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Displacement and Urban Reinvestment: A Mount Laurel Perspective

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DISPLACEMENT AND URBAN REINVESTMENT: A MOUNT LAUREL PERSPECTIVE

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Displacement is just a calm word for a frequent and shattering experience: people losing their homes against their will. **

I. INTRODUCTION

In the fall of 1983, the United States Supreme Court and Congress addressed the question of the displacement of people resulting from public activities. The Supreme Court rejected the argument that a telephone company that was required to remove its telephone lines from areas acquired by a public housing authority for redevelopment was a "displaced person" entitled to reimbursement for expenses under the Uniform Relocation Assistance and Real Property Acquisitions Policy Act (URA).[1] On the Hill, Congress enacted

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** C. HARTMAN, D. KEETING & R. LEGATES, DISPLACEMENT: HOW TO FIGHT IT 3 (1982) (published by Legal Services Anti-Displacement Project).

1. Norfolk Redevelopment & Hous. Auth. v. Chesapeake & Potomac Tel. Co. of Va., 104 S. Ct. 304 (1983) (construing the Uniform Relocation Assistance and Real Property Acquisitions Policy Act, 42 U.S.C. §§ 4601-4655 (1976) (URA)). The case before the Supreme Court involved the interpretation of technical provisions of the URA, specifically, whether the utility company was a business and thus was entitled to reimbursement for expenses as a displaced person under the URA. It should be noted that the Court's ruling is not inconsistent with the generally strict construction of the URA by the judiciary. *See infra* notes 28-37 and accompanying text. Nor is it inconsistent with the common law rule that utilities should bear the cost of removal of their equipment from a public right of way whenever requested to do so. 104 S. Ct. at 307. It should also be noted that the Court recognized that relocation of a branch office of the Chesapeake

the Housing and Urban-Rural Recovery Act of 1983 (HURRA), a major piece of legislation that included a number of measures designed to lessen the impact of displacement.[2] In addition, a seven-year debate over the impact of displacement from the use of Community Development Block Grant (CDBG)[3] funds neared an end as the Senate passed and sent to the House amendments to the URA (URAA)[4] designed, in part, to make persons displaced as a result of CDBG-funded activities eligible for relocation benefits under the URA.[5] Also in 1983, the Supreme Court of New Jersey issued its long-awaited second opinion in the celebrated *Mount Laurel* exclusionary zoning case, reaffirming the moral and legal principle that local governments must consider the housing needs of affected citizens when they use the police power to regulate land use.[6]

The judicial and legislative activity of the past year lays the groundwork for development of a principle for resolving a ten-year controversy over the extent of responsibility that local governments should accept when residents are forced to leave their homes as a result of reinvestment activities encouraged by the cities and funded in part with public funds such as CDBG funds. Because these types of activities often do not fall within the guidelines of existing relocation legislation, as interpreted by the courts, residents displaced as a side effect of efforts to arrest blight in neighborhoods may face the prospect of having no place to go and no one to help them get there.

Public recognition of the plight of urban displacees has moved the displacement question from the silent cry of a forgotten few to a substantial recognition of displacement as a predictable consequence of most major urban reinvestment projects. The *Mount Laurel* cases establish the principle that predictable consequences must be taken into account when the police power is used.[7] Most modern

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and Potomac Telephone Company of Virginia might have triggered relocation benefits. *Id.* Subsidiary issues included the questions of whether the removal of the utility's lines were caused by the City of Norfolk's closure of streets for an urban renewal project rather than the statutory requirement of an acquisition for a federal program or project and whether the utility's lines were realty or personalty. Only removal of personalty is reimbursable under the URA. 42 U.S.C. § 4622(a).

2. Act of Nov. 30, 1983, Pub. L. No. 98-181, 1984 U.S. CODE CONG. & AD. NEWS (97 Stat.) 1153 [hereinafter cited as HURRA].

3. Housing and Community Development Act of 1974 (HCDA), 42 U.S.C. §§ 5301-5320 (1976).

4. S. 531, 98th Cong., 1st Sess. (1983), Uniform Relocation Act Amendments of 1983 [hereinafter cited as URAA].

5. S. REP. No. 71, 98th Cong., 1st Sess. 10 (1983) (report accompanying URAA).

6. Southern Burlington County NAACP v. Township of Mount Laurel (Mount Laurel II), 92 N.J. 158, 456 A.2d 390 (1983).

7. *Id.*; Southern Burlington County NAACP v. Township of Mount Laurel (*Mount Laurel I*), 67 N.J. 151, 336 A.2d 713, *appeal dismissed & cert. denied*, 423 U.S. 808 (1975).

urban reinvestment activities involve extensive use of the police power, which is often delegated to a private entity such as a redevelopment corporation. This Article analyzes the responsibility of local governments for displacement resulting from reinvestment and assesses the resources being made available to combat displacement.

II. Reinvestment Displacement

The review of displacement issues by the Supreme Court and the Congress reflects a continuing national debate concerning the responsibility for displacement that occurs when public activities promoting reinvestment take place. While most of the literature has concluded that actual displacement as a result of urban reinvestment is small when viewed from a national perspective,[8] each individual situa-

8. A major study by the Department of Housing and Urban Development (HUD), undertaken in response to congressional mandate, Section 902 of the Housing and Community Developments Amendments of 1978, Pub. L. No. 95-557, 1978 U.S. Code Cong. & Ad. News (92 Stat.) 2080, 2125, concluded that reinvestment displacement was extremely difficult to measure. The report, quoting preliminary Annual Housing Survey data, estimated that 1.7-2.4 million persons were displaced by private activity in the United States in 1979, or from .8% to 1.1% of United States households and 4.5% to 5.7% of movers. While the study states only that the incidence is much higher in cities and neighborhoods experiencing revitalization, it notes that some researchers have estimated displacement in redevelopment areas to be as high as 7% of all households in selected cities. HUD, Residential Displacement—An Update, at VI, 24-26 (1981) [hereinafter cited as Residential Displacement]. The most prevalent reason given for private activity displacement was a great increase (41.8%) in housing costs. *Id.*

A General Accounting Office (GAO) study concluded that rental rehabilitation and its characteristic displacement are confined to relatively few communities. GAO, Rental Rehabilitation With Limited Federal Involvement: Who Is Doing It? At What Cost? Who Benefits? 13 (1983) (GAO/RCED-83-148) [hereinafter cited as Rental Rehabilitation]. This conclusion infers a higher displacement rate localized to a given area. For example, one study reviewed in the HUD report indicated that in selected revitalizing neighborhoods 57% of all persons relocating were displaced. Residential Displacement, *supra*, at iii.

Displacement disproportionately affects socially vulnerable populations: minorities, low-income households, female-headed households and renters. *Id.* at 38. Each of these groups has particular attributes that contribute substantially to the inability of displaced persons to find housing under the "filtering" concept. First, minorities often are barred from access to many submarkets through discrimination. *See generally* Kushner, *Apartheid in America: An Historical and Legal Analysis of Contemporary Racial Residential Segregation in the United States*, 22 How. L.J. 547 (1979). Low income households are limited to certain markets purely by cost. *See generally* Lane, *Housing the Underhoused*, in Housing: 1970-71 (G. Sternlieb ed. 1972). Female-headed households are almost low-income by definition; 33% of them fall below the poverty line. U.S. Bureau of the Census, Statistical Abstract of the United States: 1982-83 at 431 (103d ed.). A report of the United States Commission on Civil Rights states that in 1981 the poverty rate for persons in black, female-headed households was 68%. United States Civil Rights Commission, *A Growing Crisis: Disadvantaged Women and Their Children*, 2 (1983) in Displacement in St. Louis:

tion contains within it the seeds of tragedy for a particular person or family.[9]

A FOLLOW-UP REPORT 2 (St. Louis Relocation Clearinghouse ed. 1983). Renters have been aided the least by the national housing policy mix. National Commission on Urban Problems, *Federal Income Taxation and Urban Housing* in HOUSING URBAN AMERICA (J. Pynoos, R. Schafer & C. Hartman eds. 1973).

The GAO reports that under the present CDBG program, rental rehabilitation has not been served as well by the funds as has owner-occupied rehabilitation, despite a recent survey showing that renters are three times as likely to need housing assistance as homeowners. RENTAL REHABILITATION, *supra*, at 13; *see also* L. FRIEDMAN, GOVERNMENT AND SLUM HOUSING: A CENTURY OF FRUSTRATION (1968); J. Mollenkopf & J. Pynoos, *Boardwalk and Park Place: Property, Ownership, Political Structure and Housing Policy at the Local Level* in HOUSING URBAN AMERICA, *supra*, at 55.

For an analysis disputing the methodology of the HUD studies, accusing HUD of "hyper-empiricism" and a tendency to "overstudy trees and neglect forests," and concluding that displacement is a serious national problem, see LeGates & Hartman, *Displacement*, 15 CLEARINGHOUSE REV. 207, 236 (1981).

9. Low-income families are vulnerable. As pointed out in W. GRIGSBY & L. ROSENBURG, URBAN HOUSING POLICY (1975):

> Low-income families are deprived with respect to housing in a number of different ways. . . . To obtain even unsatisfactory living quarters, they are forced to pay such a high proportion of their income for housing that they have insufficient funds remaining for other necessities of life. Having secured a place to reside, not a few of them live in the knowledge that an interruption in income may suddenly force them to move. . . . These then are the 12 dimensions of the housing problem of the poor: lack of adequate housing space, quality, and furnishings; poor neighborhood environment; excessive housing costs relative to family income; lack of security of occupancy; restrictions upon choice of tenure; restricted locational choice; lack of special housing services for the physically handicapped; racial discrimination; excessive housing cost relative to quality and quantity of space received; and the stigma attached to receiving housing assistance.

Id. at 31-32.

Even for the poor, one's home is one's castle; one's dwelling and neighborhood are related closely to self-perception. Schorr, *Slums and Social Insecurity* (Research Report No. 1, U.S. Department of Health, Education and Welfare, 1963) *reprinted in part in* R. MONTGOMERY & D. MANDELKER, HOUSING IN AMERICA: PROBLEMS AND PERSPECTIVES 10, 11 (2d ed. 1979). As one author stated:

> Men live in a world which presents them with many threats to their security as well as with opportunities for gratification of their needs. The cultures that men create represent ways of adapting to these threats of security. . . . Housing as an element of material culture has as its prime purpose the provision of shelter . . . it serves people as a locale where they can regroup their energies for interaction with [the] outside world . . . as a place of safety from both nonhuman and human threats. . . . The house becomes the place of maximum exercise of individual autonomy. . . . The house acquires a sacred character from its complex intertwining with the self and from the symbolic character it has as a representation of the family. . . . These conceptions of the house are readily generalized to the area around it, to the neighborhood.

Rainwater, *Fear 'and the House-as-Haven in the Lower-Class,'* 32 J. AM. INST. PLANNERS 23 (1966), *reprinted in* R. MONTGOMERY & D. MANDELKER, *supra*, at 14-15.

The negative impact of displacement upon these vulnerable populations is greater than simply a psychological or social effect. Because the lower rungs of the filtering ladder have fewer choices, the lower the family income, the fewer are the choices of relocation. HUD, DISPLACEMENT REPORT 24 (1979)[hereinafter cited as DISPLACEMENT REPORT]. Thus, the

A report by the Department of Housing and Urban Development (HUD), the most extensive study to date on the question, concludes that reinvestment displacement is mainly a local problem affecting a few revitalizing cities. The report recommends that HUD should help affected communities provide housing counseling and expand their housing supply to accommodate displacees.[10] While the report estimated that between 1.7 million and 2.4 million people were

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impact of any forced move is correlative to income levels. As the 1979 HUD report noted, this negative effect will be multiplied by limited growth policies or exclusionary practices of suburban communities. *Id.* In addition, displacement from a given neighborhood may interfere with access to special services such as senior centers, welfare offices, job training centers, neighborhood service centers or even safe and accessible public transport. *Id.* The 1981 HUD study noted that displaced households generally experience significant increases in crowding and housing cost. RESIDENTIAL DISPLACEMENT, *supra* note 8, at 17.

A longitudinal study of the relocation of the elderly indicated that moving often adversely affected their health and daily functions, but that the voluntarism of the move was not as closely associated with the degree of harm as was supposed. The author believed that the amount of physical and social support received by the relocatees in the new environment greatly affected their adaptability. Ferraro, *Health Consequences of Relocation Among the Aged in the Community*, 38 J. GERONTOLOGY 90, 94-95 (1982). Other studies have shown that relocation, even though not outside the individual's community, will often have negative effects. *See* J. Kasteler, R. Gray & M. Carruth, *Involuntary Relocation of the Elderly*, 8 GERONTOLOGIST 276, 278-79 (1968). One study noted that a decline in health sometimes results from displacement. K. Schooler, *Environmental Change and the Elderly*, in 1 HUMAN BEHAVIOR IN THE ENVIRONMENT (I. Altman & J. Wohlwill eds. 1976).

One study has shown three findings that are of interest. First, the effects of displacement are felt most strongly among three variables: housing, income and employment. Second, displacement can have some positive effects on material well-being. Finally, where negative effects occur there is no perfectly positive correlation between the lower income and a decrease in material well-being. Newman & Owens, *Residential Displacement: Extent, Nature and Effects*, 38 J. SOC. ISSUES 135, 146-48 (1982). The study noted that, although the displacement usually resulted in overcrowding, changes in income were often positive. The study also showed that employment hours often increased along with income and housing costs. *Id.* at 143. The study suggested that longer work hours and other changes caused increased income and might be spin-off effects of displacement on the poor. *Id.*

10. RESIDENTIAL DISPLACEMENT, *supra* note 8, at 79.

In discussing the relationships between local government, neighborhood organizations and the private sector in revitalization and displacement, the HUD report pointed out that "displacement is inextricably tied, both directly and symbolically, to the relationship between government and neighborhoods. The governmental role (Federal, State and local) may be direct . . . or indirect. Or government may become involved with displacement caused by private-sector activity as those displaced turn to the city in anger when confronted with conditions out of their control." DISPLACEMENT REPORT, *supra* note 9, at 9. Amidst this mix of powers, the report places an increasing responsibility on local governments with the decreasing role of the federal agency:

> Where a federal agency has a direct role in contributing to displacement other actors may be involved, but the basic responsibility remains with the Federal agency. As the agency's direct role lessens, however, those other actors become even more important and critical to a successful strategy . . . . Local governments could play a more important strategic role through tax deferrals for low-income homeowners and use of regulatory powers to prevent abuses.

