sufficient vacant dwellings that large influxes of higher income residents would place small strain on housing costs for lower income persons.⁶ At the same time, low-income residents who remain in a gentrifying neighborhood with a low vacancy rate may be harmed by paying a higher percentage of their income for rent.⁷

Gentrification has at least two causes.⁸ First, it most familiarly reflects a change in preferences by upper income persons about living in the city.⁹ Increasing numbers of affluent people view city life as affording cultural and social opportunities superior to those of the suburbs, which at the same time may seem increasingly inaccessible because of urban sprawl and traffic congestion. The scale of this change should be kept in perspective as suburban growth both in residences and employment continues to substantially outstrip urban growth.¹⁰ Second, broader economic changes have increased demand for housing in some cities beyond what the market can supply outside of formerly marginal neighborhoods.¹¹ Thus, the young professionals in the Bay Area or Boston who took jobs in the technology sector during the boom, may have moved to the Mission District or Charlestown because of the lack of attractive affordable alternatives. Such demand is more likely in cities with tight housing overall and a vital tradition of urban living. This cause also reflects a disparity in income growth for upper income and low-income people. This income disparity results from widespread changes in the global economy so that gentrification may be a vanguard of the new post-industrial, or even post-modern, city.¹²

6. *Id.* at 62-63; see also Bethany Bonner, *Historic Preservation in Detroit: Purpose and Procedure* (2002) (unpublished seminar paper, Georgetown University Law Center, on file with author).

7. Jacob L. Vigdor, *Does Gentrification Harm the Poor?*, 2002 BROOKINGS-WHARTON PAPERS ON URB. AFF. 133, 168-69, available at <http://muse.jhu.edu/journals/urb/toc/urb2002.1.html>.

8. *Id.* at 137.

9. Keith Aoki links this to changes in architectural taste as post-modern architecture fostered a regard for historic architectural styles and details and to a facility with restructuring them for modern living. Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning and Gentrification*, 20 FORDHAM URB. L.J. 699, 792-94 (1993). Aoki expresses considerable ambivalence about this taste for the historic, referring at one point to "bogus antiquity," *id.* at 824, but his real concern is for the marginalization of low-income people, as he accepts the claims of mass displacement discussed below. *Id.* at 818.

10. Kennedy & Leonard, *supra* note 5, at 8-9.

11. See Vigdor, *supra* note 7, at 142-44.

12. Aoki, *supra* note 9, at 800; see also DAVID LEY, *THE NEW MIDDLE CLASS AND THE REMAKING OF THE CENTRAL CITY* (1996).

This essay proceeds as follows. First, I consider in more specificity the complaints lodged against gentrification, with particular attention to the role of historic preservation, and consider the extent to which these complaints hit the mark. Second, I try to specify the advantages for poor and ethnic minorities from gentrification in this society given its political structures and history, and argue that these advantages substantially outweigh the losses they inflict on the poor. Finally, I suggest how the negative consequences of gentrification might be minimized, the most constructive path for which is the promotion of increased affordable housing throughout the metropolitan area. My hope is that the arguments presented will better focus discussions about the effects on the poor of policies that promote urban redevelopment.

A personal word before I begin: I am a gentrifier. My wife and I bought our first house on an outer street of Capitol Hill, Washington, D.C., in 1982, a neighborhood that had been gentrifying sporadically since the 1960s. We did so because we preferred the city to the suburbs, preferred living in an area that was economically and racially mixed, and because we could afford to buy there, but not in a more wealthy neighborhood in the same geographic region. Many of my academic and policy views were shaped by involvement in local politics, educating my children in local public schools (where I served as a president of the PTA), attending a local church, and discussing endlessly with neighbors the path of development of our community. My experience extends my sympathy in some directions, but deflects it from others.

I. THE CASE AGAINST GENTRIFICATION

The legal literature has nearly consistently denigrated gentrification because of its apparent harm to the urban poor and racial minorities who disproportionately populate urban neighborhoods. Even articles that concede the benefits to a city as a whole from a return of the affluent dwell persistently on the injustice to the poor that flows from loss of affordable housing or changes in neighborhood character.¹³ The prevalence of this opinion is puzzling, given the ambiguity of empirical data.

13. See e.g., David B. Fein, Note, *Historic Districts: Preserving City Neighborhoods for the Privileged*, 60 N.Y.U. L. REV. 64, 82-83 (1985).

Michael deHaven Newsom sets the trend in an early article, published before the term “gentrification” had become current.¹⁴ He assaulted the “Georgetown syndrome” whereby affluent whites had redeveloped historic housing in Georgetown, both displacing low-income blacks and obliterating the neighborhood’s black heritage.¹⁵ He did not think historic preservation “inherently evil,” but argued that, as practiced, it had become “a hobby of middle- and upper-class whites.”¹⁶ Newsom argued for a variety of devices by which blacks could exercise more control over preservation efforts that affect them to both tell their own story truthfully, and promote their economic interests.

Newsom made a good point, but Washington, D.C. is unusual in the extent to which gentrification involved a replacement of black with white residents.¹⁷ Nationally, most displaced persons may be white, as white working class neighborhoods have been the favorite sites for gentrification.¹⁸ Thirty years later, many of Newsom’s distinctly cultural and racial concerns about the effect of historic preservation on neighborhoods have been addressed. Somewhat more of the higher income newcomers are black. Many preservation initiatives celebrate the struggles and achievements of blacks. Several historic districts in Washington, D.C., such as U Street, Shaw, and LeDroit Park, have been organized around places important to black culture or evoking significant black residents.¹⁹ Historic preservation organizations and regulatory authorities enjoy black leadership.²⁰ In

14. Michael deHaven Newsom, *Blacks and Historic Preservation*, 36 LAW & COMTEMP. PROBS. 423 (1971).

15. *Id.* at 423.

16. *Id.* at 431.

17. The demographic consequences of gentrification in Washington are studied in EILEEN ZEITZ, *PRIVATE URBAN RENEWAL* (1979). Zeitz notes that during the period of gentrification in Georgetown, 1940 to 1970, Washington gained population (peaking at over 800,000 in the census of 1950) and went from being 72% white to 72% black. The total population of Georgetown declined over the same period and the black percentage declined from between 14% and 28% to about 2%. *Id.* at 39-43.

18. Richard T. LeGates & Chester Hartman, *The Anatomy of Displacement in the United States*, in *GENTRIFICATION OF THE CITY* 178, 185 (Neil Smith & Peter Williams eds., 1986).

19. See District of Columbia Inventory of Historic Sites, at http://planning.dc.gov/preservation/pdf/history_inventory_070102.shtm (last visited Feb. 23, 2003).

