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## **Housing Rights Versus Property Rights**

*By Carl F. Horowitz, Ph. D.*



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# Housing Rights Versus Property Rights

By Carl F. Horowitz, Ph.D.

Of all the points made about today's alleged affordable housing shortage, few have such appeal as that its antidote lies with instituting a legal right to housing. If people cannot afford adequate housing – or prefer not to pay for it – they can breathe easily, knowing that their government is required by law to pick up the tab. Like all ideas hatched in the netherworld of collectivist economics, this one works only on paper.

Those urging the United States to institute a right to housing invariably make three points. First, they note America is in the midst of an unprecedented housing crisis. Admitting that the housing stock, both in size and quality, has improved over time, they choose to concentrate instead on statistics purporting to reveal its widespread lack of affordability for poor and non-poor households alike. Second, they note the apparent irony that the 1949 Housing Act called for “a decent home and a suitable living environment for every American family,” rarely wasting an opportunity to chastise the federal government for giving mere lip service to those words. Finally, they note that the noble promise of 1949 one day could be realized if only Congress would put some teeth into it, preferably in the form of a Constitutional amendment.

Though people started speaking of a right to housing over fifteen years ago, many more speak of it today. The very fact that today Fannie Mae is holding a panel on the issue is evidence enough of that.

**Pointing the Finger.** The chorus calling for the right to housing views any system of housing allowing for profit and liberal property rights as being responsible for today's shortage. Housing is a human right. Since the real estate business does not find it profitable to provide adequate housing for all, government has a moral obligation to fill the vacuum, and pay anybody's housing expenses upon demand.

Thus, *The Right to Housing*, a collaborative project undertaken by the Institute for Policy Studies Working Group on Housing, maintains:<sup>1</sup>

...every American household is entitled to adequate shelter at an affordable cost. Every person should be able to find a home in which his or her tenure is secure, without fear of arbitrary displacement; no one's options should be limited by discrimination on race, gender, or household

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1 Institute for Policy Studies Working Group on Housing, *The Right to Housing: A Blueprint for Housing the Nation* (Oakland, CA: Community Economics, 1989), p. 24.

composition. Housing should therefore be regarded as a **right** — not as a product or commodity which may or may not be available or affordable according to the decisions of private investors and the performance of the marketplace.

Similarly, sociologist Wouter Turpijn of the Netherlands argues:<sup>2</sup>

As long as users' rights have no priority over owners' rights, the opportunities for dwellers to give satisfactory form and content to their home situation remain...limited...[T]he International Year of the Homeless in 1987 could have been an opportunity par excellence to recognize and effectuate that the right to dwell is of a higher order than the right to own land and the buildings on it. Unfortunately, this did not happen.

Scott Leckie, a legal advisor to the Mexico-based Habitat International Coalition, calls for an internationally-binding agreement guaranteeing the right to housing. Noting that this right is merely a "paper right for perhaps one-third or more of humanity," Leckie calls for "raising the level of demand from a moral...one to that of a demand grounded in law."<sup>3</sup>

Since the state has been lax in fulfilling housing rights, "Pressure needs to be exerted on the legal systems of the world to accept the enforceability and justifiability of housing rights on terms equal to other human rights."<sup>4</sup>

**Right-to-Everything Lobby.** It would be mistaken to think that these people will be satisfied with a guarantee of housing alone. The right-to-housing lobby properly can be seen as the right-to-everything lobby. The American Civil Liberties Union (ACLU), a strong advocate of the right-to-housing, exemplifies this tendency. A resolution passed at the ACLU's 1985 biennial meeting reads:<sup>5</sup>

The ACLU recognizes that constitutional guarantees of equal protection and due process are meaningless when people are without sufficient money to provide themselves with a minimum standard of living. Recognizing that what is needed is money, the ACLU calls on the federal government to enact laws guaranteeing every individual a minimum standard of living as a matter of constitutional right.

This statement succinctly sums up the world envisioned by the right-to-housing movement: a world containing no personal responsibilities, only confiscatory claims against others requiring no justification; a world in which rule of law can be ignored at will to mollify political grievances; a world in which having little money to spend on housing (even if due to drug abuse, alcoholism, or an extensive criminal record) is tantamount to being denied "civil rights."

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2 Wouter Turpijn, "Shadow-Housing: Self-Help of Dwellers in the Netherlands," in *Affordable Housing and the Homeless*, Jurgen Friedrichs, ed. (New York: Walter de Gruyter, 1988), p. 111.