Id. at 9-10.

displaced in 1978 by federal projects, private reinvestments, and private disinvestments in city neighborhoods, it professed uncertainty about precise figures because of the lack of a single definition of displacement and the difficulty in determining why people moved in specific instances.[11] The report highlights some local anti-displacement efforts, including a program in Cincinnati that pays all displacees from specially designated development areas a maximum benefit of $2,500.00 per person and a "Relocation Clearing House" in St. Louis that helps families find displacement housing and requires developers to submit a comprehensive relocation plan to the city.[12] A recent survey of condominium conversions in the St. Louis area concluded that while displacement is not a major problem in the condominium conversion market it does produce serious questions of public policy in that low-income, elderly persons may lose their housing if the building is converted into condominiums.[13]

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11. HUD cited two principal reasons for its uncertainty about precise figures: the unavailability of reliable national data on those activities that could lead to displacement, and the unavailability of reliable data on the households who move and their reasons for moving. *Id.* at 8.

George and Eunice Grier propose a rather inclusive definition for displacement:

> Displacement occurs when any household is forced to move from its residence by conditions which affect the dwelling or its immediate surroundings, and which:
>
> 1. are beyond the household's reasonable ability to control or prevent;
>
> 2. occur despite the household's having met all previously-imposed conditions of occupancy; and
>
> 3. make continued occupancy by that household impossible, hazardous, or unaffordable.

G. GRIER & E. GRIER, URBAN DISPLACEMENT: A RECONNAISSANCE (1978) (unpublished report prepared for HUD) *quoted in* DISPLACEMENT REPORT, *supra* note 9, at 5.

As noted in the HUD report, this definition makes no distinction between those individuals and families who are entitled to relocation benefits under the URA and those who are ineligible. In addition, the definition does not discriminate between displacement because of purely private and "natural" aspects of the housing market (disinvestment and abandonment) and the direct and indirect effects of programs (highway construction, blight designation, and code condemnation). DISPLACEMENT REPORT, *supra* note 9, at 5-7.

HUD later accepted this definition as "conceptually the most useful" because it "contains two crucial components: the requirement that the moves be necessitated by housing or neighborhood-related factors beyond the household's control, and a requirement that these factors make continued occupancy infeasible (as opposed to simply undesirable)." RESIDENTIAL DISPLACEMENT, *supra* note 8, at 75.

12. RESIDENTIAL DISPLACEMENT, *supra* note 8, at 79-80.

13. A. YOUNG, THE INCIDENCE AND IMPACT OF CONDOMINIUMS IN ST. LOUIS (1983) (unpublished report prepared for the Phoenix Fund, St. Louis). The study reported that a total of 3,362 rental units had been converted to condominiums in St. Louis city and county between 1966 and 1982. The report estimated that as many as 1700 households believed themselves to have been displaced by condominium conversions and noted that low statistics may hide the seriousness of harm. *Id.* at 88.

> Finally, it is important to avoid allowing the gross statistics to mask the considerable inconvenience and discomfort experienced by a percentage of those

Displacement of persons as a result of governmental activity to promote redevelopment is an extremely complex issue affecting urban communities. It must be distinguished from normal turnover that can be expected in any community because of the mobility of American society and the changing demands of the housing market.[14]

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actually impacted by a conversion. Although across the sample only 35% note a negative effect, many respondents included angry or desperate comments with their surveys. The elderly and one parent families with school-age children found the move most difficult; they and others expressed dismay at the cost of moving and the emotional burden of finding one's home out of one's control. There are legitimate questions to be asked about the public policy questions which arise from these individual experiences, and it would seem appropriate to examine ways in which the conversion process might be made more humane, however insignificant it is in numerical terms.

Id. at 95.

For an analysis downplaying the effect of condominium conversion on the rental market and concluding that no housing crisis actually exists in the United States, see Muth, *Condominium Conversions and the "Housing Crisis"* in RESOLVING THE HOUSING CRISIS: GOVERNMENT POLICY, DECONTROL AND THE PUBLIC INTEREST (M. Johnson ed. 1982). The most complete assessment on the issue of condominium conversion appears to be in HUD, THE CONVERSION OF RENTAL HOUSING TO CONDOMINIUMS AND COOPERATIVES (1980).

A different result, however, is reported in S. NEWMAN & M. OWEN, RESIDENTIAL DISPLACEMENT IN THE U.S. 1970-79 (1981) (draft report prepared by the Institute for Social Research, University of Michigan for the Office of Policy Development and Research, HUD). The authors estimate that 27% of all urban displacement moves are caused by the sale or conversion of rental property to owner-occupied property. *Id.* (as cited in RESIDENTIAL DISPLACEMENT, *supra* note 8, at 27).

14. Government intervention in the housing market traditionally has consisted of fine-tuning of the natural process of filtering. This concept assumes that government policies can help all housing consumers best by bolstering new production. Adding new units to the supply of housing, even if they are high-cost, will aid low-income level families because better units gradually will open up to them.

For the filtering process to function properly a "normal" rate of vacancy is needed. Unless a certain percentage of dwellings remains temporarily vacant the necessary rate of residential mobility cannot occur. Thus, there is a certain optimum level of housing vacancies that is desired and necessary to the functioning of the filtering process. The concept of turnover is simply a change in occupancy. Relating vacancy rate to turnover allows a certain predictability in meeting the needs of a particular group with a known housing stock at a given vacancy rate. W. F. SMITH, HOUSING: THE SOCIAL AND ECONOMIC ELEMENTS 145-46 (1971). For an analysis of the filtering pattern in terms of household and housing characteristics, see W. F. Smith, FILTERING AND NEIGHBORHOOD CHANGE (1964).

Federal housing policy historically has favored new construction on the assumption that all subsequent occupants have successively lower incomes. By constructing high-cost, new housing the lower income housing needs will be served. Sands, *Housing Turnover: Assessing Its Relevance to Public Policy*, 42 J. AM. INST. PLANNERS 419, 422-24 (1976); *see also* W. GRIGSBY, HOUSING MARKETS AND PUBLIC POLICY (1963).

Anthony Downs provides an insightful analysis of how the filtering image has combined with housing and building codes to create and to foster exclusionary land practices where "thousands of the poorest households . . . concentrate in urban centers." Downs, *The Successes and Failures of Federal Housing Policy*, 34 PUBLIC INTEREST 124, 125-27 (1974).

Critics of the filtering concept strike at the lack of true accessibility for all consumers, especially minorities and large families, and the fact that a disproportionately large share of the national housing policy has benefited those above the poverty level through the

During the past forty years, reinvestment has occurred in two phases in most American cities. The first phase involves the acquisition by public authorities of abandoned or substandard but occupied buildings. This type of displacement is best illustrated by the urban renewal programs of the 1950's and 1960's.[15] The second phase, which is the subject of this paper, involves situations where occupied buildings are acquired either by a private redevelopment entity or by persons moving into a particular neighborhood area as a result of reinvestment activities. In this phase, a question arises as to whether a sale is "voluntary," that is, whether the cost of complying with a redevelopment plan is so onerous that the occupier is forced to sell or move out.[16]

Displacement occurs in a number of situations. Clearance and redevelopment of residential areas for commercial and industrial purposes or for public facilities is the first and most visible example. This was the chief characteristic of the first phase of displacement. It is not nearly so prevalent today but does occur from time to time.[17]

Second, buildings that are adjudged to be unsafe under local ordinances and state statutes may be demolished if it is determined

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tax code and housing subsidies. *See* A. SOLOMON, HOUSING THE URBAN POOR 196 (1974). For a policy analysis revealing the major actors in the setting of national housing policy, see H. WOLMAN, POLITICS OF FEDERAL HOUSING (1971).

15. *See* 42 U.S.C. §§ 1450-1460 (1976). Under the urban renewal program, "[r]edevelopment was in essence a bulldozing technique. It tended to throw the baby out with the bathwater; valuable, usuable buildings were destroyed along with the slums. . . . [S]ome communities used redevelopment for 'Negro removal.'" L. FRIEDMAN, *supra* note 8, at 161, 167 (footnote omitted).

16. One of the major stumbling blocks to an effective analysis of displacement is the question whether a particular move is voluntary or involuntary. *See, e.g.*, DISPLACEMENT REPORT, *supra* note 9, at 8.

The URA does not require that a move be involuntary for an eligible person to receive relocation benefits, and the proposed amendments do not change that approach. 42 U.S.C. § 4601(6); URAA, *supra* note 4, § 101(d)(6). The Committee Report to the URAA acknowledges the difficulty in determining whether a move is involuntary as the basis for its decision not to require a determination that displacement is involuntary to establish eligibility. S. REP. No. 71, 98th Cong., 1st Sess. 12 (1983).

17. A rebirth of this type of displacement may be on the horizon. One of the major arguments advanced by supporters of the URAA, is that

> recent congressional interest in programs to rebuild the Nation's infrastructure presages a significant reversal (in a 10-year decline in displacement by Federal programs and projects). The 97th Congress saw large increases in funding for highway construction and airport development programs. Meanwhile, additional funding for public works programs—which are also likely to be implemented by state and local governments—is expected in the 98th Congress. These programs will result in a significant increase in the number of federally funded displacement actions; the Federal Highway Administration, for example, estimates that its relocation activities will increase 82 percent over 1982 levels by 1985.

S. REP. No. 71, 98th Cong., 1st Sess. 3 (1983).

that rehabilitation is not feasible.[18] Any occupants of those buildings, of course, will be displaced.

Third, occupied units in which occupancy is illegal as a result of serious code violations may be withdrawn from the market if it is determined that the building is not susceptible to rehabilitation or if the owner does not have the resources to accomplish the rehabilitation. If the building is withdrawn from the market, the occupiers may be displaced by that process.[19]

Fourth, a major activity during a second-phase redevelopment effort is the substantial rehabilitation of residential structures. So-called "gut rehabilitation," in which the shell of the building is retained but the interior is completely redone, normally cannot be accomplished while the building is occupied. Thus, a type of "temporary" displacement takes place in which residents are removed for a period of time, anywhere from six months to two years, corresponding to the reconstruction.[20]

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18. *See, e.g.,* MO. REV. STAT. §§ 67.400-.450 (Supp. 1984) (authorizing home rule cities to demolish dangerous buildings if owner fails to repair); Atkins v. Department of Bldg. Regulations, 596 S.W.2d 426 (Mo. 1980). *See also* Traylor v. City of Amarillo, 492 F.2d 1156 (5th Cir. 1974); Perepletchikoff v. City of Los Angeles, 174 Cal. App.2d 697, 345 P.2d 261 (1959); City of Houston v. Lurie, 148 Tex. 391, 224 S.W.2d 871 (1949). For a comprehensive analysis of the issue, see Mandelker, *Housing Codes, Building Demolitions, and Just Compensation: A Rationale for the Exercise of Public Powers Over Slum Housing*, 67 MICH. L. REV. 634 (1969).

In an unreported decision affirmed without opinion, the Federal District Court for South Carolina upheld Columbia, South Carolina's authority to condemn and demolish substandard buildings within the city limits against charges that such action constituted a taking of private property without just compensation. Timmons v. Andrews, 673 F.2d 1317 (4th Cir.), *cert. denied*, 103 S. Ct. 137 (1982).

On the related question of tenant rights to compensation for loss of leasehold interests because of city-ordered eviction from substandard housing, the Seventh Circuit first ordered just compensation, then later reversed itself because of intervening Supreme Court decisions in Texaco, Inc. v. Shoot, 454 U.S. 516 (1982), and Loretto v. Teleprompter Manhattan CATV Corp, 484 U.S. 419 (1982), and concluded that there was no constitutional "taking" where tenants were ordered to vacate temporarily their uninhabitable dwelling to permit repairs pursuant to a housing code because the tenant's possessory right was subject to the state imposed condition that the premises remain fit for human habitation. Devines v. Maier, 665 F.2d 138 (7th Cir. 1981) (*Devines I*) and Devines v. Maier, 728 F.2d 876 (7th Cir. 1984) (*Devines II*).

19. George Sternlieb has done pioneering work to document this process. *See* G. STERNLIEB & R. BURCHELL, RESIDENTIAL ABANDONMENT: THE TENEMENT LANDLORD REVISITED (1973) (published by Center for Urban Policy Research, Rutgers University).

20. The proposed amendments to the URA require permanent displacement as a criterion for benefits if displacement is caused by rehabilitation, demolition or other types of federally assisted programs such as code enforcement. URAA, *supra* note 4, § 101(d)(6)(B)(ii), (C). The Committee Report commented that "[i]f displacement is temporary, such displacement should be for a reasonable period, generally not longer than one year, *and all increased costs associated therewith should be paid by the displacing agency*." S. REP. No. 71, 98th Cong., 1st Sess. 12 (1983) (emphasis added).

The conversion of rental property to owner-occupied property can be a fifth cause of displacement. In most situations where the conversion of an occupied building takes place, the current tenants are given some opportunity to purchase the units.[21] However, if the conversion results in substantial renovation of the units, the cost of acquisition and maintenance most likely will be considerably higher than the previous rental charges. If the tenants are persons of low or moderate income, it is unlikely that they will be able to purchase the units, and, consequently, those individuals will join the ranks of displaced persons.[22]

Sixth, a significant but still almost invisible type of displacement results from increased costs of occupation, such as higher rents, that follow substantial rehabilitation and the overall increase in property values that takes place as a neighborhood is upgraded.[23] Neighborhood and historic preservation efforts can result in substantially higher housing costs because of the often expensive attention to detail, such as brass kick-plates and colonial style wood doors, required to preserve the character of the structure.[24] This situation

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21. The Uniform Condominium Act (UCA) has been enacted in eight states: Maine, ME. REV. STAT. ANN. tit. 33, §§ 1601-101 to 1604-118 (Supp. 1983); Minnesota, MINN. STAT. ANN. §§ 515A.1-101 to 515A.4-118 (West Supp. 1980); Missouri, MO. REV. STAT. §§ 448.1-101 to .4-120 (Supp. 1984); New Mexico, N.M. STAT. ANN. §§ 47-7A-1 to -7D-20 (1983); Pennsylvania, 68 PA. CONS. STAT. ANN. §§ 3101-3413 (Purdon Supp. 1984); Rhode Island, R.I. GEN. LAWS §§ 34-36.1-1.01 to -4.20 (Supp. 1983); Virginia, VA. CODE §§ 55-79.39 to .103 (1981); West Virginia, W. VA. CODE 36B-1-101 to -4-115 (Supp. 1983). The UCA requires tenants to be given 120 days notice of a proposed conversion, 60 days to purchase their units, and 180 days to match the price of another purchaser if the tenant has not purchased the unit during the 60-day period. UCA, § 4-112 (1980).

Legislation aimed at controlling the rate of condominium conversions raises several constitutional issues regarding the "taking" of property. *See, e.g.*, Comment, *Defining Property Rights: Constitutionality of Protecting Tenants from Condominium Conversion*, 18 HARV. C.R.-C.L. L. REV. 170 (1983).

22. *See supra* note 13.