20. See Adam Gopnik, *Saving Paradise*, NEW YORKER, Apr. 22 & 29, 2002, at 76 (profiling Harlem preservationist Michael Henry Adams). The D.C. Historic Landmark and Historic District Protection Act provides that “all appointments to the Historic Preservation Review Board shall be made with a view toward having its membership represent to the greatest practicable extent the composition of the adult population of the District of Columbia with regard to race, sex, geographic distribution and other demographic characteristics.” D.C. CODE ANN. § 6-1103(b) (2002).

at least some places, the historic preservation movement has been successfully integrated.²¹

Of course, other cultural and racial issues remain. The great majority of new residents in gentrifying neighborhoods are white, of which many are gay, while many existing residents are people of color.²² New residents have different values and preferences, which will shape local shopping and cultural institutions. Conflicts between old and new residents may erupt over, for example, school funding or subsidized housing priorities. Some legal authors have argued that this kind of change is a wrong perpetrated by gentrification.²³

This view seems deeply flawed to me. While some neighborhoods may contain unusual and important cultural institutions for a particular ethnic group that draw or hold people of that tribe, no neighborhood remains frozen in some ethnic or class essence. Dynamic succession has been the rule in all our urban history. Harlem, which has experienced significant gentrification in recent years, used to be German and Jewish, and was named by Dutch farmers who displaced Indians; its black identity reflects the complex movement of rural southern blacks to northern cities between 1920 and 1970, although today nearly half of its black residents are immigrants from Africa and the West Indies.²⁴ Inner city people of color have no more moral or legal sanction for ethnic exclusion than do suburban whites. That newcomers and prior residents may have different views on neighborhood issues presents opportunities to both as well as problems. Neighborhoods may be most attractive when they contain diverse populations and a variety of indigenous enterprises. The more plausible cultural concern of gentrifying neighborhoods will be that continuation of the process may lead to a new homogeneity of afflu-

21. Historic preservation in the District of Columbia has usually been supported by both blacks and whites. "By and large[,] community members, including African-Americans, saw the potential of historic preservation as a community development tool, as a way of having control over their destinies." Jeremy W. Dutra, "You Can't Tear it Down": The Origins of the D.C. Historic Preservation Act 27 (2002) (unpublished seminar paper, Georgetown University Law Center, on file with author). This alliance probably was fostered by mutual opposition to the urban renewal and highway building programs imposed on the district by the Federal government in the 1950s and 60s, when District residents had no self-government.

22. See LeGates & Hartman, *supra* note 18, at 182-83.

23. *Id.* at 196.

24. See Jeffrey S. Gurock & Calvin B. Hunter, *Harlem*, in *ENCYCLOPEDIA OF NEW YORK CITY* 523-25 (Kenneth T. Jackson ed., 1995). Current gentrification in Harlem by both black and white homeowners and merchants is described in Rob Gurwit, *Up in Harlem*, *PRESERVATION*, July-Aug. 2002, at 40.

ence—a concern best addressed through enhancement of affordable housing programs, as explained below.

Plainly, the prime allegation is that influxes of affluent whites displace poor residents both directly, by occupying renovated buildings that formerly provided low cost rentals, and indirectly, by increasing the demand for higher quality, more expensive housing within the neighborhood. Anecdote and common perception suggest that these harms are real. Yet, the empirical evidence for the extent of such displacement is actually rather inconclusive. The great difficulty has been establishing a causal relationship between persons moving away and gentrification.

The federal government generally has taken the view that displacement from gentrification has never been a serious problem.²⁵ Advocates for the poor, on the other hand, have long argued that displacement occurs on a large scale and have called for government action to protect low-income residents.²⁶ By 1979, the Legal Services Corporation had established a national Anti-Displacement Task Force and prepared a handbook entitled “Displacement: How To Fight It.”²⁷ Peter Marcuse, a planner influential with legal reformers argued that, “[p]ublic policies dealing with housing . . . must have as their clear objective the elimination of displacement in all its forms, whether by abandonment or gentrification.”²⁸ Legal publications during the next decade tended to adopt this viewpoint and proposed legal barriers to displacement, many of which would have discouraged the process of gentrification, such as zoning to prevent redevelopment, rent control, and special taxes on speculative redevelopment.²⁹ These authors also

25. U.S. DEP'T. OF HOUS. & URB. DEV., DISPLACEMENT REPORT: INTERIM REPORT ON HOUSING DISPLACEMENT (Feb. 1, 1979).

26. See, e.g., Richard T. LeGates & Chester Hartman, *Displacement*, CLEARINGHOUSE REVIEW: J. POVERTY L. 207 (July 1981) [hereinafter LeGates & Hartman, *Displacement*].

27. LEGAL SERVS. CORP., DISPLACEMENT: HOW TO FIGHT IT (1979).

28. Peter Marcuse, *Gentrification, Abandonment, and Displacement: Connections, Causes, and Policy Responses in New York City*, 28 WASH. U. J. URB. & CONTEMP. L. 195, 229 (1985). Marcuse takes the dubious view that gentrification worsens abandonment of residential building, apparently because he thinks that all or most of the new residents in gentrifying neighborhoods move there from areas being abandoned. *Id.*

29. See ZEITZ, *supra* note 17, at 80-83 (describing speculator tax proposal in D.C.); Jon C. Dubin, *From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color*, 77 MINN. L. REV. 739 (1993); James G. Durham & Dean E. Sheldon, III, *Mitigating the Effects of Private Revitalization on Housing for the Poor*, 70 MARO. L. REV. 1 (1986); Lawrence K. Kolodney, *Eviction Free Zones: The Economics of Legal Bricolage in the Fight Against Displacement*, 18 FORDHAM URB. L.J. 507 (1991); Marcuse, *supra* note 28; Ray Telles, *Forgotten Voices: Gentrification and Its Victims*, 3 SCHOLAR 115 (2000); Molly McUsic, Note, *Reassessing Rent Control: Its Economic Impact in a Gentrifying Housing Market*, 101 HARV. L. REV. 1835 (1988).

harbored a general antipathy to the role of private property and markets in shaping urban space.³⁰

The meaning of "displacement" in this context must be limited, of course, to persons who move from their homes, but would prefer not to. Obviously, people move all the time for many reasons; indeed, it is estimated that half of all urban residents move every five years.³¹ Direct displacement in the rental market from gentrification would occur when a landlord raises rents precipitously or withdraws a unit from the market to refurbish it or sell it for owner occupation in order to take advantage of neighborhood changes.³² These reflect the most troubling harm from gentrification: the displaced persons are forced to move from their homes and often from their neighborhoods by forces beyond their control. Such persons may experience social dislocation and a psychological wrench from the severing of emotional ties.³³ Such harms will be aggravated when the displaced person must seek housing in a market of rising rents. Direct displacement may also occur when an owner-occupier feels she must sell when rising property values sharply increase the amount of property tax due. Yet, here the story is more complicated because the owner also has an asset increasing in value that provides opportunities as well as costs.³⁴

Indirect displacement occurs when, upon the voluntary departure of existing residents, the owner raises rents, or removes the unit from the market. The harm here is the loss to the neighborhood of an affordable dwelling. Indeed, both types of displacement, direct and indirect, result in the loss of affordable units and highlight the general need for affordable housing. Some writers have alleged that indirect

30. See, e.g., Duncan Kennedy, *The Effect of the Warranty of Habitability on Low Income Housing: "Milking" and Class Violence*, 15 FLA. ST. U. L. REV. 485 (1987).

31. Vigdor, *supra* note 7, at 142.

32. Direct displacement and the harm it brings can be caused, of course, by phenomena other than gentrification, such as loss of employment, fire, or death or illness within a family. Advocates sometimes tart up their descriptions of displacement through gentrification by emphasizing incidents of landlord arson and harassment of tenants, see, e.g., Marcuse, *supra* note 28, at 215-16, but such misdeeds already are illegal and may distract from the greater challenges of providing affordable housing.

