Fall 1986

Mitigating the Effects of Private Revitalization on Housing for the Poor

James Goeffrey Durham
University of Dayton, jdurham1@udayton.edu

Dean E. Sheldon III

Follow this and additional works at: https://ecommons.udayton.edu/law_fac_pub

Part of the Housing Law Commons

eCommons Citation
Durham, James Goeffrey and Sheldon, Dean E. III, "Mitigating the Effects of Private Revitalization on Housing for the Poor" (1986). School of Law Faculty Publications. 97.
https://ecommons.udayton.edu/law_fac_pub/97

This Article is brought to you for free and open access by the School of Law at eCommons. It has been accepted for inclusion in School of Law Faculty Publications by an authorized administrator of eCommons. For more information, please contact frice1@udayton.edu, mschlagen1@udayton.edu.
I. INTRODUCTION

Private revitalization of decaying urban neighborhoods is generally viewed as a positive trend in the life cycles of American cities.1 Beyond the private benefit to the revitalizer,2 the most popularly appealing benefits are that existing housing stock is preserved while neighborhoods are saved from decay and that increased tax revenues accrue to cities as a result of increasing property values.3 The positive effects of urban revitalization have usually been emphasized, however, with insufficient attention given to the social and monetary costs of

---


2. Potential benefits for the residential revitalizer include making a profit by renovating a building and selling it, or acquiring a rental or a home for less than market price.

revitalization. This article considers the costs of revitalization and proposes how those costs can be mitigated or avoided by requiring revitalizers to internalize the costs of their revitalization.\(^5\)

One of the major costs of revitalization is that the present residents of the areas experiencing revitalization will probably have to move without being compensated for their expenses. The result is a redistribution of wealth from residents to revitalizers because the revitalizers need not internalize\(^6\) the costs incurred by the residents. Although researchers have studied the monetary impact of revitalization,\(^7\) the popular view of revitalization is that it has great benefits with few costs.\(^8\) Forcing revitalizers to internalize the costs of their projects would both minimize the costs of revitalization and limit arbitrary redistributions of wealth from the current residents to the revitalizers.

A revitalizer who must internalize the costs of the project will undertake the project only if it is efficient, that is, if the benefits of the project outweigh its costs.\(^9\) This article addresses how to identify the benefits and costs of revitalization. It further discusses how to allocate the costs efficiently so that revitalizers will internalize expenses, thus enabling them to make efficient decisions about undertaking projects. Effi-

---

4. "Costs" include both concrete and easily monetizable costs such as moving expenses for a displaced resident or any increase in municipal services and the less concrete costs of psychological harm to residents from the destruction of their neighborhood and the prospect of having to move. See infra text accompanying notes 130-42.

5. The coverage of this article is limited to residential tenants. Although commercial tenants may suffer from costs associated with revitalization, such as increased rent and increased competition from other stores, those are risks of doing business. Displaced residential tenants are dealing with a basic need for shelter, and unlike commercial tenants, are not able to pass on the increased costs.

6. "Internalize" means that one bears costs resulting from one's own activity which would otherwise be borne by others.

7. These costs will be discussed infra in the text accompanying notes 74-110.

8. See supra note 1.

9. The project is efficient because its aggregate benefits exceed its aggregate costs, thus maximizing wealth. If, on the other hand, the costs exceed the benefits, the project is inefficient and should not be undertaken. That result is also efficient, because again wealth is maximized since a project which would have resulted in a loss of wealth has been avoided.
ciency may not be society's ultimate goal,\textsuperscript{10} but efficiency in urban revitalization would promote society's goal to treat its members equitably.\textsuperscript{11}

This article first examines the costs and benefits of revitalization and outlines who bears the costs and who gains the benefits. This article then offers specific proposals for forcing revitalizers to internalize their costs. These proposals provide some definite conclusions about how cities can encourage efficient revitalization and thereby treat their citizens in an equitable manner.