3 Scott Leckie, "Housing Rights in the 1990s," *Cities*, Vol. 8, No. 1 (February 1991), p. 33.

4 *Ibid.*

5 Bruce Fein, "Will the ACLU's Vision Prevail?" *Washington Times*, February 12, 1991.

Thus far, almost nobody has really bothered to examine the socialist moral basis of a right to housing. To really understand how this movement has captured the imagination of so many in academia, think tanks, and government requires a rudimentary understanding of its revisionist view of individual rights.

### The Sophistry of Positive Rights

When people speak of a right to an economic good, whether housing, health care, or food, they speak of a positive as opposed to a negative right. The very term “positive right” connotes cheerfulness and decency, while a negative right connotes seemingly repressive warnings of “No Trespassing,” and “You may not...” Some, therefore, might receive the false impression that negative rights are anti-liberty. Quite the contrary: It is the near-complete codification of positive rights that eventually destroys freedom.

Negative rights protect a person from harm being done to him, whether by the state or private citizens. They provide an individual with the right to exercise economic, political, cultural, and religious liberties so long as that person does not deprive his neighbors of theirs. Under negative rights, if I am harmed, I have the right to expect the state to restrain the other person from causing further harm to me (and possibly others), and to rationally adjudicate differences through established administrative, legislative, or judicial procedures.

Under a purely negative rights scenario, people do not have any formal right to housing, but do have the right to build an extra bedroom, redesign their kitchen, or select a home or apartment in any neighborhood without fear of racial or ethnic discrimination. Our Bill of Rights is imbedded in this principle. It does not mandate a right to have certain goods or services because it does not need to. It wisely assumes that human beings, being rational enough to forge economic associations and transactions, will in most cases improve their lot better through mutual agreements (i.e., prices) than through a coercive third agent (i.e., the state) that assumes *a priori* knowledge about human “needs.”

**Declining Standards.** To those hostile to the market, for whom justice is measured by equality of distribution, such a guarantee is not enough. They emphasize positive rights, the right to receive something above and beyond the right to compete equally with others for it. They typically ask, “What good does it do for a poor person to have the right to choose his housing, if he can afford so little of what is on the market?” The counter-argument, one which they never address, is that when taxes must be continually raised to meet a legal mandate to provide adequate housing, standards of adequacy themselves decline for everybody, including the poor.

Such people seem uninterested in addressing why so many people cannot afford adequate housing in societies where it is guaranteed. They might point out, for example, that in the Soviet Union, housing costs a household about \$10 monthly. Wow, what a bargain! What they do not point out is that Soviet housing, in space and in physical condition, is dismal by capitalist standards. Families often double and even triple up in the same apartment, while vacancies are virtually nonexistent.<sup>6</sup>

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6 Kirstin Downey, "Shaking the Myth of American Housing Superiority," *Washington Post*, February 23, 1991. See also Paul Craig Roberts and Karen LaFollette, *Meltdown: Inside the Soviet Economy* (Washington, DC: Cato Institute, 1990), pp. 51-56.

Such proponents minimize the importance of negative rights — so much the better to take them away! — and would institute a system of positive rights, whereby the state guarantees equality of condition to all. Their idea of a morally valid social contract is more than simply the right to prevent others from stepping in your way; it extends to the right to demand others to pay your way as well.

**Transcending Nature's Scarcity.** Yet an abundance of something cannot be mandated, only created. What we take for granted as necessities of life in a modern society has always required people somewhere figuring how to extract materials from the earth and water cheaply and efficiently. Roger Starr makes this point frequently with respect to housing. When a society frustrates at every turn this process of exploration, all but the upper classes experience scarcity. A deity did not drop a bountiful housing stock upon this or any other nation. Abundance anywhere requires the initiative — and freedom — for human beings to transcend nature's inherent scarcity.

Right-to-housing advocates imply or openly state that consumers gain only at the expense of others. Since our economy has only so many resources to allocate, a rising economic tide inevitably sinks some boats. Flowing from this assumption is that society's poor somehow would not be poor were it not for certain sybarites who consume beyond their own needs. Surely, these gluttons should be made to disgorge themselves of their luxury — in the form of much higher taxes — in order to address “unmet social needs.” America has slum-dwellers and homeless persons in part because selfish yuppies spend their disposable income on frivolities like Jacuzzi whirlpools, plush wall-to-wall carpeting, and eight-room private dwellings on half-acre lots instead of cheerfully making do with modest four-room flats.

Right-to-housing advocates arrogate to themselves an ability to recognize such housing “overconsumption,” and to proscribe appropriate punitive measures. In their great haste to mandate justice for those having little in a land of abundance, they never bother to look at the moral preconditions that created the abundance, only the supposed unfairness of the fact that some people have more than others.