33. See Kolodney, *supra* note 29, at 511-12 n.15; Margaret J. Radin, *Residential Rent Control*, 15 PHIL. & PUB. AFF. 350 (1986). Vigdor found in his review of the literature, however, that "[s]tudies tracking the outcomes of those displaced have generally found absolute increases in well-being, and mixed evidence on changes in well-being relative to [voluntary movers]." Vigdor, *supra* note 7, at 150-51.

34. The problem for the low-income homeowner may be that a lack of cash, credit, or experience with an appreciating asset poses a barrier to managing the asset for maximum value. Of course, for some owners, the rise in the value of their homes is a godsend, making possible a comfortable retirement or achievement of other financial goals.

displacement raises the same concerns as direct and should be combated the same.³⁵

It is not clear however, that indirect displacement provides a ground for opposing gentrification. That increased demand raises prices is a common feature of a functioning land market, and nearly everyone is foreclosed from living in certain areas by high prices. When this occurs in urban areas, it is unlikely to be the result of exclusionary zoning as lower income people recently lived there and the laws seldom impose large lot or housing unit sizes.³⁶ While public policy should seek to provide decent housing for all in safe and diverse neighborhoods, it is not clear what the moral claim is to maintain a high level of low-income units in any particular area, particularly when the means of doing so are directed at preventing influxes of more affluent people that benefit the city as a whole.

That direct displacement by gentrification occurs is certain, but what has been hard to know is how many people are affected. Although some studies have posited large numbers, they are plagued by sweeping definitions of displacement and a conspicuous failure to show that gentrification causes such displacement.³⁷ In particular, they do not compare movements from gentrifying neighborhoods with moves from others; thus, they fail to show how much displacement would occur in the absence of gentrification. Two recent studies use new techniques to measure comparative displacement and find no evidence that gentrification causes significant direct displacement.

In a study in New York City, researchers Freeman and Braconi looked at surveys during the 1990s of persons who recently moved into new units and found 5.47% of them could be considered dis-

35. Marcuse argues for a broad understanding of displacement, including what he terms "exclusionary economic displacement," which amounts to what I term indirect displacement, an increase in rents that precludes low-income people from taking possession of a unit. Marcuse, *supra* note 28, at 214.

36. Historic district designation has been assailed as exclusionary because it may increase the cost of maintaining existing homes, *see* Dubin, *supra* note 29, at 772-73; Fein, *supra* note 13. Such designation makes it harder to site new multi-family housing within a district composed of row houses. *See* ZERTZ, *supra* note 17, at 67-69. At the same time, designation may discourage displacement because it makes the existing scale and architectural character of the neighborhood the baseline for new development.

37. *See, e.g.,* LeGates & Hartman, *Displacement*, *supra* note 26, at 220 (noting that national "likely displacement is in the 2.4 - 2.8 million persons per year range"); Marcuse, *supra* note 28, at 216 (Annual displacement from gentrification in New York City "probably runs between ten thousand and forty thousand households per year.").

placed.³⁸ When the researchers compared movements by low-income people from gentrifying neighborhoods, as opposed to non-gentrifying neighborhoods, they found that poor households were *less* likely to move from the gentrifying neighborhoods. Indeed, they found that increases in rent were associated with a *lower* likelihood of moving rather than a higher one. The authors concluded:

Our research sheds new light on the gentrification process. Although it does not prove that secondary displacement [i.e., from rising rents] of the poor does not occur in gentrifying areas, it suggests that demographic transition is not predicated on displacement. Low-income households actually seem less likely to move from gentrifying neighborhoods than from other communities. Improving housing and neighborhood conditions appear to encourage the housing stability of low-income households to the degree that they more than offset any dislocation resulting from rising rent.³⁹

In another recent study, Jacob Vigdor used data collected by the American Housing Survey to study changes in the occupation of particular housing units in Boston during three separate periods.⁴⁰ The study found that units containing poor persons at the beginning of any four-year period were unlikely to have one at the end, but that this change reflected income mobility more than displacement.⁴¹ “In each time interval, a poor household is actually more likely to exit poverty than to be displaced by a nonpoor household.”⁴² This led Vigdor to compare movements from gentrifying and other neighborhoods of more and less educated persons (a status that does not change as quickly as income). He found that less educated householders were more likely to remain in their units in gentrifying neighborhoods than elsewhere in the city, and no less likely to remain than higher educated persons in the same neighborhood.⁴³ He also found evidence that gentrification accelerated socioeconomic integration.⁴⁴ Vigdor does not conclude that the poor are not hurt by gentrification, as some remain in their units paying higher rent without a corresponding in-

38. Lance Freeman & Frank Braconi, *Gentrification and Displacement*, 8 THE URBAN PROSPECT 1, 2 (2002), available at <http://www.chpcny.org>. Nationally, 4% to 5% of moves are involuntary, and thus can be classified as displacement. Vigdor, *supra* note 7, at 149.

39. The authors also raise the question whether rent stabilization might be moderating the pressure toward displacement.

40. Vigdor, *supra* note 7.

41. *Id.* at 156.

42. *Id.* at 157.

43. *Id.* at 160.

44. *Id.* at 167-68.

crease in personal welfare. He does argue for targeted subsidies however, particularly for elderly renters.⁴⁵ But, he does not find evidence that gentrification displaces the poor.⁴⁶

These studies should not be taken to prove that gentrification never causes displacement. We know from our own observations that it sometimes does, and we can surmise that it must do so in certain circumstances, such as when rents rise rapidly and relocation costs are low. Yet, the studies point out that benefits for low-income residents from neighborhood economic improvement can give them both the reason and the means to remain despite higher costs. This certainly calls into question the empirical basis for the demonization of gentrification that typifies the legal literature. We need to better understand the advantages gentrification offers the poor as well as the costs.

II. GAINS FOR LOW-INCOME PEOPLE

An adequate account of the benefits that gentrification creates for low-income city dwellers requires some recollection of the historical development of metropolitan areas since 1945.⁴⁷ The primary themes have been the expansion and primacy of the suburbs, first for residential growth, and second, for retail, commercial, and political dominance within their states. At the same time, cities lost economic and political power, as business followed the white middle-class to the suburbs, leaving behind increased concentrations of poor people of color. Cities became less able to absorb the poor through loss of employment opportunities, decline of public education, and diminishment of political clout in federal and state fora. High demand in cities for public services required high rates of taxation that discouraged new economic growth.⁴⁸

Poor minorities could not follow the white middle-class and the jobs to the suburbs for many reasons, but especially because of exclusionary zoning. After 1900, suburbs developed as separate local jurisdictions, increasingly free in most places from any threat of annexation by their generative cities.⁴⁹ Zoning greatly enhanced the power of suburbs to pursue separate destinies. States played no role,

45. *Id.* at 171-73.

46. *Id.* at 150, 161-62.

47. See generally KENNETH T. JACKSON, *CRABGRASS FRONTIER* (1985).

48. See, e.g., GERALD FRUG, *CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS* (1999); Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 *STAN. L. REV.* 1115 (1996).