II. IMPACT OF REVITALIZATION

A. Revitalization: Gentrification and Other Myths

The private revitalization of and reinvestment in housing in predominantly blue-collar central urban neighborhoods has been mistakenly labeled "gentrification" by scholars and the popular press.\textsuperscript{12} The resurgence of investment in inner-city housing has been accomplished generally by middle-class, white-collar workers rather than by a landed aristocracy.\textsuperscript{13} The result is not "gentrification" as much as it is a shift from lower and working middle-class groups to another, but more affluent, middle-class group.\textsuperscript{14}

\textsuperscript{10} The point of this article is to illustrate what can be accomplished through cost internalization. A strict utilitarian approach would dictate that internalization should be where the inquiry ends. There are other considerations, such as fairness and equity, which this article will consider. See infra text accompanying notes 107-10 & 113-14.

\textsuperscript{11} See infra notes 113 & 143.


\textsuperscript{14} Bryant & McGee, supra note 12, at 48; Palen & Nachmias, Revitalization in a Working-Class Neighborhood, in GENTRIFICATION, DISPLACEMENT AND NEIGHBORHOOD REVITALIZATION 129 (J. Palen & B. London eds. 1984). In some areas experiencing rehabilitation of the housing stock, however, some of the participants have been long-term, working-class residents or newcomers of relatively similar status. Id. at 129-31.
Since World War II wealthier classes of people have tended to move from the city to the suburbs.\textsuperscript{15} Despite this general trend, within particular cities there has been a focused movement of the upper middle class into older, central neighborhoods.\textsuperscript{16} The influx of the middle class, primarily from different parts of the city, transforms low and moderate income neighborhoods into higher-priced residential areas mainly through privately financed rehabilitation.\textsuperscript{17}

The decision to buy or significantly improve property in revitalizing areas depends upon the values of the decision-maker.\textsuperscript{18} The rising costs of housing have prompted working people to seek alternatives to newly-constructed homes in the suburbs. The single-family home, the foundation of the "good life" in America, is beyond the reach of many middle-class or young upwardly mobile families or individuals unless they choose to buy a deteriorating property at a low cost.\textsuperscript{19} For the price of renting a one-bedroom apartment in a suburban area, a family can own a home in the city, turn its sweat into equity, and be close to vocational and cultural centers.\textsuperscript{20}

In the late 1970's, when double digit inflation was the norm, home ownership became a more attractive investment because the inflation of home prices met or exceeded the inflation rate.\textsuperscript{21} Since the inflation rate has leveled off, home ownership is no longer a sure-fire investment.\textsuperscript{22} In order for owner-occupiers of single-family homes to significantly outpace inflation in today's economy, they have had to assume more risk.\textsuperscript{23} Revitalizing areas have provided an increased

\textsuperscript{16} See Lipton, \textit{Evidence of Central-City Revival}, in BACK TO THE CITY, ISSUES IN NEIGHBORHOOD RENOVATION 42 (S. Laska & D. Spain eds. 1980).
\textsuperscript{17} Id.; Bryant & McGee, supra note 12, at 47 n.10.
\textsuperscript{19} See Palen & London, supra note 13, at 7.
\textsuperscript{20} Id.
\textsuperscript{22} Marth, \textit{A Housing Era Ends}, NATION'S BUS., Sept. 1982, at 26-28.
\textsuperscript{23} Id. Generally, the rate of return on an investment is at least partially determined by the risk involved; the greater the risk, the greater the return. Home buyers may or may not be willing to accept the risk inherent in purchasing a home in a revital-
risk/increased return opportunity for the investment-minded home buyer.

Central neighborhoods often contain deteriorating, older buildings that are structurally sound and architecturally interesting. These neighborhoods are typically located near central business districts and often near areas of historical interest, water, or public open spaces. A post-Victorian house in the heart of the old city or a townhouse near the waterfront has a potential for elegance that is absent in suburban tract houses and duplexes. Perhaps a desire to live in a bygone era accounts for the charm some revitalizers attach to their homes and neighborhoods. Whatever the reason, many revitalizers are motivated by the historic or cultural significance of their homes and neighborhoods.

Unless there is a good chance that revitalizers will make money, or at least make a solid investment, the revitalizing trend would quickly wither. However, many other factors which favor living in the central city may enter into the decision-making process. The belief that suburbia holds the unqualified good life has failed as suburbia has discovered it has many of the same problems as the central city. Some revitalizers view the influx of the upper middle class into these blue-collar, sometimes ethnic, neighborhoods as an ideal medium for promoting a better understanding between people of different races and socio-economic backgrounds. The manual labor involved in rehabilitating a house may also provide an interesting and challenging diversion for the white-collar worker in search of an eclectic lifestyle.