Does not this century's experience with socialism demonstrate that explicit government decrees giving people a right to something necessarily undermine price as its allocator? They imply that if someone cannot afford the item, government will automatically supply it through taxation. The result has been and always will be the atrophying of a nation's wealth through confiscatory taxes, and through a diminished work incentive. With little wealth created, there will be little left over to redistribute. Anyone blessed with a minimum of common sense understands that if government announces in advance that it will extract most wealth, however noble its rationale, society will have less of an incentive to create it, except through black market channels. If even these channels are browbeaten out of existence, a nation's assets will be eventually publicly-owned, for who other than the state would buy a nearly worthless asset?

**Political Connections.** Those nations espousing a positive rights doctrine, citing the temporary need to curtail “procedural” freedoms in order to grant “material” ones, typically rob people of the former, and never deliver on the latter, save for foot soldiers in their political cadres. In these socialist societies, the political class and the upper class are the same thing. The result of politicizing economics is the distribution of wealth on the basis of political connections rather than of merit. The right-to-housing movement seeks to continue Tammany Hall-style patronage in the name of “justice,” “human rights,” and other lofty abstractions.

Leszek Kolakowski and Milovan Djilas recognized over a generation ago why this idea was doomed to fail in their own Eastern Europe, but most in the West ignore them.

### **The Right-to-Housing in Practice: An Unenviable Record**

In the U.S., there is no explicit national right-to-housing, something housing advocates never tire of pointing out. Yet, over the past quarter century, federal, state, and local governments have instituted certain mechanisms – some mistakenly call them reforms – that collectively constitute such a right all but in name.

In some instances, government institutes a price ceiling on housing, its profits, or one of its factors of production (rent control, interest rate ceilings, anti-speculation taxes). In others, government imposes a production quota on housing or one of its factors of production (right-to-shelter laws, “fair share” regional affordable housing plans, downtown office-housing linkages, mandatory credit allocation). In still others, government withholds housing or vacant land from the general market and reserves it for households deemed to be disadvantaged (cooperative and condominium conversion control, lifetime tenancy, land banking, “one-for-one” replacement laws for publicly-owned and subsidized housing, prepayment restrictions on amortizing subsidized housing, prohibition of tenant evictions from both publicly and privately-owned housing). Let me focus on one of them – right-to-shelter laws – as representative of good intentions gone bad. Washington, D.C.’s experience with its own such law stands as a parable on the impossibility of effectively enforcing positive rights.

Some background discussion should suffice here, though I realize this is primarily a local Washington audience. By the fall of 1984, homelessness had been successfully promoted as the nation’s biggest domestic problem. In Presidential and Congressional election campaigns, the Democrats used the existence of street people as proof incarnate of the callousness and indifference of the Reagan Administration toward the poor. Here, by God, were maybe millions of decent Americans much like us pushed onto the streets!

Looking back, it is little short of amazing how easily they manipulated this issue, and disarmed their critics. Yet succeed they did, expertly mixing maudlin sentiment, class envy, and false statistics for the six o’clock news.

**Snyder’s Strategy.** In Washington, D.C., home of the fanatic late homeless activist, Mitch Snyder, the anti-homelessness campaign reached its apex. Snyder, in front of ghoulishly whirring news cameras, was engaging in one of his lengthy hunger strikes to secure millions of federal dollars for his Community for Creative Non-Violence (CCNV) to renovate a federal-owned building operated as a homeless shelter by the CCNV for over a half-year. Meanwhile, his followers managed to put Initiative 17 on the November election ballot.

Initiative 17 was the prototype right-to-shelter law.<sup>7</sup> It would legally obligate the District of Columbia government to provide shelter for any person requesting it for up to 180 days.<sup>8</sup>

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7 Initiative 17 is formally known as D.C. Law 5-146, “District of Columbia Right to Overnight Shelter Initiative of 1984.”

8 In fact, as could have been predicted, shelter operators often deliberately ignored the 180-day rule. See Pamela McClintock, “City’s Right-to-Shelter Law Withstands Gutting Attempt,” *Washington Times*, May 4, 1990.

Here, finally, its proponents argued, was the solution to homelessness. By forcing government to do what the private sector was apparently unwilling to do, the homeless would now have housing. Voting against the measure was tantamount to murder, especially as Snyder was close to the very death he would inflict upon himself through different means some six years later.

The strategy worked brilliantly. President Reagan agreed to release funds for renovation of the CCNV shelter shortly before Election Day, while voters approved Initiative 17 by an over 2-to-1 margin. What happened afterward is something Washington-area residents would prefer not to remember.