23. Press reports of rehabilitation activity in St. Louis highlight the impact of substantial neighborhood change. One report indicated that inflation-adjusted values of owner-occupied homes in five city neighborhoods increased from 21% to 218% during the 1970's. In one neighborhood, the average price of homes went from $7429 in 1970 to $50,855 in 1980. Discounting for inflation, the 1980 value was $23,648, an increase of 218% in real value. St. Louis Globe-Democrat, July 2-3, 1983, at 1E, col. 6. In another neighborhood, landlords reported being able to rent rehabilitated apartments for $300-$350 per month in 1982 that were renting for only $70 per month in 1980. Harris, *The Tiffany Turnabout*, ST. LOUIS COMMERCE, Dec. 1982, at 56, 57.

Preliminary reports from an effort by the City of San Diego to track movement of tenants from apartments after property rehabilitation indicated that the average rent went up 26% following rehabilitation and that within two years almost 60% of the tenants had left. RENTAL REHABILITATION, *supra* note 8, at 22-23.

24. According to the GAO study, a New Britain, Connecticut rehab project spent $6,800 to replace all bathroom fixtures and kitchen and pantry floor coverings even though code standards required considerably less for compliance. The investor-owner had requested

is perhaps the most difficult to measure because it is almost indistinguishable from situations in which people voluntarily leave for any of the reasons that may be viewed as a normal part of the operation of the urban housing market.

Last, the failure of subsidized housing projects can result in displacement of the occupants of those units, particularly if, in the process of foreclosure and resale, the subsidy is lost.[25] The result then becomes a substantially higher cost of occupancy, which has the effect of forcing the persons who were the beneficiaries of the subsidies out of those units and into the marketplace.

III. Legislative and Judicial Response

In all of these situations, the question of the proper allocation of responsibility for the social costs of displacement arises. As Congress recognized in the Declaration of Policy for the Uniform Relocation portion of the URA, public policy in this country requires that persons affected by federal and federally assisted public activities "shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."[26]

This question tends to arise in two particular ways. First, questions concerning the sufficiency of relocation assistance currently available under the URA tend to focus on whether or not particular displacees qualify under the URA. *Norfolk Redevelopment & Housing Authority v. Chesapeake & Potomac Telephone Company of Virginia* is an example of this type of displacement question.[27] A settled body of case law has drawn a narrow interpretation of the eligibility provisions of the URA.

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the general improvements as part of the rehabilitation, and the city had incorporated it into the project. Rents increased 36%. Rental Rehabilitation, *supra* note 8, at 20-22.

Historic district zoning may impose affirmative duties upon property owners that may increase housing costs beyond the owner's ability to pay. *See* Note, *Affirmative Maintenance Provisions in Historic Preservation: A Taking of Property?*, 34 S.C.L. Rev. 713, 716-17 (1981). The article cited several cases in which these provisions were seen as a "reasonable use" of the local government's regulatory power of private property. *Id.* at 726-29. *See, e.g.*, Maher v. City of New Orleans, 516 F.2d 1051 (5th Cir.), *cert. denied*, 426 U.S. 905 (1975); Figarsky v. Historic Dist. Comm'n, 171 Conn. 198, 368 A.2d 163 (1976).

25. In U.S. v. St. Paul Missionary Pub. Hous., Inc., 575 F. Supp. 867 (N.D. Ohio 1983), the court held that HUD may foreclose on a Section 8 housing complex for elderly and low-income families despite the owner's claim that HUD's failure to pay subsidies caused the default. *See also* Alexander v. HUD, 441 U.S. 39 (1979); Federal Property Management Corp. v. Harris, 603 F.2d 1226 (6th Cir. 1979); LeGates & Hartman, *supra* note 8, at 215 (characterizing this problem as a growing one, along with the threat of displacement, "as the first generation of public housing projects terminate their original 40-year annual federal contributions contracts").

26. 42 U.S.C. § 4621 (1976).

27. 104 S. Ct. 304 (1983) (discussed *supra* text accompanying note 1).

A second area involves the question of whether there is any public responsibility to assist persons displaced by private redevelopment activities that are assisted by public funds. Courts consistently have interpreted the URA as not covering that type of phenomenon.

In *Alexander v. HUD*,[28] the Supreme Court held that tenants displaced because a defaulting subsidized housing project was closed by HUD after HUD acquired the interests from the defaulting sponsors did not qualify as displaced persons under the URA because default acquisitions do not satisfy the causality requirement of the statute: "acquisition . . . for a [federal] program or project."[29] In *Moorer v. HUD*,[30] the court held that persons displaced as a result of acquisition by a private corporation of units to be rehabilitated with Section 236 funds under Project Rehab did not qualify for relocation benefits because no governmental action was involved.[31] The court found that the delegation of the power of eminent domain by the state through the city to the private redevelopment corporation did not make the corporation a governmental entity.[32]

In *Young v. Harris* the United States Court of Appeals for the Eighth Circuit considered the question of private redevelopment.[33] The court held that an urban redevelopment corporation operating under authority of the Missouri Urban Redevelopment Corporation law, authorizing tax abatement and delegation of the power of eminent domain to private urban redevelopment corporations pursuing city-approved redevelopment plans, was not a state instrumentality.[34] Thus, no government acquisition resulting in displacement took place even though FHA-insured mortgages, section 8 subsidies, and CDBG funds were used to fund the project area; that level of federal financial assistance was insufficient to trigger the relocation provisions of the URA.[35]

In *Isham v. Pierce*, the United States Court of Appeals for the Ninth Circuit held that a private owner who undertakes to develop a federally assisted project that does not entail the acquisition of property by a governmental entity is not obligated to provide benefits and relocation assistance to displaced persons under the URA.[36]

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28. 441 U.S. 39, 66-67 (1979).
29. 42 U.S.C. § 4601(6) (1976).
30. 561 F.2d 175, 183 (8th Cir. 1977), *cert. denied*, 436 U.S. 919 (1978).
31. 12 U.S.C. § 1715z-1 (1981).
32. *See* 561 F.2d at 183.
33. 599 F.2d 870 (8th Cir.), *cert. denied*, 444 U.S. 993 (1979).
34. *Id.* at 878 (discussing MO. REV. STAT. §§ 353.010-.180 (1978)).
35. *Id.*
36. 694 F.2d 1196, 1205 (9th Cir. 1982); *see also*, Note, *Displaced Persons and the Uniform Relocation Act: A Proposed Methodology for Awarding Benefits*, 58 B.U.L. REV. 596 (1978); *cf.*

In *Isham* the private owner sought to rehabilitate and to convert the San Francisco Y.W.C.A. Club into a federally subsidized project for lower-income elderly and handicapped tenants. The court based its opinion on statutory interpretation concluding that "if Congress had intended the URA to cover private developments receiving HUD loans, then these sections would have been the appropriate place to state that such a private acquisition would be deemed an acquisition within the meaning of the URA."[37]

The question of who is responsible for softening the impact of redevelopment activities on long-term residents of the area undergoing redevelopment has eluded policy-makers since the private redevelopment strategies were articulated. A considerable amount of buck-passing has taken place. At one level, the buck is passed between courts and legislatures, as evidenced by the tendency of courts to decline to review decisions implementing redevelopment plans on the theory that those decisions are legislative decisions that are not to be second-guessed by the courts.[38] At another level the passage of the URA by Congress has resulted in a form of buck-passing among governmental entities. Because the coverage of the URA is quite broad and the benefits are quite generous, there is a natural tendency to conclude that the policy that already has been declared by Congress is all that can be expected to be done in this area unless Congress chooses to add to it. The argument is not really

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Feliciano v. Romney, 363 F. Supp. 656 (S.D.N.Y. 1973) (where displacement of families by city occurred before city entered into financial assistance contract with federal government; timing of displacement precluded relocation benefits coverage under URA).

The URA does not apply to the general revenue sharing program. Goolsby v. Blumenthal, 590 F.2d 1369, 1370-71 (5th Cir. 1979). Nor does it apply to private involvement in the Section 8 housing project under 42 U.S.C. § 1437. Conway v. Harris, 586 F.2d 1137, 1141 (7th Cir. 1978); *see* Hanson, *Applicability of Federal Statutory Remedies in Housing Displacement Cases: How Much Federal Involvement Is Necessary?* 59 J. URB. L. 341 (1982). The author compares judicial construction of URA applicability to that of the National Environmental Protection Act (NEPA), 42 U.S.C. §§ 4331-4395 (1976 & Supp. III 1979), and advocates adoption of the NEPA standard of testing for both the degree of federal control over the program or project and the level of financial support needed to trigger the Act's coverage.

37. 694 F.2d at 1201.

38. *See, e.g.*, City of Chicago v. R. Zwick Co., 27 Ill. 2d 128, 188 N.E.2d 489, *appeal dismissed sub nom.* Gonzalez v. City of Chicago, 373 U.S. 542 (1963); Schweig v. City of St. Louis, 569 S.W.2d 215 (Mo. Ct. App. 1978); Leo Realty Co. v. Redevelopment Auth., 320 A.2d 149 (Pa. Commw. Ct. 1947). For a stricter view of the review question, see Fasano v. Board of County Comm'rs, 264 Or. 574, 580, 507 P.2d 23, 26 (1973) (it would be ignoring reality to view rigidly all zoning decisions of local governmental bodies as legislative acts accorded presumption of validity and shielded from constitutional scrutiny by theory of separation of powers); *see also* Sweetwater Valley Civil Ass'n v. National City, 18 Cal. 3d 270, 555 P.2d 1099, 133 Cal. Rptr. 859 (Cal. 1976); Yonkers Community Dev. Agency v. Morris, 37 N.Y.2d 478, 335 N.E.2d 327 (1975) (applying heightened standard of judicial review to blight determinations).

a preemption argument;[39] it is an argument that society has done what it can do and that the problem is of sufficient magnitude that it should be addressed at the federal level.[40] Congress has addressed the problem by requiring federal agencies to minimize displacement[41] and by enactment of the URA. If this legislation is inadequate, it should be modified.[42]

This governmental buck-passing is used quite effectively by cities that profess an inability to deal with displacement problems because of budgetary constraints. They point the finger at the federal government as the one who should bear the prime responsibility.[43] At the same time, local community groups concerned about displacement tend to focus their arguments on private redevelopment organizations because they are the most visible actors; they are the ones whose actions are linked most clearly to any displacement that may take place.[44] The redevelopment organization typically responds that displacement is not its responsibility, that the developer is active because the city has invited it to be and that the problem of displacement is one for the city or the public at large, not for the individual developer.[45] The argument continues that the costs to the developer of assuming responsibility for relocation will be disproportionate and

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39. The federal government has the power to preempt state and local legislation through the supremacy clause. Justice O'Connor noted recently, in another context, "When Congress preempts a field, it precludes only state legislation that conflicts with the national approach. The States usually retain the power to complement congressional legislation, either by regulating details unsupervised by Congress or by imposing requirements that go beyond the national threshold." Federal Energy Regulatory Comm'n v. Mississippi, 102 S. Ct. 2126, 2152 (1982) (O'Connor, J., dissenting).

40. For an analysis of the coverage and uniformity offered by state relocation statutes, see Pearlman & Baar, *Beyond the Uniform Relocation Act: Displacement by State and Local Government*, 10 CLEARINGHOUSE REV. 329 (1976).

41. The HCDA requires applicants for CDBG grants to certify compliance with the URA. 42 U.S.C. § 5304(a)(5) (1976). The HURRA, *supra* note 2, reinforce congressional concern about displacement. *See infra* notes 50-73 and accompanying text.

42. *See* S. REP. No. 71, 98th Cong., 1st Sess. 2-7 (1983) (discussing efforts at improvement over past several years).

43. In Olean Urban Renewal Agency v. Herman, 50 A.D.2d 1081, 1082, 376 N.Y.S.2d 328, 331 (1975), the court ruled that the sole burden of relocation does not fall on either the appropriate federal agency or the appropriate local agency but is to be shared by the agency and the displaced individual.

44. A recent controversy over displacement in St. Louis, pitting the residents against the developer, found its way into the New York Times. N.Y. Times, Dec. 2, 1983, at A18, col. 5.

45. An experienced developer in St. Louis observed:

> There are going to be people involuntarily displaced in a redevelopment area. It's just a fact of life . . . But the rationalization I finally came up with is that if the housing is deteriorating, and if we don't do something, it will continue to deteriorate, and many of the people would have to move anyway.

St. Louis Post-Dispatch, Nov. 21, 1983, at 7A, col. 6 (statement of R. Jerrad King, president of City Equity Corporation).

will result in either more costly redevelopment programs or no redevelopment at all. This argument in turn raises the question whether the residents will be worse off by having to stay in a deteriorating neighborhood than they will be if they move out.[46]

Given this situation it is not unusual, particularly because the courts have narrowly interpreted the URA, for local governments to make a token allocation of monies for relocation benefits while in reality washing their hands of the displacement problem in private redevelopment activities.[47] The result is a situation in which the displacees have no support for their position. The city claims that it does not have the funds to make the relocation payments; the developer claims that displacement/relocation is not its responsibility. The city, furthermore, is unwilling to place substantial responsibility on the developer because the city is concerned that if it does it may lose the benefits of the redevelopment activity. The courts, moreover, have narrowly construed the URA, and Congress has been unreceptive to the argument that private redevelopment activities should trigger URA benefits.

While debating but not enacting proposals to expand URA coverage for the past seven years, Congress has responded to the problem of redevelopment displacement by gradually adding anti-displacement strings to CDBG funds.[48] Its most ambitious undertaking is contained in the 1983 Housing Act.[49] Recipients of CDBG

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46. *See infra* notes 92-107 and accompanying text.

47. According to its application for 1980 CDBG funds, the City of St. Louis allocated $254,000 of the $39,555,100 in block grants it sought from HUD for relocation payments and assistance. For the same period, according to its application, St. Louis County allocated no funds for relocation from its request for $9,605,000.

In its 1984 Statement of Community Development Objectives & Projected Use of Funds, the City of St. Louis allocated $350,000 for emergency housing and $250,000 for relocation referral services from its anticipated block grant of $28,090,500. The City requires redevelopment corporations to submit comprehensive relocation plans and, in cases of proposals for CDBG assistance in neighborhood strategy areas, to provide direct relocation assistance consisting of moving allowances ($50-$200/room) and dislocation allowances of $100/household and $200/business. Policies and Requirements for Promoting Neighborhood Stability and for Relocation Assistance in Programs Undertaken by the City of St. Louis, Year VI application 156, 163 (1980). Little or no direct allocation of CDBG funds is made for relocation services because of the city's policy of emphasizing leverage of CDBG funds. Year X Policy Plan, City of St. Louis 2 (1984).

In a GAO questionnaire regarding experiences in providing local housing authorities with CDBG funds, two questions seeking information about types of housing assistance provided did not even list relocation assistance as one of the choices. GAO, BLOCK GRANTS FOR HOUSING: A STUDY OF LOCAL EXPERIENCES AND ATTITUDES 47, 54 (1982) (supp. GAO/RCED 83-21A)[hereinafter cited as BLOCK GRANTS].

48. *See* Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 302(c)(1)(C), 97 Stat. 357, 386 (amending 42 U.S.C. § 5304 to require that grantees provide displaced tenants reasonable opportunity to relocate in immediate neighborhood).