B. External Benefits

Rehabilitating a home in a blighted central part of the city benefits the home buyer, if one assumes that the buyer is a

---

24. See Lipton, supra note 16, at 43.
25. See Allen, supra note 18, at 29.
27. See id. at 49.
29. President's Report, supra note 3, at 7-2.
rational decision-maker and thus will only choose to rehabilitate a home if it is in his or her economic interest. Before purchasing a house, the buyer will attach values to factors considered significant and, based on those values, make a decision. Buying a house in a central neighborhood rather than choosing a different housing alternative reflects the buyer's internal cost/benefit analysis. That individual's decision may benefit people outside the household. This section discusses those benefits.

The city is an obvious indirect beneficiary of the revitalization trend. The increased interest in inner-city housing is seen as a key factor in the renaissance of the great American city. In addition to the intangible benefits of restoring a city to its former glory, local governments have direct economic incentives for stimulating the redevelopment of decaying, central neighborhoods. Increased property values generate increased property tax revenues for financially stricken cities. Tax delinquencies and tax lien foreclosures should decline in revital-

31. For the purposes of economic analysis, this article will assume that the individuals contemplating purchasing a house in a revitalizing area have access to information that will allow them to consider the costs and benefits of their housing choices. This article will also assume that the house buyer will maximize utility by making a decision that, in the aggregate, maximizes benefits and minimizes costs. A. POLINSKY, supra note 23, at 10.


33. Bryant & McGee, supra note 12, at 48; Note, supra note 32, at 959.

The assertion that increased property values will provide the city with increased property tax revenues is at least partially based upon the assumption that the houses in revitalizing areas will be frequently reassessed in order to reflect their increasing value. However, such reappraisals may not occur for a variety of reasons.

DeGiovanni, An Examination of Selected Consequences of Revitalization in Six U.S. Cities, in GENTRIFICATION, DISPLACEMENT AND NEIGHBORHOOD REVITALIZATION 75 (J. Palen & B. London eds. 1984). DeGiovanni suggests that some of the reasons are the following:

The appraisal office may be understaffed; the appraisers may not perceive changes in the neighborhood; the reappraisal of property may be limited by statute or constitutional amendment . . . [or] the city government may adopt a policy to delay or avoid reappraisal because of likely opposition to tax increase or for fear of inhibiting reinvestment in the early stages.

Id. at 86 n.18. "[T]he percentage of increase in assessed property values did not keep pace with the percentage of increase in the market value of housing" in the neighborhoods studied by DeGiovanni, which suggested to him that the benefits of revitalization to cities may be overstated in many cases. Id. at 76.
izing areas, which should mean that the city collects taxes more quickly and with lower administrative costs. Revitalization preserves existing housing stock, thereby keeping more taxpayers in the city. Revitalization also helps bring deteriorated properties up to applicable building code standards.\textsuperscript{34}

Less tangible but still significant benefits also accrue to the city when a neighborhood revitalizes. Private redevelopment of architecturally interesting buildings preserves a physical link to the city's past without the direct expenditure of public funds for that purpose.\textsuperscript{35} Well-preserved historical districts give a city a sense of history that is impossible to duplicate with new construction.\textsuperscript{36} Having desirable inner neighborhoods enhances a city's prestige on a national level, making it a more attractive place for new industry, conventions and travel.\textsuperscript{37} Beyond these benefits, there is also the possibility that revitalization of central city neighborhoods will also reattract the middle class back to the city and stem, if not reverse, the trend for the cities to become polarized with the rich and white at one pole and the poor and minority at the other.\textsuperscript{38}

Other external benefits are also bestowed on the revitalizer's neighboring property owners. It is almost inevitable that the revitalization of a run-down building will benefit neighboring property owners. The neighboring owners may only receive the benefit of seeing their neighborhood improve. More likely, however, the neighbors will also benefit by an increase in the value of their own property and, if they are landlords, the ability to increase rents in their own buildings.