Scores of households, consisting primarily of single mothers with children, declared themselves "homeless" to qualify for free shelter. Soon enough, the incidence of such requests (usually met) increased by some 500 percent.<sup>9</sup>

**Desperate Measures.** The law induced the District government to take desperate measures to avoid lawsuits. The worst of all was the District's contracting with motel operators to provide shelter. These were "operators" in both senses of the word, billing the government about \$3,000 a month per room in slum structures that in any normal market would not command one-tenth that. The most notorious shelters, the Pitts Motel and the Capitol City Inn, both now closed, the latter demolished, were little more than fire traps masquerading as lodging.

Predictably, court action came when the situation appeared no nearer to a solution than when the law was passed. Homeless advocate lawyers convinced D.C. Superior Court Judge Harriet R. Taylor in 1988 to impose a daily fine of \$5,000 (at one point \$30,000) upon the District government until it lived up to the spirit of the law, and agreed to provide shelters throughout the city.

In 1985, the Washington, D.C. government spent a substantial \$9 million on its shelter program; in 1989, it spent roughly \$30-to-\$40 million. The latter figure excluded millions in fines accumulated since Judge Taylor's order.<sup>10</sup>

During 1989-90, District officials, recognizing a budget-buster when they saw one, sponsored an amendment to gut the law's onerous aspects. Spearheaded by Council Members Nadine Winter and H.R. Crawford, the amendment: limited the maximum stay in a District-run shelter to 30 days for individuals and 90 days for families; required homeless people with incomes to contribute to their shelter costs; and required unemployed able-bodied homeless adults to receive job counseling. The bill passed in June 1990. Followers of Mitch Snyder, who only weeks later committed suicide, attempted to override the amendment through referendum on the November ballot, but the voters, having now understood the damage this law did, sustained it.

**Still Shackled.** Ironically, the District still is shackled to the old law. While the program is budgeted at only \$13 million in fiscal 1991, Judge Taylor's court order remains in effect. If the District wants to avoid further fines, it must approve the renovation of a building into a 50-bed shelter for homeless men. This has been on the front pages as of late. Initially proposed

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9 Stuart Butler, *Understanding Homelessness in America* (Grove City, PA: Public Policy Education Fund, Inc., Special Report #48, August 1988), p. 3.

10 Rene Sanchez and Christine Spolar, "District to Overhaul Shelter Plan," *Washington Post*, March 7, 1991.



near an elementary school in the Tenley Circle area, overwhelmingly vehement public opposition in the surrounding neighborhood caused the District to shift the site to a recreation center near the Vice-Presidential mansion. Opposition again is vehement.

It is hardly any wonder that residents oppose the shelter. Initiative 17 has promoted the kinds of irresponsible behavior that so often lead to homelessness in the first place. Drug use, drug dealing, littering, alcoholism, assault, theft, and prostitution ran rampant at the city's shelters, especially at the CCNV.<sup>11</sup> At the Capitol City Inn, a crack-addicted man murdered his own two children.

Children continually exposed to such an environment often have grown up to be like their parents. Homeless advocates themselves are admitting this phenomenon of "second-generation homelessness," of shelter children who now, as teens and young adults, require free shelter to house their own, often illegitimate, children.<sup>12</sup>

**Socialist Failures.** The failed economies of socialist nations provide the best example of the kinds of damage socializing the housing stock can do. For example, all citizens in the Soviet Union have a constitutional right to housing, work, rest, leisure, health care, pensions, education, and cultural benefits. In Cuba, now almost terminally ill from totalitarian economics, all citizens have a constitutional right to housing as well as an eight-hour workday, a weekly rest period, annual paid vacations, paid maternity leave, and government child care.

Can anybody believe that the Soviet Union, Cuba, or any other country codifying such "rights," have met their obligations? In the late-80s, it was hard to find socialist housing officials who were not admitting the failure of their system.

- ◆ In the Soviet Union, public officials practically condemned their own housing policies after revelations that the high death toll from the Armenian earthquake had been due to shoddy construction.
- ◆ A Hungarian planning official described his nation's housing shortage as "worse than before, indeed, it is hopeless."<sup>13</sup>
- ◆ In Poland, a prominent Communist Party magazine described that country's housing situation as "hit by an incurable disease."<sup>14</sup> It has been quite common in that country for people to wait 15, 20, and even 30 years for an apartment to become available.
- ◆ Vietnamese Foreign Minister Nguyen Co Thach told a news conference in New Dehli, "The Americans couldn't destroy Hanoi, but we have destroyed our city by very low rents."<sup>15</sup>

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11 See Scott Shuger, "Who Are the Homeless?" *Washington Monthly*, March 1990, pp. 38-49.