49. See JACKSON, *supra* note 47, at 148-56.

except to pass enabling legislation and appoint judges protective of private property. After the Supreme Court's validation of suburban zoning in *Village of Euclid v. Ambler Realty Co.* in 1926,⁵⁰ suburbs were free to pursue their own visions without regard to the needs of the populations of the urban area as a whole and to treat those who could not afford single family homes as nuisances.⁵¹ The practical point was that the Court had validated standard zoning laws as permitting each locality to create single-family housing zones to the extent favored by the locality itself. Suburbs eventually became adept at drafting zoning ordinances to enhance property values, and therefore, increase property tax receipts, minimize social irritants and the need to provide local social services, and protecting successful separate public education systems.⁵² Living in such favored circumstances understandably led many suburbanites to oppose social and educational spending by state and federal governments because they felt little personal stake in the success of state or national programs and would pay for much of them.⁵³ Racial segregation rose to historically high levels. Lack of personal relationships or common purpose made it easy to indulge race or ethnic prejudice to explain how "those people" foun-dered.

The Supreme Court continued its protection of suburban prerogatives, reaching a remarkable apogee between 1973 and 1974. First, it upheld, against an Equal Protection challenge, state laws financing public education solely from local property taxes, despite its obvious role in creating unequal educational opportunities for children in low-income districts.⁵⁴ In *Village of Belle Terre*,⁵⁵ it resoundingly approved a zoning ordinance that permitted within the village only single-family homes composed of no more than two unrelated adults and their chil-

50. 272 U.S. 365 (1926).

51. See, e.g., Richard H. Chused, *Euclid's Historical Imagery*, 51 CASE W. RES. L. REV. 597 (2001).

52. Although held to violate the New Jersey constitution in *Southern Burlington County NAACP v. Township of Mount Laurel*, 336 A.2d 713 (1975), appeal dismissed and cert. denied, 423 U.S. 808 (1975), and subject to limited attack under the laws of a few other states, exclusionary zoning is generally entirely lawful and actively pursued. See generally VICKI BEEN & ROBERT ELLICKSON, *LAND USE CONTROLS* 944 (2000).

53. See J. Peter Byrne, *Are Suburbs Unconstitutional?*, 85 GEO. L.J. 2265 (1997); Sheryll D. Cashin, *Localism, Self-interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985 (2000).

54. *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973). Litigants have subsequently turned to state courts to attack unequal funding in forty states, and twenty state supreme courts have declared state funding plans unconstitutional. See James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249, 266-69 & nn.70-86 (1999).

55. *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974).

dren. Justice Douglas explained, in language chillingly free from irony, that the police power was “ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.”⁵⁶ Finally, and perhaps least defensibly, it prohibited judges from remedying *de jure* racial segregation in cities through decrees that bound suburban school districts.⁵⁷ The effect of these and other Court decisions⁵⁸ was that, so far as the federal Constitution was concerned, suburbs could enact laws that made it economically impossible for low-income people to live there and could preserve their educational resources only for the children of residents, regardless of conditions in neighboring public schools.

Reformers have urged the enactment of statutes or adoption of judicial doctrines to facilitate the migration of poor minorities to suburbs.⁵⁹ They have seen migration as opening up employment and educational opportunities for the poor, while relieving them from urban concentrations of poverty and crime. Such prescription could find support in the *Gautreaux* studies, which demonstrate enhanced educational and employment attainments by poor blacks relocating to predominantly white, middle-class suburbs from segregated Chicago public housing pursuant to a federal decree.⁶⁰

Increased mobility for blacks generally has led many to relocate in the suburbs.⁶¹ Yet, studies like that of William Julius Wilson suggest that for remaining residents the situation actually deteriorated

56. *Id.* at 9.

57. *Millikin v. Bradley*, 418 U.S. 717 (1974).

58. *See, e.g., Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977) (noting that exclusion of racial minorities from suburbs violates the Constitution only when done with “invidious discriminatory purpose”); *Warth v. Seldin*, 422 U.S. 490 (1975) (denying standing to a broad array of plaintiffs seeking to challenge constitutionality of exclusionary zoning).

59. The federal government, by using housing vouchers and studying the results, instituted the “Moving to Opportunity” program designed to move low-income families to non-low income areas. Housing and Community Development Act of 1992 § 152, *repealed by* P.L. 105-276, Title V, Subtitle C, § 550(f), 112 Stat. 2610 (1998). Studies of the program to date are reported in Mark Shroder, *Moving To Opportunity: An Experiment in Social and Geographic Mobility*, 5 CITYSCAPE 57 (2001), available at <http://www.huduser.org/periodicals/cityscape/vol5num2/shroder.pdf> (last visited Feb. 23, 2003).

60. *See* Florence W. Roisman, *The Lessons of American Apartheid: The Necessity and Means of Promoting Residential Racial Integration*, 81 IOWA L. REV. 479 (1995); *see also* James E. Rosenbaum et al., *Can the Kerner Commission's Housing Strategy Improve Employment, Education, and Social Integration for Low Income Blacks?*, 71 N.C. L. REV. 1519 (1993).

61. *See* Sheryll Cashin, *Middle Class Black Suburbs and the State of Integration, A Post-Integrationist Vision for Metropolitan America*, 86 CORNELL L. REV. 729 (2001).

because of the departure of their more successful neighbors.⁶² Wilson posited that inner city blacks suffered the consequences of “social isolation,” lacking contact with persons of a different class, or with persons of different racial backgrounds, or both, which would concentrate the effects of poverty and shape the life opportunities available, such as “access to jobs and job networks, availability of marriageable partners, involvement in quality schools, and exposure to conventional role models.”⁶³

Gentrification needs to be assessed within this context. Many poor, minority neighborhoods gained this character as a result of white flight and dis-investment. Existing residents have limited resources with which to improve their circumstances, faced with their own problems and the need to cope with the consequences of their neighbors’ troubles. Urban economic development through government programs has not been a notable success.⁶⁴ Whatever political power poor minorities may wield in the city often is truncated by the financial fragility of the city government and its diminished influence on state and federal government.

The arrival of more affluent residents provides a counter movement to this pattern of metropolitan development over these past decades. The studies finding poor residents are less likely to leave gentrifying neighborhoods than other sections of the city suggest (although they do not prove) that the process creates benefits for these residents. Although social science proof of the existence of such benefits is scarce,⁶⁵ some benefits are apparent from the reversal of the

62. WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* 56-62 (1987).

63. *Id.* at 61. “Wilson’s concentration effects hypothesis has received almost universal empirical confirmation.” Michael Schill, *Assessing the Role of Community Development Corporations in Inner City Economic Development*, 22 N.Y.U. REV. L. & SOC. CHANGE 753, 759 (1996-97); see also *id.* at n.33 (citing studies).

64. See, e.g., Peter D. Enrich, *Saving the States From Themselves*, 110 HARV. L. REV. 377, 390-92 (1996); see also Nicholas Lemann, *The Myth of Community Development*, N.Y. TIMES, Jan. 9, 1994, § 6 (Magazine), at 27.

65. The difficulty of providing empirical proof of such benefits is illustrated by the literature concerning whether there is a neighborhood effect on the education or employment success of low-income persons that can be isolated from other influences, such as family. In a study of the literature that has achieved classic status, Christopher Jenkins and Susan E. Mayer concluded that “even if neighborhood and school effects followed a simple underlying pattern in the real world, our chances of detecting it would be low.” Christopher Jenkins & Susan E. Mayer, *The Social Consequences of Growing Up in a Poor Neighborhood*, in *INNER CITY POVERTY IN THE UNITED STATES* 111, 173 (L.E. Lynn & M.F.H. McGeary eds., 1990). However, they offer, as tentative hypotheses, that affluent neighbors are likely to be an advantage to the poor when they “set social standards for one another or create institutions that serve an entire neighborhood,” but are a disadvantage when they compete for “a scarce resource.” *Id.* at 176.

patterns of middle class exodus. The benefits to the low-income residents are economic, political, and social. Some can be realized only in neighborhoods that are economically mixed; others require only that the city as a political and taxing jurisdiction be diverse.