49. HURRA, *supra* note 2.

funds must include in their statement of activities information on plans to minimize displacement of persons as a result of activities assisted with CDBG funds and plans to assist persons "actually displaced as a result of such activities."[50] Recipients must provide "reasonable benefits" to persons involuntarily and permanently displaced "as a result of the use of assistance received . . . to acquire or substantially rehabilitate property."[51] If an activity is eligible, funds can be used to provide assistance to neighborhood groups to develop shared-housing opportunities for the elderly.[52] Section 8, existing housing and moderate rehab funds can be used for shared-housing arrangements for the elderly and the handicapped.[53] Sixty million dollars is authorized for fiscal 1984 for grants to states, local governments, Indian tribes and non-profit organizations to provide emergency shelter and essential services to the homeless.[54] Structures rehabilitated under this program must be used for emergency housing for at least three years.[55] Demolition or disposition by sale or other transfer of public housing units may be authorized only if the application is developed in consultation with affected tenants and tenant councils and if displaced tenants are relocated "to other decent, safe, sanitary and affordable housing which is, to the maximum extent practicable, housing of their choice . . . ."[56]

A new rehabilitation grant program allocating funds to CDBG entitlement communities and states to permit them to make grants for rehabilitation activities limits the rehabilitation work that may be assisted to that needed to correct substandard conditions, make essential improvements, and repair major systems in danger of failure.[57] The rehab work must not cause involuntary displacement of very-low-income families by families that are not very-low-income.[58] The owner must agree not to convert assisted units to condominiums for at least ten years after completion of the project.[59] An equitable share of CDBG funds must be used to provide hous-

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50. *Id.* § 104(b)(2) (amending section 104(a)(2)(B) of HCDA).
51. *Id.* § 104(g) (adding a new subsection (j) to § 104 of HCDA).
52. *Id.* § 105(d) (amending section 105(a)(15) of HCDA).
53. *Id.* § 211 (adding new subsection (p) to section 8 of United States Housing Act of 1937, to be codified at 42 U.S.C. § 1437f).
54. *Id.* § 216.
55. *Id.*
56. *Id.* § 214(a) (adding new section 18(a) and (b)(2) to United States Housing Act of 1937, to be codified at 42 U.S.C. § 1437p).
57. *Id.* § 301 (adding new section 17 to the 1937 Housing Act, to be codified at 42 U.S.C. § 1437o).
58. *Id.* § 17(c)(2)(F).
59. *Id.* § 17(c)(2)(G)(ii).

ing for families, including large families with children, and priority must be given to projects with units in substandard condition that are occupied by very-low-income families.[60]

A new construction and substantial rehabilitation grant program also contains a prohibition against involuntary displacement of very-low-income families by families that are not very-low-income.[61] The owner must agree not to convert assisted units to condominiums for at least twenty years beginning on the date the units become available for occupancy.[62] Project selection criteria include the extent to which a project will minimize displacement[63] and a requirement that "reasonable relocation payments" are to be provided under regulations to be issued by HUD.[64]

Section 234 condominium unit mortgage insurance[65] is available in converted rental projects only if: the conversion occurred more than one year prior to the application for insurance; the mortgagor or co-mortgagor was a tenant; or the conversion is sponsored "by a bona fide tenants organization representing a majority of the households in the project."[66] To minimize displacement by condominium conversion, Congress has provided that shared appreciation mortgages are now eligible for FHA insurance on one to four family and multi-family units.[67] A new housing-voucher demonstration program requires HUD to use substantially all of its voucher contract authority to assist families that are residing in dwellings to be rehabilitated under the new rental rehabilitation and development grant program and families displaced as a result of rehabilitation activities supported by these new programs.[68]

The displacement/relocation provisions of the 1983 Amendments to the United States Housing Act of 1937 reflect a curious ambivalence on the part of Congress.[69] Perhaps the key provisions are the requirements that CDBG recipients provide "reasonable benefits" to persons "involuntarily and permanently displaced" by use of the CDBG funds to acquire or substantially rehabilitate property, and the prohibition against involuntary displacement of very-

60. *Id.* § 17(c)(3)(A), (B).
61. *Id.* § 17(d)(4)(C).
62. *Id.* § 17(d)(4)(D)(ii).
63. *Id.* § 17(d)(5)(C).
64. *Id.* § 17(g).
65. National Housing Act § 234, 12 U.S.C. § 1715y (1982).
66. HURRA, *supra* note 2, § 420(b).
67. *Id.* § 444.
68. *Id.* § 207.
69. *See id.* §§ 301(c)(2)(F), (d)(4)(C).

low-income families by families that are not very-low-income as a result of rehabilitation efforts supported by the new rental rehabilitation and development grant programs.[70]

But what are "reasonable benefits"? Do the standards of the URA apply? And if they do, are they "reasonable" in light of today's cost of living and the general scarcity of affordable housing? The URA's benefit package for displaced residential renters includes moving expenses[71] and a $4000 maximum replacement housing allowance that is supposed to be the "amount necessary" to enable a displaced person to make a down payment on the purchase, or to rent for up to four years, "a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and [in the case of renters] reasonably accessible to his place of employment."[72] While the $4000 payment is a substantial amount of money, when spread over the four-year term for which it was designed it amounts to a rental allowance of $83.33 per month. Although it is a generous amount, is it reasonable in light of the congressional standard? The new housing-voucher demonstration program[73] is expected to provide for payments averaging $239 per month.[74] Per unit subsidies under Section 8 programs have ranged from $130 per month for Section 8 existing housing to $250 per month for the discontinued Section 8 new construction program.[75]

An unsuccessful effort at amending the URA, spearheaded by Senator Sasser during the 1979-81 period, would have increased the maximum relocation benefit for renters to $8000.[76] Using the same analysis, this benefit would have amounted to a four-year rental allowance of $166.66, which is considerably closer to the average subsidies of federal housing programs that have sought to provide the housing quality embodied in the relocation benefits provisions.

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70. *Id.* §§ 17(c)(2)(F), 104(g).

71. 42 U.S.C. § 4622 (1976).

72. *Id.* § 4624.

73. HURRA, *supra* note 2, § 207.

74. The new voucher system will parallel the existing Section 8 program. 42 U.S.C. § 1437f (1976). The average per unit subsidy for Section 8 existing construction has been $2300 as compared to $5,800-$6,800 under Section 8 new construction. 10 HOUS. & DEV. REP. (BNA) 403 (1982). HUD estimates for fiscal 1985 assume an average payment standard (affordable monthly rent) of $384 and an average tenant share of rent of $145/month. 11 HOUS. & DEV. REP. (BNA) 773 (1984).

75. Abt Associates, *Participation and Benefits in the Urban Section 8 Program*, 8 HOUS. & DEV. REP. (BNA) 1051 (1981) (study prepared for HUD in 1979).

76. S. 1108, Uniform Relocation Assistance Act Amendments of 1979, § 6(1) (amending § 204 of the URA, 42 U.S.C. § 4624).

The Sasser Amendments were defeated because of concern over the costs of the increased benefits and fear that the amendments would render urban redevelopment projects economically unfeasible. The amendments would have broadened the coverage of the URA and would have shifted the responsibility for assisting persons displaced by private redevelopment from the federal or state government to the private developer.[77]

The URAA, a revised effort spearheaded by Senator Durenberger and co-sponsored by Senators Sasser and Levin, have cleared the Senate and are pending in the House.[78] By reducing the cost of an expanded package, broadening the scope of coverage to include persons displaced by rehabilitation and utilities, reworking the benefits to provide more help to small businesses and permitting states and local governments to substitute state-regulated programs for federal regulation, the URAA have gathered an impressive list of supporters.[79] The URAA would increase maximum benefits for tenants whose income exceeds fifty percent of the median income of the area from $4000 to $4500 but would reduce the period of coverage from four years to three. If monthly housing costs for a suitable replacement dwelling exceed the costs of the displacement dwelling by a total amount over a thirty-six-month period of less than $4500, those monthly housing costs would determine the displacement allowance.[80] The basic standard for the allowance—a suitable replacement dwelling—will be defined in the URAA.[81] A "suitable replacement dwelling" must meet six standards: 1) decent, safe and sanitary, 2) adequate in size, 3) affordable, 4) functionally similar, 5) in an area not subject to unreasonable adverse environmental conditions, and 6) in an area not generally less desirable with respect to utilities, facilities, services and employment.[82] Because persons with incomes below fifty percent of the area median are not subject to the $4500 cap, their reloca-

77. *Id.* § 2(b)-(d). Developers in the St. Louis area during the time these amendments were debated expressed to the author concern that the amendments would make urban redevelopment projects economically unfeasible. No precise estimates of the costs involved were given.

78. URAA, *supra* note 4.

79. During his presentation to the Senate, Senator Durenberger identified the office of Management and Budget and other federal agencies, the United States Conference of Mayors, the National Governors Association, and officials of the National Association of Housing and Redevelopment among supporters of the URAA. 129 CONG. REC. S7247 (daily ed. May 20, 1983) (statement of Senator Durenburger).

80. URAA, *supra* note 4, § 204 (amending section 204(a) of the URA, 42 U.S.C. § 4624).

81. *Id.* § 101(e)(10) (amending section 101 of the URA, 42 U.S.C § 4601).

82. *Id.*

tion allowance presumably would cover actual costs of suitable replacement housing for three years.

Major substantive changes affecting local redevelopment activities include expansion of the definition of "state agency" to embrace "any entity which has eminent domain authority under state law."[83] There is a new term, "displacing agency," which is defined to include persons given federal financial assistance that causes a person to be a displaced person and federal and state agencies utilizing federal financial assistance.[84] The definition of "displaced persons" is expanded to include tenants permanently displaced "as a direct result of rehabilitation or demolition" undertaken with federal financial assistance[85] or "a program or project undertaken by a Federal agency or with Federal financial assistance."[86]

While passage of the expanded definition would be a major victory for displaced tenants, the actual benefits provided would be limited to moving costs and advisory services unless affordable housing is not available.[87] Through a complicated series of provisions, residential tenants eligible for advisory services are also eligible, under the authority to provide "last resort housing,"[88] for the relocation rental assistance allowance[89] if suitable replacement housing is not within a displacee's financial means.[90] A major qualification under the URAA may require displacees to choose federal or state housing assistance, if available, in lieu of the relocation benefit. While the proposed amendment makes the election optional, failure to do so will be considered in evaluating eligibility for housing

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83. URAA, *supra* note 4, § 101(b) (amending section 101(3) of the URA, 42 U.S.C. § 4601(3)).

84. *Id.* § 101(e)(11) (amending section 101 of the URA, 42 U.S.C § 4601).

85. *Id.* § 101(d)(6)(ii) (amending section 101(6) of the URA, 42 U.S.C. § 4601(6)).

86. *Id.* In commenting on this addition, the Committee Report stressed the committee's express intention "that persons displaced as a direct result of activities funded by the [HUD-CDBG] program will be eligible for relocation benefits under this act." S. REP. No. 71, 98th Cong., 1st Sess. 10 (1983).

87. Moving costs and advisory services are covered by sections 202 and 205 of the URA. 42 U.S.C. §§ 4622, 4625 (1976). Local housing officials and others testified at a committee hearing that the amendments provided too little aid, expressing concern that using certificates or vouchers as substitutes for replacement dwellings could play havoc with waiting lists for Section 8 units. Witnesses supported, however, the proposed change in relocation standard from comparable replacement housing to suitable housing. 11 HOUS. & DEV. REP. (BNA) 882 (1984).

88. URAA, *supra* note 4, § 206 (amending section 206 of the URA, 42 U.S.C. § 4626).

89. *Id.* § 204 (amending section 204 of the URA, 42 U.S.C. § 4624).

90. *Id.* § 205 (amending section 205 of the URA, 42 U.S.C. § 4625). As noted by the Committee report, the proposed new section 205(c)(3) requires that a displacing agency assure that a person "shall not be required to move" from a dwelling unless the person has had a "reasonable opportunity to relocate to a suitable replacement dwelling." S. REP. No. 71, 98th Cong., 1st Sess. 11 (1983). The committee's rationale for the com-

assistance should the displacee apply for assistance during the three-year period.[91]

The average monthly benefit under the URAA, based on $4500 over thirty-six months, would be $125.00. This figure is close to the average costs of Section 8 existing housing in 1979 but only slightly more than one half the expected voucher subsidy for 1985.[92] Because the new voucher program will use Section 8 existing housing fair market rentals as the basis for the voucher payment calculations, the URAA represent an effort to coordinate relocation benefits for tenants with current administration policy regarding housing assistance.[93]

It is possible to pose some hypotheticals to illustrate the possible impact of these proposals. Assume a developer proposes a one hundred unit development at a cost of $4,000,000 ($40,000 per unit). If, because of the URAA, that project were to trigger the URA at the $4500 per person maximum, some possible cost impacts are as follows:

a) *33 1/3%* URA benefits and *25%* coverage:
$1500/unit for 25 units = $37,000 (0.9% increase);
b) *33 1/3%* URA benefits and *50%* coverage:
$1500/unit for 50 units = $75,000 (1.87% increase);
c) *33 1/3%* URA benefits and *100%* coverage:
$1500/unit for 100 units = $150,000 (3.74% increase);
d) *66 2/3%* URA benefits and *25%* coverage:
$3000/unit for 25 units = $75,000 (1.87% increase);
e) *66 2/3%* URA benefits and *50%* coverage:
$3000/unit for 50 units = $150,000 (3.74% increase);
f) *66 2/3%* URA benefits and *100%* coverage:
$3000/unit for 100 units = $300,000 (7.58% increase);
g) *100%* URA benefits and *25%* coverage:
$4500/unit for 25 units = $112,500 (2.81% increase);
h) *100%* URA benefits and *50%* coverage:
$4500/unit for 50 units = $225,000 (5.62% increase);
i) *100%* URA benefits and *100%* coverage:
$4500/unit for 100 units = 450,000 (11.25% increase).

Under these hypotheticals, the potential impact to the developer from the URAA could range from slightly less than one percent of the project cost to more than eleven percent. Obviously, in some cases,

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plicated steps a displaced tenant must undergo to achieve the full level of assistance is that "relocation assistance must avoid becoming so generous as to render the cost of renovation and redevelopment programs uneconomical for state and local governments." *Id.* at 8.

91. URAA, *supra* note 4, § 204 (amending section 204(b) of the URA, 42 U.S.C. § 7624).

92. *See supra* notes 74 and 75 and accompanying text.

93. *See supra* notes 48-69 and accompanying text.

the impact would be negligible, while in others it would be enormous. Under the URAA, relocation payments become eligible for federal financial assistance as a program cost.[94]

However, three points need to be stressed. First, no one really knows the precise impact of the URAA because each situation will involve its own combination of variables. Second, developers can and will calculate these costs in advance. Some developers will absorb the costs and pass them on to the new tenants; others will seek alternatives to displacement-causing activities while others will choose not to develop the property. Last, the present practice of passing most of the costs of displacement from privately sponsored, but governmentally aided, urban development on to the persons displaced is unjust and immoral.