\section*{C. External Costs}

The decision to buy or not buy a piece of property is a private decision based on internal benefit/cost analysis.\textsuperscript{39} Fac-

\begin{itemize}
\item\textsuperscript{34} See DeGiovanni, supra note 33, at 73.
\item\textsuperscript{35} See Allen, supra note 18, at 33.
\item\textsuperscript{36} Id.
\item\textsuperscript{37} Id.
\item\textsuperscript{38} President's Report, supra note 3, at 1-10 to 1-23.
\item\textsuperscript{39} This article will assume that home buyers make decisions based on what they think is best for themselves. In order to make a rational decision, a buyer must place values on the costs and benefits of the factors going into the decision. The concept of the power of choice in decision making is known as consumer sovereignty. A. Polinsky, supra note 23, at 10.
\end{itemize}
tors such as purchase price, quality of schools and resale value may enter into this system of personal valuation. It is not society's concern whether the buyer makes the "proper" personal decision. However, when the homebuyer's decision adversely affects other people, this private decision becomes a matter of public concern. This section discusses the major external costs of the private decision to buy a home in a revitalizing neighborhood.

One of the major costs of revitalization is the depletion of low or moderate income rental properties that occurs as a neighborhood changes from primarily rental properties to owner-occupied units. When the owner moves in, the tenant must find shelter elsewhere. As more people compete within a neighborhood for desirable housing stock, the value of the property increases. If the landlord increases the rent to a revitalized market level, the tenant may be unable or unwilling to pay the higher rent and may be forced to move or be evicted. In addition, property taxes may increase whether or not the property is improved, because the rising property values around it make it a more likely candidate for rehabilitation. Rather than absorb the increased property taxes on the rental unit, the landlord may pass on the increase to tenants in the form of increased rents. If the tenants cannot afford the increase, they may have to move and possibly pay higher rents in different neighborhoods. The involuntarily displaced tenants of the old neighborhood may endure significant emotional and psychological burdens as well as economic

40. DeGiovanni, supra note 33, at 83.


Among 250 women, however, 26 percent report that they still feel sad or depressed two years later, and another 20 percent report a long period (six months to two years) of sadness or depression. Altogether, therefore, at least 46 percent give evidence of a fairly severe grief reaction or worse. And among 316 men, the data show only a slightly smaller percentage (38 percent) with long-term grief reactions.

Id. at 360.

Another commentator states that displaced tenants often display unfocused bitterness because they receive little, if any, official recognition of their plight. The statements of one angry resident of a gentrifying neighborhood exemplified the general feeling:
hardship. The loss of their former neighbors and the sense of identity the outmovers attach to their neighborhood often leave lasting scars.  

Revitalization may increase costs to local government as well. If a city wishes to stimulate investment in housing in these areas, it may be required to provide better services than it did for the blue-collar neighborhoods. Because revitalizing neighborhoods are usually bordered by low income neighborhoods, the incidence of violent crime is likely to be greater than in more affluent parts of the city or suburbs. If there appears to be a greater incidence of crime or a lack of police presence, the potential revitalizer, having the resources to make alternative shelter choices, may choose to live elsewhere. In addition to demands for increased police protection the new residents may request additional street paving, lighting, landscaping, sidewalks or other items and services. The city may be more responsive to these requests if it sees it may be able to offset the increased costs through an enhanced property tax base.

---

What's happening to the Italians is the same thing that happened in Society Hill, where they chased the blacks out, and Queen Village, where they chased the poor Poles and Ukranians [sic] out. They couldn't compete with the tax base the professionals were setting. Some people make a killing; they get a home they paid $4,500 for, and they sell it for $100,000 and go to Jersey. But a lot of others hate what's happening. They think they are going to be pushed out. They think, who the hell do these stinking liberals think they are? They're going to take over!


42. See generally Fried, supra note 41, at 370-76 (case studies).


44. See President's Report, supra note 3, at 11-13.

45. People prefer not to be victims of crime. One study suggests that an actual experience as a victim does not significantly affect the inmover's satisfaction with a revitalized neighborhood. Spain & Laska, Renovators Two Years Later: New Orleans, in GENTRIFICATION, DISPLACEMENT AND NEIGHBORHOOD REVITALIZATION (J. Palen & B. London eds. 1984). Spain and Laska also noted that "those who perceive their neighborhood as a safe place to walk at night are significantly more satisfied than those who perceive some danger." Id. at 116. Spain and Laska found that perceptions of safety are more important than actual experience with crime; as long as the neighborhood is defined as safe, people are generally satisfied regardless of whether they themselves have been victims of crime. Id.