A. Economic

Persistent urban poverty cannot be eliminated by simple policy measures. Nothing in this essay argues that social welfare or education programs should not be pursued. Gentrification is not in any sense a complete answer to the challenges poverty presents. Still, it seems likely that gentrification can improve economic opportunities for the urban poor.

At the simplest level, existing residents should find expanding employment opportunities in providing locally the goods and services that more affluent new residents can afford. Studies suggest that poor people can find better employment in the suburbs than in the city.⁶⁶ The problem has been that inner city residents cannot reach these suburban jobs because of distance and the lack of a necessary automobile. While one may be concerned that local jobs generated by gentrification often will be low-paying, unskilled positions in restaurants and shops, existing residents may need opportunities that do not require much education. A cause of the aggravation of urban poverty has been the decline within cities of jobs not requiring higher education.⁶⁷ Gentrification may slow that trend by making investment in new shops and local services more economically attractive. Also, new residents will not generally compete with existing residents for such jobs.⁶⁸

Gentrification may also contribute to citywide enhancement of employment for low-income residents. Increases in urban populations will enhance demand for municipal services and thus the need for municipal employment. They also will increase municipal tax receipts,

66. See Rosenbaum, *supra* note 60, at 1528.

67. WILSON, *supra* note 62, at 39-42. Wilson notes:

Just as the changes in the economy have fundamentally altered the job market situation for inner-city blacks, so too has the class and racial composition of urban public schools and residential neighborhoods been affected by population movements responding to economic changes The flight of the more affluent families to the suburbs has meant that the central cities are becoming increasingly the domain of the poor and the stable working class.

Id. at 135-36.

68. See Jenkins & Mayer, *supra* note 65 (affluent neighbors are more likely to benefit the poor when they do not compete for "scarce resource").

making possible increases in public employment. Also, to the extent that gentrification reflects increases in employment for higher educated persons within the city, such firms should also need to employ lower educated persons for support functions.

Pioneers in neighborhood redevelopment were hampered by the unwillingness of lenders to finance new construction or rehabilitation of existing housing in depressed urban neighborhoods. This reflects the legacy of redlining, by which lenders had adopted guidelines that denied funds to urban areas in economic decline and with substantial minority populations.⁶⁹ Early gentrifiers found specialized lenders willing to take mortgages, and their success eventually led banks to provide home loans in urban areas. Thus, gentrification helped break down barriers to real estate lending in cities, which makes it easier today for urban residents at all income levels to buy a house or remodel. Researchers Wyly and Hammel found that gentrifying neighborhoods seem to be teaching mortgage lenders that they can lend profitably in the central city.⁷⁰ Unfortunately, their research finds no evidence to date of expanded mortgage lending to blacks in gentrifying neighborhoods.⁷¹

Gentrification should also improve shopping for low-income people. Depictions of the effects of gentrification on retail tend to focus on stereotypes of chain stores selling expensive frivolities replacing indigenous businesses that were meeting the needs of poor people, for example, Starbucks taking over a bodega. While such deleterious changes undoubtedly happen as rents increase, they also reflect national retail trends. Offering these changes as an epitome of commercial change in gentrifying neighborhoods is sentimental and misleading. The inner city long has been plagued by inadequate shopping, leading to prices for staples higher than in affluent suburbs with more competition. Supermarkets and other discount retailers are as likely to follow the affluent into the city as are cafes and boutiques, even if their entry occurs only after a critical mass has been reached. At the same time, existing merchants in gentrifying neighborhoods are likely to welcome newcomers with money to spend. In all, gentrifica-

69. See JACKSON, *supra* note 47, at 197-218.

70. Elvin K. Wyly & Daniel J. Hammel, *Islands of Decay in Seas of Renewal: Housing Policy and the Resurgence of Gentrification*, 10 HOUS. POL'Y DEBATE 711, 763 (1999), available at http://www.fanniemaefoundation.org/programs/hpd/pdf/hpd_1004_wyly.pdf (last visited Feb. 23, 2003).

71. *Id.* at 760-61.

tion should substantially enhance the quality and variety of goods and services available to low-income people.

B. Political

Exclusionary suburban zoning persists because decisions are made in a political forum in which poor people have a negligible voice.⁷² Affluent people rationally make decisions furthering only their interests in low taxes and good public education.⁷³ At the same time, urban residents have been stymied in their local deliberations by the lack of resources; the voice of the poor has been heard largely by only themselves, and despair sometimes has brought forth posturing demagogues. Proposals for remedying this state of affairs frequently suggest some form of regionalism, by which some decisions are removed to state or regional entities.⁷⁴ The expectation is that poor citizens will have more of a voice in a larger political entity, which must take account of their needs.

Gentrification creates urban political fora in which affluent and poor citizens must deal with each other's priorities in a democratic process. This creates opportunities for the poor to extract increases of spending on services, while responding to demands for fiscal accountability. In such a process, the poor are likely to have the advantage of numbers but be disadvantaged in terms of money and organization. But it does create a democratic process in which they have power.

The increase in affluent voters also should increase the leverage of cities in state and national fora. Cities have been centers of political power for the disadvantaged, but their declining share of state population and fiscal weakness decreases their strength. Gentrification promises a slowing or reversal of that trend. Increasing poor citizens' ability to bargain in other political arenas likely will have benefits for poorer citizens.

C. Social

William Julius Wilson has posited that the urban culture of poverty may be caused primarily by social isolation of poor blacks from

72. See FRUG, *supra* note 48, at 80-81; Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841 (1994).

73. See Robert Inman & Daniel Rubinfeld, *The Judicial Pursuit of Local Fiscal Equity*, 92 HARV. L. REV. 1662 (1979).

74. See, e.g., Sheryll D. Cashin, *Localism, Self-Interest and the Tyranny of the Favored Quarter: Addressing the Barriers To the New Regionalism*, 88 GEO. L.J. 1958 (2000).

“individuals and institutions that represent mainstream of society.”⁷⁵ He believes that between 1960 and 1985 the departure of more successful blacks from poor inner city neighborhoods deprived remaining residents of role models and contacts that buffered the effects of economic change.⁷⁶ Changing this culture of poverty then requires breaking down the social isolation of the poor.⁷⁷ This view has been highly persuasive and undergirds HOPE VI, the federal government’s chief housing construction program, which seeks to replace traditional public housing with mixed income, lower density subsidized housing.⁷⁸ Two researchers noted the following:

While debate on these questions persists, the consensus among policy makers is that poverty is fundamentally transformed by its spatial concentration: When [sic] neighborhood poverty rates exceed some critical threshold, contagion effects spread behavioral pathologies through peer groups, while collective socialization erodes because children no longer see adults in positive role models as educated workers and married parents⁷⁹

Gentrification can ameliorate the social isolation of the poor.⁸⁰ New more affluent residents will rub shoulders with poorer existing residents on the streets, in shops, and within local institutions, such as public schools. Such newcomers may exhibit possibilities of social mobility and a determination to secure adequate public services that provide existing residents with the kind of role models and contacts the absence of which Wilson finds debilitating in the ghetto.