Given the injustice of the present practice and the general concern about the possible adverse impact on urban redevelopment that a total shift of displacement costs from displacees to private developers might have, a policy that shifts the displacement costs as far as practicable from displacees and a policy that strikes a balance between what the private developer can absorb and what would unduly penalize him should be sought. The URAA are a step in the right direction because they recognize the injustice of the present situation.[95]

The URAA place the relocation burden totally on private developers and, thus, do not strike the balance recommended. Also, there is a very real possibility that the URAA will not achieve their purpose because they contain no specific recognition of the practice of indirect assistance through CDBG funds. The following suggestions are offered to meet these concerns.

First, the definition of "federal financial assistance" should be amended to recognize specifically indirect federal subsidies that benefit private developers, such as CDBG grants.[96] Litigation

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94. URAA, *supra* note 4, § 208(a) (amending section 211(a) of URA, 42 U.S.C. § 4631(a)).

95. Entities with the power of eminent domain under state law would become responsible to pay relocation benefits under the URAA. URAA, *supra* note 4, § 101(b) (amending § 101(3) of URA, 42 U.S.C. § 4601(3)).

96. The URAA actually made the definition more restrictive by adding a provision excepting "mortgage interest subsidy to a person." *Id.* § 101(c) (amending section 101(4) of URA, 42 U.S.C. § 4601(4)). The Committee rationale is that "such subsidies are not believed to be direct causes of displacement. . . . [A]ny displacement . . . is believed to be primarily the result of a routine private decision to sell property in the Marketplace . . . ." S. REP. No. 71, 98th Cong., 1st Sess. 11 (1983). In any event, the Committee was preoccupied with holding off an attempt by the administration to eliminate coverage under the URA for persons displaced by programs in which the federal government has

experience has indicated that the proposed amendments may not be sufficient to cover urban displacement indirectly caused by federal programs established after the passage of the URA.

Plaintiffs in *Young v. Harris* pursued their claim for URA assistance on the theory that the Missouri redevelopment corporation causing their displacement was a "state agency," within the terms of Section 101(3) of the URA, receiving federal financial assistance in the form of CDBG funds.[97] While the court decided the case by finding that the corporation was not a state agency, language in the opinion suggests the court would be likely to conclude that CDBG money, allocated by the municipal recipient in support of a redevelopment project, is for a project distinct from that of the redevelopment causing displacement. In *Young*, the CDBG funds were used for street, park, lighting and similar improvements termed "normal municipal improvements" by the court.[98]

If this construction is permitted by the language of the URA, given the great flexibility allowed in the expenditure of CDBG money, projects could be structured so as to receive maximum benefit from CDBG funds, yet avoid the requirements of the URA. Packages of various types of indirect federal subsidies, such as CDBG funds, are necessary in many cases to make urban redevelopment projects feasible. The availability of public funds often is the *sine qua non* of major urban redevelopment efforts. Though redevelopment project promoters often are private entities, many projects would not be undertaken without the cooperation and contribution of public agencies, both state and federal. One project may involve the coordination of city, state, and federal agencies and funds.

An example of public-private partnership is the redevelopment project in *Young*. This project had been benefited by CDBG funds spent by the City of St. Louis for improvements in the area pursuant to a contract between the developer and the city.[99] When the plan for the area was approved by the city's legislative body, a contract was executed in which the city agreed to undertake a number of public improvements as conditions precedent to the developer's

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"no direct responsibility with respect to specific site or project approval decisions." *Id.* at 6.

See generally Note, *The Uniform Relocation Act: Eligibility Requirements for Relocation Benefits —*Young v. Harris, 19 URB. L. ANN. 207 (1979) (proposing that Congress adopt one or more of three alternative approaches: 1) redefine federal assistance to include mortgages and guarantees; 2) redefine "displaced persons;" 3) change "undertaken by a federal agency" to "undertaken or authorized by a federal agency").

97. 599 F.2d 870 (8th Cir.), *cert. denied*, 444 U.S. 993 (1979).

98. *Id.* at 874.

99. *Id.* at 874 n.7 (citing City of St. Louis, Ordinance 57217 (June 22, 1976)).

obligations to proceed with the project. The court in *Young* concluded that the city's agreement with the developer did not render the project a joint undertaking and that "financial assistance for municipal assistance cannot necessarily be equated with financial assistance to the private redevelopment project."[100]

The *Young* opinion raises a serious question as to whether the proposed amendments will be sufficient to cover the type of sophisticated urban redevelopment activities now taking place. Additional language should be added to include federal assistance channelled through local and state agencies for public activities that support and, at least indirectly, benefit the redevelopment activity that causes displacement.

Second, the responsibility of relocation should be apportioned between the developer and the assisting governmental entity. Section 210 of the URA,[101] relating to requirements for relocation payments in federally assisted programs, should be amended to apportion the responsibility for the costs of relocation between the developer and the governmental entity assisting the developer. Related to the question of funding is the issue of responsibility for providing the benefits set out in sections 202 through 205.[102] As the URA now reads, section 210, relating to the relocation assistance for federally financed state agency projects, requires that the state agency provide all the enumerated benefits of the URA.[103] While adding a major state law alternative permitting states to opt out from under federal supervision, the URAA do not significantly alter this requirement.[104] If the URA as amended is read consistently with its present meaning, it appears that a developer who, in undertaking a redevelopment project, becomes a "displacing agency" would be solely responsible for providing relocation payments and administrative advisory assistance.[105] Of course, the total amount of relocation payments required by sections 202 through 204 will vary depending upon a locality's market costs.[106]

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100. *Id.* at 878.

101. 42 U.S.C. § 4630 (1976).

102. *Id.* §§ 4622-4625.

103. *Id.* § 4630.

104. URRA, *supra* note 4, § 207(a) (amending section 210 of URA, 42 U.S.C. § 4630).

105. The URA attempts to soften the blow of this requirement by providing that the costs to a displacing agency of providing relocation benefits become program costs eligible for federal financial assistance. However, to a developer straining to establish project feasibility by piecing together equity syndication, first mortgage loans, second mortgage "gap" financing and CDBG grants, the prospect of adding even one or two percent, let alone 11%, to the development costs can be extremely disquieting. *See supra* note 94 and accompanying text.

106. As mentioned *supra* note 77, it was not possible, in conversations with persons involved with urban redevelopment in the St. Louis area, to determine accurate cost

In actual practice, most urban rehabilitation redevelopment efforts benefit from considerable public involvement although the prime mover—the project planner —is a private entity.[107] For this reason it would be more equitable to devise a method of apportioning relocation costs rather than placing them totally on the private developer. The role of the local and federal public authorities in a project, as well as that of the private entity, should be recognized.

Several alternatives to placing the total relocation burden on the developer may be considered. First, the developer could be required to share a percentage of the costs based on his receipt of federal funds. This alternative would encourage planning to minimize displacement of redevelopment area residents.[108] Second, the responsibility for relocation assistance could be placed on the local recipient of federal funds. The responsible agent would vary depending upon the source of federal funds. As CDBG funds are received by municipalities, the city would be the responsible agent for displacement caused indirectly or directly by the expenditure of CDBG money.[109] This alternative has an additional benefit in that CDBG funds may be used for relocation expenses. Last, the municipality could be designated the responsible party as it is in the best position to coordinate redevelopment displacement with replacement housing construction or rehabilitation. The municipality would have available CDBG funds to finance relocation costs, as well as other federal funds designated for low-income housing.[110]

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estimates of the applicability of these benefits to private urban redevelopment projects. However, concern was expressed about the suggestion that the total burden of relocation benefits be shifted to the developer. It was felt that the private sector will not take the total burden of providing relocation benefits because costs would be prohibitive and because developers would refuse to become "social workers."

107. A national survey conducted by the General Accounting Office reported that 98% of the communities responding to the survey used CDBG funds to assist single-family, owner-occupied rehabilitation efforts, and about 60% assisted multiple-dwelling rental rehabilitation projects. BLOCK GRANTS, *supra* note 47, at 72. In the 1981-82 fiscal year, communities responding to the survey (424) reported that approximately 35% of CDBG funds were used to support housing activities. *Id.* at 48.

108. Of course, it also could encourage planning to minimize use of federal funds.

109. The drawback is that other worthwhile programs would suffer. The responsibility for making this choice is one that most local housing officials do not want, particularly if federal funding for housing continues to decrease. *See* BLOCK GRANTS, *supra* note 47, at 74.

110. A HUD report identifies 12 innovative grants awarded to local governments for creative anti-displacement activities: The 12 localities and their projects are:

— *Baltimore, Maryland* is providing low- and moderate-income residents with homeownership and cooperative housing opportunities through a nonprofit real estate corporation as a vehicle for "intervention buying;"

— *Brookline, Massachusetts* has established an equity transfer assistance program to assist low- and moderate-income households to purchase their apartment units which are

Third, the question of *when* a person will be entitled to relocation benefits should be addressed. The URAA definition of "displaced person" adds tenants who move "as a direct result of rehabilitation or demolition"[111] and tenants who "will be permanently displaced as a direct result of a program or project . . . ."[112] The subsection, however, does not give any clear reference as to when a person will be entitled to the URA's benefits. Nor is the timing issue covered in any other section. This issue is very important to persons who reasonably can anticipate dislocation either immediately,

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undergoing condominium conversion. A household counseling component provides additional assistance;

- *Charlottesville, Virginia* has developed a program of deferred and short-term revolving loans for home purchase and rehabilitation, as well as housing counseling and temporary relocation assistance, to enable low-income families to remain in the 10th and Page neighborhood;
- *Columbia, South Carolina* is assisting low-income residents to remain in neighborhoods through the conversion of 18 houses into at least 42 smaller, more affordable units. No-interest, deferred payment loans will be used for the rehabilitation. The units will be kept affordable through the use of the HUD Section 8 Moderate Rehabilitation Program;
- *Denver, Colorado* is combating displacement in the city and county by the use of interim financing, mortgage payment assistance, referral service and public education;
- *Fairfax County, Virginia* has undertaken the improvement of the Woodley-Nightingale Mobile Home Park, which is slated for reconstruction and expansion under a city redevelopment plan. Despite numerous deficiencies, the park is, for many of its residents, the only feasible and affordable housing alternative within Fairfax County. The plan will improve housing conditions in the park, reduce overcrowding and provide residents with the opportunity to purchase their mobile homes and share in the ownership of the mobile home park on a cooperative basis;
- *King County, Washington* is purchasing condominium units for rental to low-income, elderly households facing displacement as a result of the conversion of their apartments to condominiums;
- *Los Angeles, California* is converting an industrial building into 150 units of transitional housing for displaced persons and homeless indigents in the downtown central business district redevelopment project area;
- *Minneapolis, Minnesota* is using CDBG funds to acquire an rehabilitate 104 vacant and/or absentee owned single, duplex or multifamily units for rental and/or resale to low- and moderate-income families to minimize displacement in the Phillips Neighborhood Strategy area;
- *Santa Barbara, California* is taking steps to acquire and rehabilitate a 13-unit complex that will be converted to a model limited-equity housing cooperative. The project includes a down payment loan fund to assist individual low- and moderate-income households to join the cooperative;
- *Seattle, Washington* is rehabilitating a vacant three-story hotel for use of the second and third floors as permanent, single-room dwellings for low-income persons while the first floor is devoted to commercial purposes;
- *Washington, D.C.* is using its grant to assist low-income tenants and tenant associations to exercise their "first right to purchase" their present housing under the city's Rental Housing Act.

RESIDENTIAL DISPLACEMENT, *supra* note 8, at 67-68.

111. URAA, *supra* note 4, § 101(d).

112. *Id.*

because of their location in a "redevelopment" or "blighted" area, or in the later phases of a long-term redevelopment plan. Liberalizing the timing question to provide benefits to those who do not choose to wait for actual acquisition or lease termination would permit long-term planning by such persons and would prevent inequities inherent in the present system. The long time lag between initial project proposals and actual acquisition may result in depreciation of property values and lost opportunities to relocate to desirable areas because the necessary funds cannot be obtained.[113] This issue might be covered best in an additional subsection to section 101.

Displacement can be deemed to have occurred at several different times in the life of a redevelopment project before the actual acquisition of the property or lease termination. For example, when an area is declared to be a redevelopment area, or declared "blighted"[114] as that term is used in Missouri, there are immediate adverse economic effects on property owners in the area. Because the future of the area is uncertain, property values and investments are frozen "as is." The result often is a substantial depreciation in property values. Recognition of this event as a displacement occurrence would compensate property owners for their loss, but the effects of such a broad definition would be difficult to measure and expensive.[115]

Displacement also can be said to occur when a plan for the area which contemplates displacement is approved formally by the

113. While the HUD report concluded that "no single type of change serves as the most reliable indicator of the start of reinvestment," RESIDENTIAL DISPLACEMENT, *supra* note 8, at 12, a decision by a local government to declare an area blighted can trigger a number of reinvestment activities with displacement causing potential. *See, e.g.*, MO. REV. STAT. § 353.110 to 353.130 (1978) (authorizing local governments to delegate power of eminent domain and to grant tax abatement to urban redevelopment corporations who agree to redevelop blighted areas).

As the URA now stands, the acquisition requirement defines the timing of relocation coverage. In Lowell v. Secretary of HUD, 446 F. Supp. 859, 863 (N.D. Cal. 1977), owners of businesses that relocated in anticipation of a proposed relocation project were denied benefits because they acted prior to the execution of the contract and budget approval. *See also* Messer v. Virgin Islands Urban Renewal Bd., 623 F.2d 303 (3d Cir. 1980).

114. MO. REV. STAT. § 353.020(2) (1978) (defining "blighted area").

115. This problem is the heart of the "condemnation blight" issue. In an eminent domain case, compensation is to be paid as of the date of taking. But if there are lengthy delays in the planning process, property values may drop substantially before the actual transfer of ownership occurs. Most courts have been unreceptive to the argument that a "taking" should be recognized earlier in the process. *See, e.g.*, City of Buffalo v. J.W. Clement Co., 28 N.Y.2d 241, 321 N.Y.S. 2d 345, 269 N.E. 2d 895 (1971), Annot., 37 A.L.R. 3D 127 (1971). But an increasing number have been sympathetic to the argument that the value of the property on which compensation is based should be back-dated to some point earlier in the process. *See, e.g.*, Lange v. State, 86 Wash. 2d 585, 547 P.2d 282 (1976). For a plea for legislative response to the problem, see State ex rel. Washington University Medical Center Redev. Corp. v. Gaertner, 626 S.W.2d 373 (Mo. 1982).

necessary authorities.[116] Those who will be displaced would not have to wait until the acquisition or lease termination to begin to plan their move. Once displacement has "occurred," the requisite benefits of the URA would be forthcoming. However, this suggested approach would generate more expenses at the onset of a long-term project that, under the present system, may be phased in along with direct project costs.