46. Laska & Spain, supra note 43, at 117.
In order to understand the full cost of revitalization to the involuntarily displaced tenant, it is necessary to understand where the poor live and the basic facts of the low income rental market.

1. Central City Poverty

Between 1969 and 1976, poverty in the central neighborhoods of the largest cities increased at an annual rate of eight percent. This increase occurred at the same time that total central city population declined. In some larger cities with troubled economies, the proportion of poor persons exceeds one in five. Nearly four in every ten poor Americans live in central cities. These figures tend to understate the relative severity of central city poverty, because national poverty standards do not vary by region or location, and because living costs are often ten to twenty percent higher in central cities than in other areas of the city.

2. Demand and Supply of Low Income Housing

More housing is needed in the 1980s. The demand for additional housing in metropolitan areas has been estimated at 1.64 million units annually. Most of this demand is for owner-occupied units and single-family houses. The increasing demand for housing makes it harder for a displaced tenant to find affordable shelter. Low rent units have not generally been as profitable as higher rent units. Even with Section 8 rent subsidies and Community Development Block Grants, investors have been cautious about putting their money into low rent properties. Besides the low

47. President's Report, supra note 3, at 4-3.
48. Id.
49. Id. at 4-1.
50. Id.
51. Id.
53. Id. at xiii.
54. See President's Report, supra note 3, at 5-9 & 5-12.
55. Id. at 5-26 to 5-30.
56. Downs, The Coming Crunch in Rental Housing, 465 ANNALS, at 83.
57. Id.
rate of return, very few people desire the stigma attached to owning the "projects." Increased demand is not likely to generate an increased supply.

Leading into the 1980s, the United States has completed a vast, three-decade long sweep of unprecedented housing achievement. The 1970s was the most prolific housing decade ever, with a twenty million unit net housing expansion. This expansion can be attributed to record production levels of owner-occupied single-family units and to unprecedented gains in rental facilities.

Not only did the quantity of available housing increase, but the quality of the housing stock also increased dramatically through new construction, selective demolition and rehabilitation. Between 1950 and 1970, the proportion of substandard housing in the United States declined from 37% to 9%. Overcrowding, a classic urban housing problem, was also significantly reduced.

These remarkable statistics would appear to neutralize the critical nature of the displacement problem. If decent, low cost housing were generally available, the problem would be less acute. The outmovers would still have to bear some costs, but this price would be restricted to moving costs and demoralization. Unfortunately, the present rental market is tight, with the tightest pinch at the low rent end of the scale. As middle-income America has increasingly turned to homeownership, subsidized directly and indirectly by the federal government, renters have become poorer on the average. The
fastest growing type of renting households have incomes of less than $10,000 a year.\textsuperscript{66}

Although there has been overall growth in the rental market, over 500,000 units are removed from the market every year, most of these from the low rent categories.\textsuperscript{67} In a six year survey of rental units removed from central city inventory, over 20\% of the units with 1973 gross rents of $150 or less per month were removed while only 4.1\% of the units with 1973 gross rents of $300 or more were removed.\textsuperscript{68}

Many of these low rent units go unreplaced. The wary investor understands the market forces adverse to low income housing: high real interest rates; a narrow margin of profitability; and inability to raise rents at the same rate as operating costs. Consequently, the growth of low income rental stock has been slower than that for higher income rental stock.\textsuperscript{69}

For many citizens, rent-to-income ratios have risen to almost unbearable levels. In households with two or more people, rent as a percentage of income escalated from 21\% in 1973 to more than 25\% in 1977.\textsuperscript{70} Households headed by females pay the most rent as a percentage of income.\textsuperscript{71} Households headed by females under 65 years of age pay an average of 38.3\% of their income as rent.\textsuperscript{72} Households headed by females over 65 years of age pay 32.4\% of their income as rent.\textsuperscript{73}

An increasing number of Americans are falling below the poverty line, paying a greater percentage of their income for rent, and competing for a dwindling number of low-cost rental units. This has a profound effect on the displaced tenant. The former resident may find it extremely difficult to secure comparable housing because of shortages of low and moderate income rentals in most cities with revitalizing areas. Revitali-
zation exacerbates shortages by removing existing low and moderate income housing from the rental market.