Many would want to question whether any such effects are plausible. Some will posit a yawning cultural gulf between new, professional white residents and the existing poor, minority residents. After all, the persons whose departure Wilson considered were primarily middle-class blacks who supported black social and cultural institutions, such as churches, that new residents are highly unlikely to join. Will not racism and class bias lead the newcomers to shun existing residents?

75. WILSON, *supra* note 62, at 60.

76. *Id.*

77. *Id.* at 60–62.

78. 42 U.S.C. § 1437v (2003).

79. Wyly & Hammel, *supra* note 70, at 740.

80. Vigdor offers evidence that gentrification increases neighborhood economic diversity. Vigdor, *supra* note 7, at 167-68; see also Wyly & Hammel, *supra* note 70, at 725 (In reinventing distressed public housing, “[p]rivate market gentrification is a necessary, although by no means sufficient, condition for market rate development and income mixing.”).

While relations between gentrifiers and existing residents will be different from the relations between the latter and the departed black middle class, and less mutually supporting in some important ways, there are reasons to suppose that these new relationships can be mutually enriching. The newcomers, after all, are choosing to move next to existing urban residents rather than fleeing to outer suburbs. While the grasp of racism can never be discounted, whites who choose to move into inner city neighborhoods generally demonstrate with their feet that they have less aversion to people of color than do whites as a whole. Some newcomers affirmatively wish to live in diverse neighborhoods with people of a different ethnicity and class. While racial differences may limit the success of modeling that can occur, it reflects a retrograde racial essentialism to maintain that modeling cannot occur or increase with familiarity. An advantage of the discrepancy between the economic orbit and educational levels of newcomers and existing residents is that there is no competition for the same jobs, a friction that often has poisoned race relations at the working class level. Competition will occur in politics, of course, but so will collaboration and log rolling.

Gentrified neighborhoods also are likely to experience reductions in crime, especially violent crime.⁸¹ While one may surmise that such neighborhoods may experience an increase in property crime, at least in the short run, because the newcomers make more tempting targets, there may be a decrease in the property crime directed at the existing poorer residents. Moreover, new residents may be more successful in securing increased policing from the city and will pay taxes making such increases possible.⁸² For the same reason, the neighborhood may receive general improvements in neighborhood services, such as sanitation and public libraries.

Public education is a key forum in which the presence of newcomers can be helpful to existing residents. Studies show that there is

81. See Scott C. MacDonald, *Does Gentrification Affect Crime Rates?*, CRIME & JUSTICE, 1986, at 163. Preliminary studies from the "Moving To Opportunity" program suggest that low-income persons moving to higher income areas are less likely to be victims of crime or to commit violent crimes than those in a control group that remained in the inner city. See Shroder, *supra* note 59, at 62-64. One study discussed therein suggests that juvenile movers may be more likely to commit property crime, at least in the short run. *Id.* at 64.

82. MacDonald suggests that "crime itself serves as a feedback mechanism to deter the stability of the gentrification process." See MacDonald, *supra* note 81, at 198. He notes that the gentrifying neighborhoods he studied initially had crime rates well above those of their cities generally, *id.* at 189-90, and that police protection was the urban service valued most highly by the new residents. *Id.* at 197.

a neighborhood effect on educational attainments; students will tend to do better in schools that reflect diverse economic and educational attainments among parents than in schools in which all families are poor.⁸³ This may be because more affluent parents push for higher standards or because more affluent students exhibit a confidence that study is worthwhile and will pay off in future social benefits. There may be doubt that affluent newcomers will enter the local public schools, given the problems such urban schools often exhibit and the alternatives that newcomers can afford. While these concerns are serious, many newcomers with children cannot comfortably afford private education or they prefer public education. There are many examples of newcomers working with existing residents to improve local public schools.⁸⁴ Many current mayors recognize that improving public education will increase the pool of those willing to move into urban neighborhoods and have made it a priority. Various school choice initiatives could have complex effects on the probability of such educational mixing.

The general points seem straightforward and plausible. To the extent that the urban poor have been hurt by more affluent people moving to the suburbs, they are helped by a return of affluent people to the city. If poor people can achieve some better outcomes by moving to higher income suburbs, their opportunities should also be increased if higher income persons move in substantial numbers to their neighborhoods. Some of these benefits can be achieved only by the poor who remain in a gentrifying neighborhood, while others can be achieved by poor people in nearby neighborhoods or simply within the city as a whole. Although these benefits to the poor are largely hypothetical, they seem likely enough that cities should not adopt laws to halt gentrification, lest these benefits be lost.

III. LEGAL RESPONSES TO GENTRIFICATION

My essentially rosy view of gentrification leads me to oppose most of the limits that several legal writers have wanted to place on it. They mistakenly seek to arrest a process that appears to be beneficial

83. Studies are collected and discussed in James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 *YALE L.J.* 2043, 2103-08 (2002).

84. *E.g.*, Kennedy & Leonard, *supra* note 5, at 22-23.

both for the city as a whole and for its poor inhabitants.⁸⁵ Prohibiting poor people from being succeeded by more affluent people dooms the neighborhood, and perhaps, the city to poverty. For example, Peter Marcuse has proposed that cities designate neighborhoods in which it would “allow essentially no new development or rehabilitation that would have the effect of increasing rents or prices, or of displacing households.”⁸⁶ This is akin to forbidding firms in a city to add new employees because it would increase the demand for housing. Marcuse might reply that development would be permitted in other areas so long as it occurred on vacant land and included set asides for affordable housing;⁸⁷ but forcing development into less desired areas will dampen the demand for housing and make it harder to finance subsidies for affordable housing.

Urban policies should support gentrification generally, even as it addresses some of the harms to which gentrification may contribute. Appropriate goals for protective policies might include protection of tenants directly displaced and more affordable housing in all neighborhoods in the city. Under the urban renewal statutes, tenants displaced by condemnation of their building for redevelopment were entitled to relocation assistance.⁸⁸ Some have proposed that tenants displaced by gentrification should be eligible for moving and other expenses from a government fund.⁸⁹ If this fund were financed by general revenues, it would marginally promote displacement, as tenants might not cling to a unit to avoid incurring moving costs.⁹⁰ Yet, large problems would be encountered in designing such a system (just as there are in studying displacement empirically) because it would be difficult and costly to determine whether a tenant is moving involunta-

85. A pessimistic assessment of the probability of useful modeling in a mixed income housing development is offered in Michael H. Schill, *Chicago's Mixed-Income New Communities Strategy: The Future Face of Public Housing*, 46 URBAN AFF. ANNUAL REV. 135 (1997).

86. Marcuse, *supra*, note 28, at 232. Marcuse employs a broad definition of displacement that includes any price rises that preclude the poor from formerly affordable units.

87. *Id.* at 232-34.

88. 42 U.S.C. § 4601 (2003).

89. Durham & Sheldon, *supra* note 29, at 36-38.

90. Durham and Sheldon are unclear about where the money to finance this assistance should come. They repeatedly state, however, that the externalities from revitalization should be internalized so that gentrification should occur only when it is efficient. *Id.* at 19-20. They neither identify the external benefits from gentrification nor propose *payments* to gentrifiers to internalize those. *Id.* Thus, they logically should propose a special tax on gentrifiers or rehabilitators of buildings, as a way to internalize costs. But this ignores the external benefits of gentrification. One would want to understand the magnitude of these general benefits, before arguing for a tax that may deter the activity that produces them. Accordingly, I support a general tax on real estate transfers to support a fund for affordable housing. See *infra* Part.III.

rily, and is thus displaced, and whether gentrification caused the move. Unlike urban renewal, where the federal wrecking ball obviated any doubt about displacement or its cause, gentrification is a complex and variable process where judgments about causation will be uncertain.