Last, displacement could be deemed to have occurred once the developer begins to assemble the property necessary for the project.[117] This alternative would prevent a property owner from suffering the full effects of property depreciation because of acquisition of surrounding property and would prevent a selective acquisition process that would delay relocation funds and deny planning opportunities to potential displacees.

The question of timing goes to the heart of a relocation assistance policy designed to prevent a small segment of the populace from bearing a disproportionate share of the burdens of urban redevelopment. Because of its importance, the timing question should be addressed in legislation and not left to regulations and judicial decisions.

In sum, the URAA represent a substantial improvement and for that reason deserve support. However, without attention to the points addressed in this Article, the congressional goal of assuring that no person "should be made to bear an unfair share of the cost of Federal or federally assisted programs or projects" still may be unachieved.[118]

While the URA was not affected directly by the 1983 amendments to the United States Housing Act of 1937, the recognition of the displacement that takes effect as a result of CDBG-funded development activities is a welcome step. Taken together, the requirements to develop plans to minimize displacement and to assist displaced persons, the requirements to provide reasonable benefits to persons involuntarily and permanently displaced by CDBG-

116. The Missouri Urban Redevelopment Corporation law authorizes cities to delegate substantial police powers (eminent domain, tax abatement) to urban redevelopment corporations upon approval by the city of a development plan. Mo. REV. STAT. § 353.060 (Supp. 1982).

117. Of course, not all parcels can be acquired at the same time. Once the process begins, should property owners have to wait for the inevitable "knock on the door"? As with eminent domain cases, focus on the formalities of actual acquisition, including the date, to trigger relocation assistance may impose undue hardship on property owners who have no role in the redevelopment plan. For examples of losses from condemnation that are not covered by standard "just compensation" doctrines, see F. BOSSELMAN, M. NEWSOM & C. WEAVER, NEW APPROACHES TO COMPENSATION FOR RESIDENTIAL TAKINGS (1970).

118. S. REP. No. 71, 98th Cong., 1st Sess. 2 (1983).

funded property acquisitions and rehabilitation, and the prohibition of rehabilitation grant activity from causing involuntary displacement of very-low-income families by families who are not very-low-income offer a framework for controlling the displacement problem, at least with respect to communities taking advantage of the housing and CDBG funds available from the federal government.[119]

Reliance on Congress to deal effectively with the problem of displacement, however, in many respects misses the point. When the CDBG program was first enacted in 1974, one of the major hopes of its sponsors was that the decision-making process would be shifted from Washington to those areas most directly affected by the expenditures.[120] Along with the shift in decision-making power went the responsibility to exercise that decision-making power wisely. The controversy over displacement that has developed in the last ten years is in many respects a controversy over the wisdom of decisions made by local communities in their use of federal funds to carry out local development projects of one type or another.[121]

IV. A *MOUNT LAUREL* PERSPECTIVE

A total reliance on congressional intervention accepts the notion that the decision-making process at the local level does not include the responsibility to make the difficult choices that are involved in the process of balancing the social costs and benefits of a redevelopment project. It becomes too easy for a community to say, under the pressures of conflicting interests, that it does not have the responsibility to make a displacement/relocation benefits decision and that this decision is made in Washington and, therefore, the only thing the community needs to concern itself with is the narrow question whether the language of the law requires relocation benefits to be paid on this particular project or that particular project. This mentality has led to a focus over the last ten years on interpretation of the URA, rather than on the appropriate responsibility for displacement as a result of publicly supported private redevelopment. The results were predictable but unpleasant, at least insofar

119. *See supra* notes 50 and 73 and accompanying text.

120. For a discussion of the legislative debate on this point, see Salsich, *Community Development—Some Reflections on the Latest Federal Initiative*, 19 ST. LOUIS U.L.J. 293, 303-05 (1975).

121. *Id.* at 313-23. On the success of and the policy questions surrounding the decentralization of control in the CDBG program, see Note, *National Problems and Local Control: Tension in Title I of the Housing and Community Development Act of 1974*, 13 COLUM. J.L. & SOC. PROBS. 409 (1977) (discussing the inconsistencies inherent in the goals of the statute).

as displaced persons are concerned, because of the fact that the URA was enacted with a different type of program in mind.[122]

Acceptance of decision-making power requires acceptance of the responsibility for the predictable effects of the exercise of that power.[123] As discussed above, one of the predictable effects of the development of major redevelopment and rehabilitation programs is the displacement of existing residents.[124] Congress has been prodding the cities to accept this responsibility.[125] For several years CDBG funds have been available for relocation benefits but have not been used to any great extent.[126] The 1983 housing amendments are likely to force cities to allocate a significantly higher portion of their CDBG funds for relocation benefits than they have in the past.[127]

Much of the discussion about responsibility for displacement tends to focus on the fact that Congress, and to a limited extent the states,[128] have enacted statutes specifically identifying situations in which relocation benefits and other activities to assist displacees will be provided. The legislation to date does not face up completely to the particular problems that individuals face as a result of the displacement that occurs when sophisticated techniques such as tax abatement, delegation of the power of eminent domain to private redevelopment corporations, use of CDBG funds to write down the cost of rehabilitation property, condominium conversions, and lack of enforcement or overly strict enforcement of housing codes take

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122. The Supreme Court recognized the dilemma in its comment that the statutory language focusing on acquisition of written orders to vacate by an acquiring agency for a program or project is susceptible to two different constructions. Alexander v. HUD, 441 U.S. 39, 49 (1979). It accepted a narrow interpretation because of the declared congressional purpose, the legislative history, and the structure of the URA as a whole. *Id.* at 49-53, 53-59, 60-62.

123. As the GAO Survey reported, local housing officials have not been overly anxious to accept additional responsibilitity in the face of declining federal assistance. BLOCK GRANTS, *supra* note 47, at 74.

124. While the HUD reports characterize the fact of reinvestment displacement as "ironic," DISPLACEMENT REPORT, *supra* note 9, at 3, and the reinvestment process itself as "not . . . orderly or predictable." RESIDENTIAL DISPLACEMENT, *supra* note 8, at 22, the evidence reviewed by HUD makes a persuasive case that displacement is now a predictable by-product of urban reinvestment. What remains questionable is the amount of displacement that actually occurs as a result of a particular reinvestment activity. *Id.* at 23-37.

125. *See supra* note 48.

126. *See supra* note 47.

127. *See supra* notes 47-49 and accompanying text.

128. A major thrust of the HUD reports, *supra* notes 8 and 9, and the proposed amendments to the URA, *supra* note 4, is the encouragement of states to enact comprehensive laws allocating responsibility for displacement. Section 207 of URAA, *supra* note 4 (amending section 210 of URA, 42 U.S.C. § 4630), permits states to opt out from under federal supervision of displacement activities by enacting state laws that will "accomplish the policies and objectives" of the URA.

place.[129] These and other examples that can be developed illustrate situations in which state and local governments are making extensive use of the police power to change the characteristics of particular neighborhoods.

In most situations, a traditional view of public purpose tends to focus on the fact that the community at large will receive the benefit of a "better community" or will have "potentially harmful" situations removed from the community.[130] Some of the more insightful

129. *See supra* notes 17-25 and accompanying text.

130. The fifth amendment requires that no property be taken for "public use without just compensation." U.S. CONST., amend. V. The law of eminent domain, then, is limited constitutionally by the definition of "public use." Judicial interpretation initally limited governmental taking to property that would be put to actual use by the public—hence comes the "public use" test. *See* Nichols, *The Meaning of Public Use in the Law of Eminent Domain*, 20 B.U.L. REV. 615 (1940); *see also* Note, Poletown Neighborhood Council v. City of Detroit: *Economic Instability, Relativism and the Eminent Domain Public Use Limitation*, 24 J. URB. & CONTEMP. LAW 215, 221 (1983).

In 1954, the Supreme Court in *Berman v. Parker* addressed the constitutionality of a public taking for private use in the condemnation of an area for subsequent private redevelopment. 348 U.S. 26, 28 (1954). The blighted area contained viable commercial properties. Thus the redevelopment project was designed not to rid the area of the evils of slum housing but, as the petitioner contended, to create a "better balanced, more attractive community." *Id.* at 31. The court addressed the question of public use as a police power action:

> The definition is essentially the product of legislative determinations addressed to the purposes of government. . . . Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs . . . . This principle admits of no exception merely because the power of eminent domain is involved.

Id. at 32 (citations omitted). The Court consequentially expanded the traditional public use test to a public purpose test and tied the judiciary's hands: "The role of the judiciary in determining whether that power [of eminent domain] is being exercised for a public purpose is an extremely narrow one." *Id.* (citations omitted).

Thus the Supreme Court allowed the public taking of private property for later use by a private agency, testing the "public use" constitutional question against a more liberal public purpose standard. *See* McGee, *Urban Renewal in the Crucible of Judicial Review*, 56 VA. L. REV. 826 (1970). The "public purpose" concept in eminent domain recently has been expanded to include a private corporation's promise of economic benefit. In financially troubled Detroit a 465-acre residential area was declared blighted for the employment promise that a GM plant offered on that location. Poletown Neighborhood Council v. City of Detroit, 410 Mich. 616, 304 N.W.2d 455 (1981); *see* Comment, Poletown Neighborhood Council v. City of Detroit: *Economic Instability, Relativism and the Eminent Domain Public Use Limitation*, 24 WASH. U.J. URB. & CONTEMP. L. 215 (1983); *see also* Hawaii Housing Auth. v. Midkiff, 104 S.Ct. 2321, 2329 (1984) (finding public use requirement "coterminous with the scope of a sovereign's police powers"); Note, *Public Use, Private Use and Judicial Review in Eminent Domain*, 58 N.Y.U.L. REV. 409, 424-44, 444-55 (1983) (arguing that legislative decision-making at local level is entitled to less deference by judiciary than at higher levels because there is less public participation; advising that such local decision-making fits less comfortably into doctrine of separation of powers; concluding that courts should weigh constitutionality of enabling legislation in blight redevelopment actions with stricter scrutiny than presently used; arguing court should use a means test against public purpose requirement in each factual determination).

analyses recognize that the use of the police power to remove harmful conditions or to prevent the spread of harmful conditions can result in displacement. As early as 1937, the New York Court of Appeals, in upholding application of a local housing code provision requiring alterations to existing structures as a reasonable exercise of the police power, noted in passing that the result may be the closing of many tenement houses and the eviction of the tenants.[131] The court stated: "Argument may be made that before the Legislature causes the closing of tenement houses because they are unfit for habitation, provision should be made for better housing elsewhere for the evicted tenant."[132] But it simply passed the argument to the legislature with the standard refrain that this is a matter for the legislature and not the court.[133]

The legislature typically takes the position that a balance has to be struck.[134] As long as the displacement was not a visible problem

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For an opinion offering a conceptual framework in support of present judicial interpretations of "takings" and the public use requirements vis-a-vis regulations for the public welfare, see Humbach, *A Unifying Theory for Just Compensation Cases: Takings, Regulations & Public Use*, 34 RUTGERS L. REV. 253 (1982).

A more recent development in the law of eminent domain has been the creation of municipal redevelopment corporations. *See* MO. REV. STAT. §§ 353.010-.180 (1978). In some instances these corporations are often awarded the power of eminent domain without many of the constitutional or legal constraints that government agencies would be subject to. Under *Young v. Harris*, for example, a municipal redevelopment corporation with eminent domain powers was not required to provide relocation benefits under the URA as a state agency. *See* 599 F.2d 870, 877 (8th Cir.), *cert. denied*, 444 U.S. 993 (1979).

Municipal corporations generally have been provided much freedom in their control over "blighted" areas. For a case study and history of such corporations, see Note, *Municipal Corporations: Constitutionality of Oklahoma's Central Business District Redevelopment Act*, 35 OKLA. L. REV. 821 (1982).

Another example of municipal land-use regulation under the police power is zoning for segregated uses. The Supreme Court addressed a due process challenge to a zoning decision in a very early case. The Court expressed its perception of the need for an evolving definition of public welfare: "[W]hile the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation." Village of Euclid v. Amber Realty Co., 272 U.S. 365, 387 (1926).

Regulation of land use based on aesthetics has been accepted as a valid exercise of the police power and entitled to the proper legislative presumption. Courts sometimes use a means-end test to see if the intended good measures up to the harm caused. *See* Bufford, *Beyond the Eye of the Beholder: A New Majority of Jurisdictions Authorize Aesthetic Regulation*, 48 UMKC L. REV. 125 (1980); Note, State v. Jones; *Aesthetic Regulation — From Junkyards to Residences* 61 N.C.L. REV. 942 (1983); Note, 18 WAKE FOREST L. REV. 1167 (1982).

131. Adamec v. Post, 273 N.Y. 250, 7 N.E.2d 120 (1937).

132. *Id.* at 261, 7 N.E.2d at 125.

133. *Id.*

134. The URAA Committee Report reflects this attitude with the observation that while the amendments "will not result in the compensation of persons displaced . . . to the satisfaction of all parties concerned . . . [the amendments] represent a fair and equitable balancing." S. REP. No. 71, 98th Cong., 1st Sess. 7 (1983).

affecting a large number of people or a result of public acquisitional efforts, which would raise questions of just compensation and due process under the fifth amendment, a balancing of public and private interests would take place. In those situations where the public interests outweigh the private interests, most of the time in housing redevelopment activities, the public interest would prevail.[135]

Because the people who are displaced typically are disorganized, poor, depressed, and scattered, it has been extremely difficult if not impossible for them to articulate effectively either in court or in the legislature the enormity of the burden they are being asked to shoulder.[136]

Recent cases in New Jersey suggest an alternative approach to the question of responsibility for displacement in private redevelopment activities. In *Mount Laurel I*,[137] the Supreme Court of New Jersey held that a zoning ordinance that contravened the general welfare violated the state constitutional requirements of substantive due process and equal protection.[138] The court articulated the principle of "fair share" housing and concluded that developing communities could not use their delegated police power to regulate land use in a manner that excluded housing for low-income persons. The constitutional obligation would be satisfied by "affirmatively affording a realistic opportunity" for the construction of a fair share of the present and prospective regional need for low- and moderate-income housing.[139] In *Mount Laurel II*[140] the court returned to the original case after several intervening cases had fleshed out the law but had failed to develop an effective remedy or means of administering the doctrine.[141] In an eloquent opinion designed to "put some

135. *See supra* note 130.

136. The URAA Committee Report reports an impressive consensus of support for URAA, but none of the individuals and agencies identified as supporters has any direct connection with the particular interests of low income and minority groups. S. REP. No. 71, 98th Cong., 1st Sess. 5-6 (1983).