12 Ellen Uzelac, "2nd-Generation Homeless Show Depth of Problem," *Baltimore Sun*, February 18, 1991.

13 Arch Puddington, "Life Under Communism Today," *Commentary*, Vol. 87, No. 2, February 1989, p. 35.

14 *Ibid.*

15 Quoted in William Tucker, *The Excluded Americans: Homelessness and Housing Policies* (Washington, DC: Regnery Gateway, 1990), p. 339.

All nations with collectivist “housing rights” distort housing supply, demand, and prices. Apologists would argue that these nations could not deliver housing in spite of their guarantee. Quite the contrary, these nations failed to deliver because of their guarantee. In other words, there is something about the very idea of codifying a right to housing that weakens a nation’s ability to provide it.

### **The Failure of Housing Socialism**

The right-to-housing movement is a socialist movement because its philosophical moorings are socialist. The idea is thus destined for failure in this nation just as it was destined for failure in the currently and formerly socialist countries it has been tried. Those claiming that programs for “nonspeculative” housing will ensure an adequate supply, and bear little or no resemblance to housing programs of communist governments, are sadly wrong. Both types of programs seek to socialize the production, and therefore availability of housing, making sure that the state is the arbiter of housing need. That way, citizens patiently must wait their turn for their housing allocation. In Communist Poland, for example, married couples frequently registered their newborn babies for apartments, hoping that the children would reach the top of the list decades later upon marriage.

Housing rights advocates are interested in more than “improving the housing stock,” or “making housing more affordable.” They want to overthrow the political arrangements that protect private property. They see the issue as housing rights versus property rights. To defend property rights, in their view, is to perpetuate the injustices that lead to housing shortages.

For these advocates, the self-interest of landlords, mortgage lenders, property insurers, and real estate agents are to blame for affordable housing shortages, and government officials, often drawn from these business ranks, have no interest in solving the problem. The advocates’ task is to harness tenant and homeowner dissatisfaction to “protect” the supply of low- and moderate-income housing. They understand the utility of hyping the homelessness issue. By defining it as a major domestic issue of the 1980s, they could more easily put housing rights on the same red-hot boiler plate.

Yet like all socialist movements, the right-to-housing one has a highly coercive agenda, no matter how much their faithful say, “This time, things will be different.” Once “the worst get on top” (to use Friedrich Hayek’s phrase) citizens not surrendering their property rights or not going along with the official ideology do not get favored treatment. Socialists know that a key to keeping citizens politically docile is rationing, and as long as there is a large for-profit private sector, rationing cannot be effective. That is why many right-to-housing people endorse as their ultimate goal nationalization of the housing stock, albeit on the installment plan. The less naive among them know that state control over goods and services means state control over political dialogue. Under socialism, there are few better ways to frustrate potential dissenters than to put them on a waiting list for housing.

**Added Layers of Bureaucracy.** What would a national right-to-housing agenda do if aggressively enforced? It would create added layers of bureaucracy at all levels of government. It would render pricing all but irrelevant. It would punish hard work and creativity. It likely even would mandate racial, ethnic, and sexual affirmative action quotas in all aspects of housing production and sale. Finally, it would impose capital gains and property taxes whose

severity would leave homeowners and landlords with little incentive but to sell to government – precisely the intent.

After government becomes the sole builder, renovator, and seller of housing – this by either buying up the entire private housing stock chunk-by-chunk, or by allowing private ownership, but with bans on for-profit sale – it would then possess the power to grant and withhold housing as a political tool. It would create through friendly nonprofit contractors a permanent housing pork barrel. Given its decidedly non-ostentatious definition of housing “need,” it would build housing that often would match its egalitarian philosophy – those cramped, poorly-built, poorly-equipped Soviet apartments are not that way by accident.

**Lofty Motives Causing Penury.** Penury will be the most likely long-run outcome of the movement’s philosophy. Many who push for the right-to-housing mean well, good intentions surrounding any redistributive policy. Lofty motives, however, will not comfort the hundreds of millions of Americans who will find their freedom of choice in housing severely restricted in the name of “fairness.” Especially restricted will be black and Hispanic welfare families looking for opportunities rather than entitlements.

Developing arguments against a legal right to housing is easier said than done, given the intertwining of compassion and guilt in today’s political climate. Few openly would challenge such a right, reluctant to be called “heartless.” These days, to be against any coercive strategy to explicitly help the poor – regardless of how repeatedly unsuccessful it has been – invites the accusation of being “against the poor.” This unwritten rule, so prevalent in public dialogue on so many domestic issues, is in fact what must be overcome if all Americans one day really will be well-housed.