Rent control, for all its well-known vices,⁹¹ may have some virtue in blunting direct displacement.⁹² A recent New York City study points to rent control as an explanation for why gentrification does not cause more displacement.⁹³ Should rent control seek to hold rent for any unit permanently below the market rate, it will bring on all the ills of inefficiency and inequity that follow from the system. However, moderate rent stabilization, which would slow the rate of increase in any one year and increase the period for rent to rise to a new market level, could prevent the frightening spikes in rent that sometimes occur in gentrifying neighborhoods and permit tenants to adjust to new levels of demand.⁹⁴ Also, rent control typically prohibits landlords from refusing to renew a lease at its termination without good cause.⁹⁵ Moreover, rent control does not preclude, in principle, rehabilitation of buildings because landlords typically can increase rent in other units to pay for such costs. It does however, discourage rehabilitation because it limits the profits to be gained from it. Ameliorating displacement may not justify rent control, but it probably counts in its favor. It certainly is not an answer to the problem of affordable housing.

Low-income homeowners can be more easily protected against being forced to sell prematurely by devices that do not distort the basic functioning of the market. Such homeowners may both be harassed by rising costs and enjoy the benefit of a rapidly appreciating asset—their home. To some extent, their problem is not poverty, but the illiquidity of assets. Caps on annual increases in real property taxes function like the moderate rent control, described above, to make more gradual increasing burdens. Some cities permit abate-

91. See, e.g., ANTHONY DOWNS, *RESIDENTIAL RENT CONTROLS: AN EVALUATION* (1988); Edgar O. Olsen, *Is Rent Control Good Social Policy?*, 67 CHI.-KENT L. REV. 931 (1991).

92. See Note, *Reassessing Rent Control: Its Economic Impact in a Gentrifying Housing Market*, 101 HARV. L. REV. 1835 (1988).

93. Freeman & Braconi, *supra* note 38, at 2.

94. For example, rent increases in any year could be the average of unregulated rent increases over the past three years in the same census tract. It is difficult in practice to set the rent at the right level.

95. See *Block v. Hirsch*, 256 U.S. 135 (1921).

ments in real property taxes for historic properties that are restored.⁹⁶ Finally, some jurisdictions have revolving repair funds to lend money to low-income homeowners to make repairs consistent with the requirements of historic preservation laws, repayment being due only upon sale of the house.⁹⁷ These seem like fair measures to ameliorate the costs borne by low-income people to achieve the public benefits of historic preservation.

Given the costs and uncertain benefits of efforts to assist displaced renters, reformers should concentrate their efforts on effectively addressing the lack of affordable housing for the urban poor, particularly in economically integrated neighborhoods. Increased demand for higher income housing leads, in the short run, to higher rents and a decrease in affordable housing. But the deficiency in desirable low-income housing reflects larger failures in public policy. The private market will not generate new urban affordable housing that meets minimum standards of acceptability; the rewards for the developer are simply inadequate. The “filtering” or “trickle down” of housing previously occupied by more affluent people has been the dominant source of private low-income housing, but such aging housing often requires capital investments. Federal housing programs have had some successes and many failures and provide fewer units than are needed.⁹⁸

Gentrification highlights the need for better housing policies and suggests how they might be accomplished. Rather than regulate the market in pursuit of more egalitarian results, the polity should put up public money to provide housing that poor people otherwise cannot afford.⁹⁹ Regulations impose costs that may give some actors incentives that are counterproductive. Government must find more resources to finance construction or rehabilitation of more affordable

96. See Harry K. Schwartz, *State and Local Real Property Tax Incentives for Historic Preservation Property*, 40 A.L.I. -A.B.A. 911, 913 (1999).

97. See Christopher Van Wyk, *Preserving Historic Resources and Communities, at the Same Time*, 21 PRESERVATION L. REP. (forthcoming).

98. See generally Michael H. Schill, *Privatizing Federal Low Income Housing Assistance: The Case of Public Housing*, 75 CORNELL L. REV. 878 (1990).

99. An interesting intermediate point is a District of Columbia law that gives tenants a right of first refusal when their landlord seeks to sell the building to a third party. D.C. CODE §§ 42-3402.02 - 3402.03 (2001). This gives tenants a limited form of equity in their apartment that can become valuable either prompting a buy-out by the landlord to avoid a procedural tangle (reputedly the most common outcome) or permitting the creation of some form of tenant cooperative that can buy the building using subsidized finance. See Jeanne Goldie Gura, *Preserving Affordable Homeownership Opportunities in Rapidly Escalating Real Estate Markets*, 11 J. AFFORDABLE HOUS. & COMTY. DEV. L. 78, 87 (2001).

units and to support rent subsidy programs like the federal Section 8. Regulatory policies can encourage such units to be located throughout the urban region, avoiding the wicked concentrations of poverty that plagued too much public housing.¹⁰⁰ Poverty creates deleterious external effects and the poor are less likely to exit poverty when they need to cope with their own problems and fend off the effects of other people's misery, such as crime, drugs, and educational failure.¹⁰¹

An example of the relationship between gentrification and affordable housing that has attracted interesting commentary is an evaluation of the relationship between gentrification and HOPE VI, the federal program to replace dilapidated public housing with mixed-income housing at lower densities in an architectural form resembling the surrounding neighborhood. A remarkable project built under HOPE VI is The Townhomes on Capitol Hill, which has replaced the abandoned Ellen Wilson Dwellings public housing project with 134 mixed-income, limited equity cooperative units that are designed by the distinguished architect, Amy Weinstein, to evoke the Victorian styles characteristic of the surrounding neighborhood.

A recent article by Professor Lynn Cunningham criticized the use of HOPE VI in D.C. because of the existing market demand for urban residences.¹⁰² He discussed The Townhomes as a prominent example of his concern. Professor Cunningham argued that placing HOPE VI projects in gentrifying neighborhoods does not aid revitalization of depressed neighborhoods, but serves chiefly to reduce the number of units of affordable housing available in a market of spiraling rents and prices. Conceding the dramatic improvement in conditions for low-income people who obtain units in the Townhomes on Capitol Hill, he concluded, "[f]rom the perspective of the approximately 20,000 low-income households on the waiting list for DCHA housing or Section 8 vouchers, it looks like another tool in the hands of the area's gen-

100. Breaking down exclusionary zoning in the suburbs must be part of any strategy to enhance affordable housing in the metropolitan area. During the 1990s, the number of jobs in the Washington metropolitan region reportedly increased by 412,000 but the number of dwellings by just 204,000, leaving a calculated shortage of homes of 53,500; the greater growth of demand over supply drives price increases and promotes gentrification. Peter Whoriskey, *Prosperity Feeds Housing Pinch; Working Families are Finding Fewer Affordable Options in Region*, WASH. POST, Mar. 17, 2002, at A1.