137. Southern Burlington County NAACP v. Township of Mount Laurel, 67 N.J. 151, 336 A.2d 713 (1975).

138. N.J. CONST. art. I, § 1. While the court focused on state constitutional due process and equal protection issues, the main thrust of the case centered on use of the police power. 67 N.J. at 174-80, 336 A.2d at 725-28. A concurring judge would have reached the same result by interpretation of the terms "general welfare in the zoning enabling statute." *Id.* at 193, 336 A.2d at 735 (Mountain, J., concurring) (construing N.J. STAT. ANN. § 40:55-32 (West 1979)).

139. *Id.* at 187-88, 336 A.2d at 731-32.

140. Southern Burlington County NAACP v. Township of Mount Laurel 92 N.J. 158, 456 A.2d 390 (1983).

141. *See, e.g.*, Home Builders League v. Township of Berlin, 81 N.J. 127, 405 A.2d 381 (1979); Pascack Ass'n., Ltd. v. Washington Township, 74 N.J. 470, 379 A.2d 6 (1977); Fobe Associates v. Demarest, 74 N.J. 519, 379 A.2d 31 (1977); Oakwood at Madison, Inc. v. Township of Madison, 72 N.J. 481, 371 A.2d 1192 (1977).

steel into that doctrine''[142] and to emphasize that the *Mount Laurel* obligation is to provide a ''realistic opportunity for housing, not litigation,''[143] the court reaffirmed the fair share principle; concluded that it was applicable to all communities, whether developing or not, containing ''growth areas'' as shown on the concept maps of the New Jersey State Development Guide Plan; and held that municipalities' affirmative governmental obligation to provide a realistic opportunity for the construction of low- and moderate-income housing included the use of inclusionary devices, such as density bonuses and mandatory set-asides, as well as the elimination of unnecessary cost-producing land use requirements and restrictions.[144]

The *Mount Laurel* cases have contributed two main points to housing and land use control jurisprudence. First, there is a clear recognition that the concept of general welfare, on which zoning as well as all other exercises of the police power ultimately rest, includes ''proper provision for adequate housing of all categories of people.''[145] *Mount Laurel I* contained extensive discussion of the importance of housing to individuals and the rationale for concluding that the term ''general welfare'' is broad enough in today's society to embrace notions of adequate housing.[146] In *Mount Laurel II*, the court restated the constitutional principle as follows:

> [T]he State controls the use of land, *all* of the land. In exercising that control it cannot favor rich over poor. It cannot legislatively set aside dilapidated housing in urban ghettos for the poor and decent housing elsewhere for everyone else. The government that controls this land represents everyone. While the State may not have the ability to eliminate poverty, it cannot use that condition as the basis for imposing further disadvantages. And the same applies to the municipality, to which this control over land has been constitutionally delegated.[147]

Second, *Mount Laurel I* also recognized that certain planning and regulatory decisions will have an impact beyond the boundaries of the particular decision-maker's sphere of direct control. When the police power is delegated to local government, as in zoning, tax abatement and eminent domain, the sphere of direct control and

142. *Mount Laurel II*, 92 N.J. at 200, 456 A.2d at 410.
143. *Id.* at 352, 456 A.2d at 490.
144. *Id.* at 258-74, 456 A.2d at 441-50.
145. *Mount Laurel I*, 67 N.J. at 179, 336 A.2d at 727.
146. *Id.*
147. *Mount Laurel II*, 92 N.J. at 209, 456 A.2d at 415.

interest of the entity exercising the power is narrower than the sphere of control and interest of the delegating entity.[148] However, the justification for the ultimate use of the police power must relate to the general welfare of the people who are within the sphere of influence of the delegating agency. Thus, when the use of the police power will have an impact beyond the boundaries of the entity exercising the power, "the welfare of the state's citizens beyond the borders of the particular municipality cannot be disregarded and must be recognized and served."[149]

Mount Laurel II acknowledges this point by reviewing the relationship of suburban exclusionary zoning to the continuing disintegration of cities and concluding that "[z]oning ordinances that either encourage this process or ratify its results are not promoting our general welfare, they are destroying it."[150]

When those two propositions are applied to the problem of reinvestment displacement, the proper location for assumption of responsibility becomes clearer. Enough evidence has been gathered to establish that any decision by a local government to use the delegated police power to promote extensive reinvestment activities is going to affect the lives of those individuals in the target area, no matter how sensitive officials may be to meeting their specific needs.[151] As noted previously, if residents cannot afford the costs imposed on them by the reinvestment activity, the effect is likely to be a reduction or elimination of the shelter they have.[152] If that effect is not addressed, the welfare of these residents, who are citizens of the delegating entity, is not recognized and served.[153] This exercise of the police power in the particular instance, thus, would be questionable.

The direct impact of police-power-induced displacement is felt by the affected residents who become excluded from their community. As citizens of the delegating state, their welfare has not received the attention it deserves. In summarizing the rulings of *Mount Laurel I* and its progeny, the court in *Mount Laurel II* noted that every municipality had an obligation to its resident poor and

148. For discussion of the problem of externalities and spheres of control, see T. KUHN, PUBLIC ENTERPRISE ECONOMICS AND TRANSPORT PROBLEMS 8 (1962); D. MANDELKER & R. CUNNINGHAM, PLANNING AND CONTROL OF LAND DEVELOPMENT 130-34 (1979); Dunham, *A Legal and Economic Basis for City Planning*, 58 COLUM. L. REV. 650 (1958).

149. *Mount Laurel I*, 67 N.J. at 177, 336 A.2d at 726.

150. *Mount Laurel II*, 92 N.J. at 211 n.5, 456 A.2d at 416, n.5.

151. *See supra* notes 8-14 and accompanying text.

152. *See supra* note 23.

153. *Mount Laurel I*, 67 N.J. at 177, 336 A.2d at 726.

that the "zoning power is no more abused by keeping out the region's poor than by forcing out the resident poor."[154]

The social costs of displacement are not confined to the displacees. Persons not displaced, both inside and outside the boundaries of the delegated agency, may become caught up in the bitterness and frustrations engendered by public controversies over displacement.[155] All taxpayers are affected by public expenditures for social welfare programs to repair the damage caused by displacement. The welfare of these individuals also goes unrecognized and unserved when predictable reinvestment displacement goes unattended.[156]

The essence of the *Mount Laurel* jurisprudence is that the effect of a local land use decision must be considered, particularly when the effect may be to retard housing opportunities of persons who otherwise may be expected to reside in that community. Reinvestment displacement raises the same question as exclusionary zoning although the view is from a different angle. Displacement occurs in communities often because the community does not take into account the impact that a particular exercise of the police power may have on the people who are displaced.[157] Because the exercise of the police power depends for its validity on the requirement that it promote public health, safety, morals or the general welfare, and because "proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare,"[158] it follows that a community should be required to take into account the impact of a decision to exercise the police power on the long-term residents who may be disproportionately affected by that decision. While in most private redevelopment activities the zoning power is not used, zoning is simply one manifestation of the police power. Other uses of the police power such as code enforcement, the granting of tax abatement and eminent domain to private redevelopment corporations, the marshalling of resources and the allocation of subsidies may have the same effect of forcing out the resident poor.[159]

A major limitation to *Mount Laurel I* is that it was applied only

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154. *Mount Laurel II*, 92 N.J. at 214, 456 A.2d at 418.

155. The delegated agency may be the city promoting the reinvestment activity or a private entity such as a development corporation that has been delegated a particular police power, such as eminent domain, for use in a limited area of the city.

156. *Mount Laurel II*, 92 N.J. at 211 n.5, 456 A.2d at 416 n.5.

157. *See supra* note 124.

158. *Mount Laurel I*, 67 N.J. at 179, 336 A.2d at 727.

159. *See supra* notes 17-25 and accompanying text.

to developing municipalities,[160] although this limitation has now been expanded to any municipality that has been designated, either wholly or in part, as within a "growth area" of the state.[161] The growth area concept is based on the New Jersey State Development Guide Plan[162] and represents a clear attempt to establish a state policy towards future growth. At first glance, the developing municipality /growth area limitation would appear to make the *Mount Laurel* rule inapplicable to urban reinvestment problems. However, the premise of the developing municipality/growth area concept is that these areas are likely to be the most attractive areas to developers and their clientele, and, as such, the municipalities should not be permitted to disregard the interests of citizens of the state who may not be able to compete in an unregulated marketplace or one that is skewed in favor of higher income persons.[163]

It is now clear that urban reinvestment can produce the same type of exclusionary pressures as the suburban zoning practices challenged in *Mount Laurel I* and *II*. In both situations, the exclusionary effects began as unintended by-products of laudable policies—development of the suburbs and redevelopment of the central cities. In both situations, once the by-product becomes evident, it is incumbent upon the state and its political subdivisions to take steps to ameliorate the exclusionary effects of particular uses of the police power. In a very real sense, a city that is actively encouraging reinvestment is a developing municipality or a growth area. In the words of the Supreme Court of New Jersey in *Mount Laurel II*, "[I]f sound planning of an area allows the rich and middle class to live there, it must also realistically and practically allow the poor."[164]

Blighted neighborhoods are cancers on the city landscape. If left unattended, they will destroy the city. The police power is the source of much of the current medicine being administered. Sophisticated combinations of development rights control, code enforcement, emi-

160. Pascack Ass'n, Ltd. v. Washington Township, 74 N.J. 470, 477, 379 A.2d 6, 9 (1977).

161. *Mount Laurel II*, 92 N.J. at 215, 456 A.2d at 418.

162. The State Development Guide Plan (May 1980) is intended to be a statewide blueprint for future development mandated by N.J. STAT. ANN. § 13:1B-15.52 (West 1979). For a discussion of the plan and its relation to the *Mount Laurel* cases, see Mandelker, *Fair Share and Set-Aside Issues*, 35 LAND USE L. & ZONING DIG. 7 (1983); Rose, *The Mount Laurel II Decision: Is It Based on Wishful Thinking?*, 12 REAL EST. L.J. 115, 129-30 (1983).

163. A submarket in which single family, large-lot residential zoning predominates is skewed because lower-priced houses are not permitted in that submarket. See *Mount Laurel II*, 92 N.J. at 205 n.3, 456 A.2d at 413 n. 3 for a citation of the cases and the literature.

164. *Mount Laurel II*, 92 N.J. at 211, 456 A.2d at 416.

nent domain, tax abatement, tax increment and tax-exempt bond financing developed by cities to encourage private reinvestment involve extensive use of the police power. The medicine is effective, and for that reason its continued use should be encouraged. However, it has potent and predictable side effects—displacement of long-term residents who are poor and, often, members of minority groups. The limitation on the police power, that it be used only to serve the general welfare, requires a city contemplating the use of this medicine to take those predictable side effects into account.

V. A Possible Approach

After one concludes that cities have an obligation to take into account the effects of their reinvestment activities, the question that poses perhaps the most difficulty is the one of remedy. The problem of translating a requirement that a city take into account the needs of its resident poor into a program that will do this while at the same time stimulating the necessary resources to revitalize deteriorating neighborhoods is an extremely difficult one that requires an almost Solomon-like wisdom.[165]

One starting point in developing a remedy would be an examination of the premise of current redevelopment activity. The conventional wisdom is that property values have to be raised above minimum code standards to attract the type of persons who will stimulate revitalization.[166] Substantial rehabilitation of a neighborhood's housing stock raises property values, but it also forces up the cost of that housing and contributes to the ultimate displacement of long-term residents who cannot afford the increased costs.[167] Often a project may be started as one designed to assist long-term residents, but because of the underlying premise of higher property standards, the consequent activities result in higher-cost housing than those residents can afford. To what extent is it really necessary to impose what may amount to middle- and upper-class housing values on long-term residents who cannot afford to pay for the costs of achieving those values? The values themselves may well be recognized as a proper goal justifying the use of the police power,[168]

165. This requirement was articulated by the court in *Mount Laurel II*, 92 N.J. at 214, 456 A.2d at 418.

166. *See, e.g.*, Report of the National Commission on Urban Problems, Building the American City 273-93 (1969).

167. *See, e.g.*, Rental Rehabilitation, *supra* note 8, at 20-22.

168. "The concept of the public welfare is broad and inclusive. . . . It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled." Berman v. Parker, 348 U.S. 26, 33 (1954) (citations omitted).

but, when the effect of the imposition of those values will be loss of the housing that long-term residents have had, the city must make a choice.

The *Mount Laurel* rule requires that, in the making of the choice, the interest of the current residents be taken into account. Two approaches suggest themselves: 1) use of CDBG or other community development funds to subsidize the increased cost so that the residents can remain,[169] or 2) giving up the higher property standards and accepting a rehabilitation program that brings the units up to code standards but no higher.[170]

When one considers the responsibilities of public agencies that delegate substantial powers to private organizations to encourage reinvestment in deteriorating neighborhoods, a number of questions arise. Perhaps the major moral issue is the basic question of whether it is morally acceptable for society to allow a poor person to be forced from his home in order to bring new investment and new people into a particular neighborhood. We have been doing that for at least forty years, but the question does not go away. The standard answer is in the affirmative, based on the notion that this displacement is simply the price of progress.[171] This practice raises the question whether someone should be responsible for ameliorating that price. Is this not a case where perhaps the public should share the price, either by scaling down the type of investment so that the poor person can remain in his or her home or by adequately compensating the person for what is being lost?

The question is faced in any public improvement that requires dislocation. Public acquisitions of land for public projects that involve displacement, such as highways, airports and museums, attempt to soften the blow by providing compensation from the public purse.[172] Highway development follows certain predictable paths. A location is chosen and a highway is built. The question normally is not whether to use moderate or substantial rehabilitation techniques or to build new highways; it is not how much concrete to put

169. Targeting of funds in this manner requires a sharper focus on activities that directly benefit low and moderate income persons, a requirement that provoked considerable debate and a compromise provision in the 1983 Housing Act. HURRA, *supra* note 2, § 101(a).

170. A GAO report advocates this approach. RENTAL REHABILITATION, *supra* note 8, at 17. Its influence is apparent in the limitation placed on the new rental rehabilitation grant program. HURRA, *supra* note 2, § 301.

171. In another context, Justice Holmes emphasized that "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 (1922).

172. This is the basic function of the URA. Its use may become more prevalent as efforts to rebuild the nation's infrastructure get underway. *See supra* note 17.

into the highway or whether or not the highway should be composed of asphalt or concrete. Rather, discretionary decisions that affect residents tend to center on the precise location of the highway, and most of the disputes involving displacement because of highways have centered on the particular location.[173]

Residential redevelopment is vastly different from highway construction at least with respect to the displacement question. The reason for the difference is the enormous range of choices available to the public entity sponsoring the redevelopment. Buildings can be left pretty much as they are, with extensive off-site improvements such as new street lights, curbs and gutters added to spruce up the neighborhood. Concentrated code enforcement emphasizing exterior, interior or both types of repairs can be undertaken.[174] Neighborhoods can be given major face lifts with substantial rehabilitation projects. Units can be demolished and replaced with new apartments, townhouses, duplexes, cooperatives, condominiums or single-family homes. Or, more than likely, some combination of these approaches can be chosen. Given that discretion, it is entirely possible that a particular area can be redeveloped with relocation as a major requirement or a very minimal part of the process. Of course, the process itself becomes more complicated if the redevelopment activity seeks to minimize relocation. One questions whether that complication is not also a "price of progress" that should be paid because of the serious effects that individuals who are forced to relocate will suffer.[175]

Developers engaged in residential redevelopment, particularly when they are working closely with local public agencies in situations in which there is some type of relocation plan in place, may disclaim responsibility for displacement in a number of situations, even under an active relocation plan. First, developers may profess no obligation to persons "not in good standing." This term can

173. *See, e.g.*, Citizens v. Volpe, 401 U.S. 402 (1971).