101. See Byrne, *supra* note 53, at 2281-82.

102. Lynn E. Cunningham, *Islands of Affordability in a Sea of Gentrification: Lessons Learned from the D.C. Housing Authority's HOPE VI Projects*, 10 J. AFFORDABLE HOUS. & COMTY. DEV. L. 353 (2001).

trifiers to reduce the number of affordable units.”¹⁰³ He argues that federal policy instead should be geared toward renovating and improving management of existing public housing projects to maintain the number of affordable units.¹⁰⁴

Professor Cunningham raises some valid concerns: HOPE VI often reduces the number of units on-site for very poor residents in a community where affordable housing opportunities are inadequate. But he neglects several important considerations. As a political matter, HOPE VI would not exist at all if it did not entail the destruction of distressed public housing projects, which Congress saw as a menace to urban flourishing. But it also permits impressive experiments in testing the ability of people of different income levels to live together at The Townhomes on Capitol Hill literally cooperating.¹⁰⁵ Moreover, such projects can work economically only if people are willing to buy market rate units at a workable price because federal money must be leveraged by private investment. A recent study shows what common sense predicts: HOPE VI projects succeed best in gentrifying neighborhoods that attract more affluent buyers.¹⁰⁶ Unlike conventional public housing in the District, this project is racially integrated, although majority black. Finally, the success and neighborhood acceptance of The Townhomes have greatly enhanced the attractiveness of the immediate surroundings, where long vacant lots and abandoned buildings are being developed.¹⁰⁷ The success of HOPE VI in a gentrifying neighborhood actually represents the first successful government program to integrate residential neighborhoods by income,¹⁰⁸ a startling contrast to the patterns of exclusion that have typified metropolitan development for 100 years.

103. *Id.* at 357.

104. *Id.* at 363.

105. The Townhomes on Capitol Hill is organized as a limited equity cooperative. This means that low-income tenants build up equity by remaining in their units and taking proper care of them, thus mimicking the incentives playing upon ordinary property owners. The equity they can take away on sale is limited, however, so the unit can be re-conveyed at the subsidized rate.

106. Wyly & Hammel, *supra* note 70, at 741. While a HOPE VI project itself rarely will spur revitalization in a depressed neighborhood, the replacement of a traditional large public housing project may permit otherwise existing market demand to prompt investment in an area.

107. Before the project was approved, I attended a neighborhood meeting called to mobilize opposition and was the only person in attendance to speak and vote against a resolution condemning it. Today, the project is a matter of neighborhood pride.

108. “Gentrification tightens local housing markets, enabling the integration of the publicly owned, affordable, and market-rate housing that is at the heart of HUD’s reinvention.” Wyly & Hammel, *supra* note 70, at 745.

Rather than change the focus of HOPE VI, new programs should be used to increase the number of affordable units throughout more affluent neighborhoods. The sites of existing public housing, the focus of HOPE VI, generally reflect past efforts to push public housing into the least commercially desirable sites and maintain a pattern of racial segregation. Renovation of existing dilapidated apartment buildings and construction of new houses on private land by non-profit developers or tenant organizations, assisted by government subsidized financing, have shown themselves to be the most promising vehicle for meeting the need for low-income housing. The problem in cities for some time has been lack of money to fuel such construction.

Gentrification actually may help here, as the increased demand for market rate urban dwellings can create revenues that can be used for low-income housing. The District of Columbia, for example, has recently enacted legislation dedicating a portion of the real estate transfer tax and other public funds to a trust fund to finance low- and moderate-income housing.¹⁰⁹ The soaring real estate market in the District, significantly fueled by gentrification in several neighborhoods as well as rising prices in neighborhoods long ago gentrified, has filled the fund beyond expectations. This led the Mayor to propose halving the percentage dedicated to the fund, but the Council and Mayor eventually agreed not to cut the percentage, meaning that the fund should have received \$35 million by the end of 2003.¹¹⁰ While strong demand to live in a jurisdiction will raise prices to the detriment of some low-income residents, that demand can be leveraged into new, affordable housing integrated with market rate housing. Set asides and inclusionary zoning can work only where there is strong demand for housing because it raises the cost to the developer.¹¹¹ But, the

109. 2002 D.C. CODE ANN. § 14-114 (amending D.C. CODE ANN. §§ 42-2801, 2802, 2802.01, 2802.03, 2803.01 (2002)).

110. *D.C. Council Approves Full Funding For Housing; Trust Fund Could Bring More Affordable Homes*, WASH. POST, June 5, 2002, at B1. Budget woes recently led the city to limit the funds actually allocated to the housing programs, setting off protests in favor of full funding. David Nakamura, *Cuts in Housing Program Take Protest to Williams*, WASH. POST, Feb. 26, 2003, at B8.

111. Montgomery County, Maryland, now requires all developments above fifty units to set aside a portion of units for moderate-income residents. MONTGOMERY COUNTY CODE, Ch. 25A (1997). Perhaps the most surprising and impressive program for funding affordable housing in the nation flourishes in Florida, where the William E. Sadowski Affordable Housing Act, FLA. SESS. LAW SERV. 92-317 (1992), dedicating a portion of state transfer tax, is projected to generate over \$250 million in fiscal year 2002-03. See 1000 Friends of Florida, Building Better Communities, available at http://www.1000friendsofflorida.org/Affordable_Housing/Affordable_Housing_Main.asp (last visited February 5, 2002).

transfer tax set-aside avoids problems with inclusionary zoning relating both to efficiency and fairness long ago identified by Robert Ellickson, because the subsidy is raised from a large number of real estate transactions involving both new and exiting residents.¹¹²

Vigorous expansion of affordable housing throughout the city will help prevent gentrifying neighborhoods from eventually becoming enclaves of the affluent.¹¹³ Much of my praise for gentrification relies on its role in creating economically diverse neighborhoods. Yet, one must worry that continuing demand for housing in a prime neighborhood will eventually squeeze out all lower income residents, destroying the very diversity it initially fostered. One response to this concern may be to discount long-term effects, since urban life always is in transition, and great moments of neighborhood vitality may occur at unpredictable points during a transition. A less fatalistic response would be production of affordable housing within the neighborhood, legally and financially secure from the effects of the market. This, again, would not prevent displacement of individuals from market housing but would insure people of all economic levels the advantages of a diverse community.

CONCLUSION

On a recent Saturday, I attended a multi-family yard sale at the nearby Townhomes on Capitol Hill with my wife and teenage daughter. The member co-op that manages the project had organized the sale as a "community day." We strolled along the sidewalks chatting with the residents about how they enjoyed living there and examining their modest wares. We bought a number of paperbacks, many of which were by black authors. My daughter bought a remarkable pink suitcase, rather beat up, which perfectly met her sense of cool. My wife, being who she is, reorganized several residents' display of goods to show them off to better effect, to the delight of the sellers. I bought and devoured a fried fish sandwich that Mrs. Jones was selling from her apartment.

Such a modest event hardly makes news and certainly does not cancel the injustices of our metropolitan areas. No public officials at-

112. Robert Ellickson, *The Irony of "Inclusionary Zoning,"* 54 S. CAL. L. REV. 1167 (1981). Experience with housing trust funds in three cities is reviewed in Mary E. Brooks, *Housing Trust Funds: A New Approach to Funding Affordable Housing*, 46 URBAN AFF. ANNUAL REV. 229 (1997).

113. See *supra* notes 80 and 105 and accompanying text.

tended nor made claims for what it promised for the future. Yet it was a time of neighborly intercourse, money circulation, and mutual learning. If multiplied many times, it promises a better future for our communities.