174. A major source of the discretion in neighborhood redevelopment is the development of the concept of reinvestment differential code enforcement. For a review of the issues raised by this technique, as well as the literature and case law, see D. MANDELKER, C. DAYE, O. HETZEL, J. KUSHNER, H. MCGEE & R. WASHBURN, HOUSING AND COMMUNITY DEVELOPMENT 378-97 (1981).

175. For an argument that the major issue in local discretion is procedural due process, see Comment, *Beyond the Taking Issue: Emerging Due Process Issues in Local Landmark Preservation Programs*, 10 FORDHAM URB. L.J. 441 (1981). The article discusses Historic Green Springs v. Bergland, 497 F. Supp. 839 (E.D. Va. 1980), in which the court, setting aside a historic landmark designation, stated, "Courts should require administrative officers to articulate the standards and principles that govern their discretionary decisions in as much detail as possible." *Id.* at 854 (quoting Environmental Defense Fund v. Ruckleshaus, 439 F.2d 584, 598 (D.C. Cir. 1971)).

cover a number of situations, but it usually refers to tenants who have fallen behind in their rental payments, squatters, and persons who may be occupying assisted housing under certifications issued to other persons, whether or not they are members of the same family.[176]

Second, responsibility also may be disclaimed where displacement is an indirect result of the rehabilitation effort. An example of this occurrence would be a project that succeeds in improving the general market value of the area so that owners of rental property may demand and receive considerably higher rents.[177]

A third type of question, which sometimes is subsumed under the other two and other times exists as a separate issue, involves so-called "undesirables."[178] Every neighborhood has individuals or families who, if their right to continued occupancy in that particular neighborhood were put to a vote of the neighbors, probably would face eviction. But American society does not function that way. The freedom of choice valued so highly in this country does not permit neighbors to vote someone out of a neighborhood. However, excessive use of the police power can produce the same result by imposing redevelopment standards that are impossible to meet or to pay for, or by simply condemning the property of an undesirable. The discretion that is inherent in current techniques makes it possible for "undesirables" to be forced out if someone decided to do that. There appears to be little or no empirical evidence to support a charge of manipulation of the police power to remove "undesirables," but one hears a lot of neighborhood talk indicating that kind of thing takes place.[179] If the police power is going to be exercised, particularly by private developers through delegation from the city, the city must choose its developers extremely carefully. The exercise of the police power must be supervised conscientiously by a public agency, and the people who are actually making the decisions must be sensitive to the question of legitimacy of the use of police power techniques to force removal of "undesirable people."

Fourth, developers also argue, and receive considerable support

176. The URAA recognize this concern by denying relocation assistance to otherwise eligible persons who are "in unlawful occupancy of the displacement dwelling." URAA, *supra* note 4, § 101(d)(6)(D).

177. *See, e.g.*, reports cited *supra* note 23.

178. One redeveloper characterized the problem of undesirables as follows: "Say there's a building with eight people sitting out front. They have no shirts on. They're drinking beer, and not working—just hanging out. What do you do if you come to look at an apartment to rent across the street? Would you rent it?" St. Louis Post-Dispatch, Nov. 21, 1983, at 7A, col. 1 (quoting Leon Strauss, President of Pantheon Corporation).

179. *See supra* note 44.

from public officials and residents in doing so, that once a development plan is in place all affected persons should contribute to the cost of improving the neighborhood. This argument concludes that it is "not fair" to allow some people to reap the benefits associated with reinvestment without themselves contributing through compliance with the redevelopment plan.[180] No one seriously argues with the basic proposition that all should contribute to the cost of improvement. However, a problem arises when the standards of the redevelopment plan are sufficiently high that compliance is beyond the resources of current residents. In that situation, application of the principle that all should contribute by fixing up their property and complying with the redevelopment plan inevitably will produce displacement. The question then arises as to whether or not the inevitability of displacement arising from a decision to adopt a plan of that magnitude requires the decision-makers to assume responsibility for the displacement that they are about to cause.

Lawrence Friedman points out two basic ways that slums have been, and continue to be, analyzed.[181] First, the *Social Cost* approach concludes that the cost imposed by the slums on society at large justifies use of the police power to promote the general welfare by removing the slums. Second, the *Welfare* approach argues that the cost imposed by the slums on the people who live in them justifies the expenditure of funds and the use of the police power to promote the general welfare of those individuals in that part of society.[182]

Friedman concludes that both approaches normally are used in reform movements to justify slum removal or improvement.[183] Neither approach focuses on the cost to people displaced by a particular decision, although the displacement issue is recognized at least implicitly in provisions of local housing codes that limit the code enforcement power to conditions dangerous to health and safety.[184] Removal of dangerous or unhealthy conditions may make displacement necessary. Simple logic dictates that public policy ought not to entertain a situation in which people are forced to be exposed to dangerous conditions simply because the alternative is displacement. In those cases, public efforts should be directed at helping

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180. A basis for this attitude may be found in the fact that individual property owners have little or no direct control over the externalities created by neighboring property owners. For a discussion of this problem, see D. MANDELKER, MANAGING OUR URBAN ENVIRONMENT 568-69 (2d ed. 1971). *See also supra* note 148.

181 L. Friedman, *supra* note 8, at 3-4, 7, 9-10.

182. *Id.*

183. *Id.*

184. *See, e.g., supra* note 18.

people displaced because of the condemnation of dangerous buildings find suitable alternative housing. In a number of communities emergency housing shelter programs have been established at least in part to deal with those persons.[185] Many of the federal housing programs started because of response to the plight of homeless people.[186]

Absent dangerous or unhealthful conditions in the housing stock, however, the *Mount Laurel* view of the general welfare standard sees little basis for justification of the tendency of cities and their agents, the urban redevelopers, to turn their backs on the plight of residents who cannot meet the costs of neighborhood reinvestment standards substantially in excess of local housing codes.[187]

Despite a general decline in federal social welfare programs, cities have a package of tools that should enable them to meet their responsibilities to residents arising when they decide to encourage the redevelopment of a particular area. All too often the issue is viewed in the "either/or" light in which the city concludes that it cannot afford to shift total responsibility for displacement to the developer because the developer will not agree to participate in the plan under those conditions or because it does not have enough money to provide the high cost of relocation benefits. Scaling down redevelopment projects, at least with respect to occupied units, offers a way to enable residents to stay.[188] Alternative mortgage financing, particularly FHA-insured shared appreciation mortgages,[189] along with the new housing rehabilitation and development grant program,[190] offer potential sources of funds that may make it realistically possible for persons of lower incomes to fix up their homes and remain in areas undergoing redevelopment. Long-term residents, whether low-income or not, are likely to be stable citizens who are just as interested in a crime-free environment as potential new residents and who would welcome the influx of young families that cities constantly seek.

The amendments restricting mortgage insurance for condominium conversions unless the mortgagor or co-mortgagor is a tenant[191] and

185. Section 216 of HURRA, *supra* note 2, authorizes $60,000,000 in grants for emergency housing during fiscal 1984.

186. *See, e.g.* 12 U.S.C. § 1715d(a) (1981) (statement of purpose for section 221).

187. RENTAL REHABILITATION, *supra* note 8, at 20-22.

188. *Id.* at 17-22.

189. HURRA, *supra* note 2, § 444.

190. *Id.* § 301.

191. *Id.* § 420(b).

authorizing insurance for shared appreciation mortgages[192] raise some interesting possibilities. The shared appreciation mortgage could serve well as a basis for the development of a purchase program for low-income and elderly tenants who would otherwise not have access to the financing of a condominium unit. While studies have failed to document any significant displacement as a result of condominium conversions,[193] the concern about displacement that affects a group of tenants who are faced with conversion of their apartments is very real. For those who do not have access to normal credit markets, displacement will become a fact of life. However, the development of the shared appreciation mortgage concept offers hope to that particular group. If lenders can be persuaded to shift their view of a condominium unit-purchase transaction from a credit analysis to a collateral analysis,[194] the expected appreciation of the unit by reason of the conversion from apartment to condominium may offer a basis for a lender to agree to finance the purchase of that unit by a low-income tenant. This result could be particularly true for elderly persons who would not have so long an expected period of residency as others who are younger. Thus, the lending institution could expect to recoup its investment and participate in the appreciation at an earlier date.

This same concept could be used to assist resident homeowners in financing the substantial rehabilitation of their homes. Instead of being concerned so much with the increase in mortgage payments to retire the cost of the rehabilitation work, perhaps the focus could be shifted to the expected appreciation of the property. A transaction could be tailored to the ability of the existing homeowner to pay, with a correspondingly higher percentage of the appreciation to be realized by the lender at the time the unit is sold. In this scenario, the lender is not being asked to take a naive gamble that real estate inflation will continue, but rather the prudent risk that reinvestment in the neighborhood and the unit will result in an increase in the value of that unit.

Lenders are not likely to jump into these kinds of transactions without some type of insurance[195] or other support. Block grant funds

192. *Id.* § 444.

193. *See supra* note 13.

194. Remarks of Kevin McGinnis, President, Town and County Mortgage Co., St. Louis, Mo., at a Conference on Alternative Housing, University of Missouri-St. Louis, (Dec. 16, 1983).

195. Congressional support for this approach is evident from an unusual statutory comment in the 1983 Housing Act: "In carrying out the provisions of this section, the Secretary shall encourage the use of insurance under this section by low and moderate income tenants

could be used to seed revolving funds from which the loans for rehabilitation could be drawn. The new rehabilitation grant program also could be a source of funds for the rehabilitation of owner-occupied units in a target area, particularly in view of the prohibition against involuntary displacement as a result of rehabilitation.[196]

An often criticized, sometimes ridiculed, but potentially important ingredient in the successful application of the principle of local public responsibility to minimize displacement is resident consultation.[197] Amendments to the Housing and Community Development Act[198] continue, albeit in watered-down form, the requirement that citizens be involved in a decision-making process with respect to the expenditure of CDBG funds. Although the 1981 and 1983 amendments simply require that citizens be provided information regarding expenditure plans, plans to minimize displacement and plans to assist displaced persons,[199] intelligent use of that consultation process in the development of a specific redevelopment plan could serve a useful purpose.

One of the great fears of cities and their developer agents is that the type of person who is able to pay the costs associated with substantial rehabilitation projects will be unwilling to move into an area that contains a large number of low-income persons.[200] Thus, in this view a transition must take place so that the final product is a group of housing units attractive to middle- and upper-income persons. However, it may be possible, particularly if the community focuses on helping the long-term residents of its areas that are targeted for reinvestment, to develop a suitable mix. Vacant units could be substantially rehabilitated for purchase by middle-income persons, and occupied units could be rehabilitated on a level that the current residents can afford. If substantial rehabilitation of those units is necessary, the actual financing of that may be done through a shared equity or shared appreciation mortgage or a combination of CDBG funds and the new rehabilitation grant program.[201] When the current residents choose to leave the area, loan proceeds can

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who would otherwise be displaced by the conversion of their rental housing to condominium or cooperative ownership." HURRA, *supra* note 2, § 444.

196. HURRA, *supra* note 2, § 17 (c)(2)(F).

197. *See supra* note 120 and accompanying text.

198. *See, e.g.*, HURRA, *supra* note 2, § 104(b)(5)(D), (E) & (6). For a commentary on modifications to the citizen participation requirements in the 1981 amendments, see Comment, *The Community Development Block Grant Program: Past and Future*, 3 PUB. L. F. 205 (1983).

199. HURRA, *supra* note 2, § 104(b)(5)(D), (E) & (6).

200. *See, e.g., supra* note 178.

201. *See supra* note 57.

be recouped through sale of the units to newcomers. In this way, a phased transition can take place that resembles a more normal market shift. Displacement can be minimized and the current residents can be strong supporters of the redevelopment activity.

VI. Conclusion

Minimizing displacement can be accomplished if cities encouraging reinvestment place a higher priority on the interests of the long-term residents of the reinvestment areas. Two basic steps should be taken. First, the increased costs of housing in a reinvestment area should be subsidized through targeting of greater amounts of CDBG and other public funds to residents who are of low and moderate income so that they can remain after the reinvestment has taken place. Second, the extent of rehabilitation of buildings occupied by low- and moderate-income persons should be scaled down to a level designed to remove any hazardous conditions and other code violations, but the imposition of higher levels of rehabilitation should be refrained from unless the owners and occupants can afford the attendant increase in housing costs.

The moral leadership of the *Mount Laurel* court is a forceful reminder that the exercise of the police power carries with it the obligation to look out for the welfare of all of the citizens, especially those who cannot compete in the markets that are created by urban reinvestment as well as exclusionary zoning. Congress has taken halting steps in this direction and is poised to take another major one. However, the answer is not to shift total responsibility to the developers who are taking the risks of reinvestment. The major responsibility for minimizing the effects of reinvestment on persons who cannot compete in the rejuvenated market lies with the state and local governments who have developed the highly sophisticated reinvestment techniques that draw so heavily on the police power.

There are very real transaction costs associated with reinvestment displacement that have gone unrecognized or, if recognized, have not been taken fully into account. The trauma associated with displacement, the bitterness it engenders, and the general turmoil that can be created as a result are strong disincentives for neighborhood cooperation with redevelopment.[202] Displacement does

202. The most recent public controversy over reinvestment displacement in St. Louis was heralded by a newspaper headline: *Nina Place Likely Next for Dispute,* St. Louis Post-Dispatch, Jan. 23, 1984, at 3A. col. 6. Ironically, interested persons had worked behind the scenes for months to develop a plan for minimizing displacement by exempting owner-occupied units from the redevelopment plan unless the owners choose to participate. A

not have to be a part of a redevelopment activity if the city is willing to accept the potential displacees as members of its community entitled to the same respect under the law as other members of the community. Reinvestment decisions can be tailored more specifically to meet the concerns of the target area residents. The cost of the project can be spread more evenly, and residents can have a stake in the successful outcome. In this way, a laudable effort at reinvestment can avoid becoming another example of forced removal.

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compromise was reached in which properties at specified street addresses were exempted from the area designated as blighted and the use of eminent domain was denied as a means of acquisition for other specified properties that were in the area declared blighted. Board Bill No. 674, Ordinance 59088, St. Louis, Missouri (1984).