D. Amount of Displacement

The incidence of displacement on a national level is significant but understates the impact on an intra-city level. According to surveys authorized by the Housing and Community Development Act of 1980, between 0.8 and 1.1% of U.S. households, which is 1.71 to 2.4 million people, were displaced by private activity in 1979.74

HOUSEHOLDS DISPLACED BY PRIVATE ACTIVITY
DISTRIBUTION BY REASONS FOR MOVE
PRELIMINARY 1979 ANNUAL HOUSING
SURVEY ESTIMATES
(UNWEIGHTED DATA)

<table>
<thead>
<tr>
<th>Main Reason for Move</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing costs greatly increased*</td>
<td>41.8</td>
</tr>
<tr>
<td>Owner sold building</td>
<td>22.9</td>
</tr>
<tr>
<td>Owner converted to condominium</td>
<td>3.9</td>
</tr>
<tr>
<td>Building closed for rehabilitation</td>
<td>2.2</td>
</tr>
<tr>
<td>Rents were raised</td>
<td>2.0</td>
</tr>
<tr>
<td>Building converted to nonresidential use</td>
<td>.9</td>
</tr>
<tr>
<td>Building closed; no reason</td>
<td>.3</td>
</tr>
<tr>
<td>Other**</td>
<td>20.4</td>
</tr>
<tr>
<td>Specific reason not given**</td>
<td>5.6</td>
</tr>
</tbody>
</table>

Total                                                   100.0

Non-Specific Reasons

<table>
<thead>
<tr>
<th>Incidence of Displacement</th>
<th>All Reasons</th>
<th>Omitted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent of households affected by private displacement:</td>
<td>1.1</td>
<td>.8</td>
</tr>
<tr>
<td>Percentage of movers affected by private displacement:</td>
<td>5.7</td>
<td>4.5</td>
</tr>
</tbody>
</table>

*This reason was not included in the question on displacement by private activity. It is a subcategory of moves to obtain lower rent or less expensive housing.

**The last two categories (other, specific reason not given) contain an unknown number of households who moved as a result of evictions or mortgage defaults, and who should not be included in the displacement estimate. These categories are, nevertheless, included because they may also contain households who moved for legitimate displacement reasons other than those specified. The table shows the estimated incidence of displacement both with and without these non-specific categories.\(^7\)

Overall national figures dilute the impact of displacement. Because revitalization is a localized phenomenon, its impact on a neighborhood level can be quite significant. First, revitalization is an urban trend; the 1.7 million people annually displaced are concentrated in the cities. Second, the tendency for revitalization to occur in central, mostly blue-collar neighborhoods further concentrates the effect.

### E. Characteristics of People Displaced

Outmovers displaced by revitalization are more difficult to locate than inmovers, revitalizers, and those who rent and buy from revitalizers because of the difficulty in tracking lower income households.\(^7\text{6}\) Fewer studies have attempted to track outmovers and the findings are less authoritative than those on inmovers.\(^7\text{7}\) Nonetheless, recent city and neighborhood level studies indicate there is a wider range in the age, race, income, family structure and occupation among outmovers than inmovers.\(^7\text{8}\)

No discrete age group has apparently been specifically affected. For example, 29% of the outmovers tracked from three South Baltimore neighborhoods were under thirty-five years of age, 43% were over thirty-five but under sixty, and 27% were over sixty.\(^7\text{9}\) Other city neighborhood studies found a wide range of outmover ages.\(^8\text{0}\) Elderly persons comprise a significant proportion of the outmover population, which is particularly important given the difficult psychological adjustments facing elderly outmovers.\(^8\text{1}\) In a blue-collar neighborhood, it appears to be unlikely that an elderly person

\(^{7\text{5}}\) Id.
\(^{7\text{6}}\) LeGates & Hartman, supra note 12, at 39.
\(^{7\text{7}}\) Id.
\(^{7\text{8}}\) Id.
\(^{7\text{9}}\) Id. at 39-40.
\(^{8\text{0}}\) Id. at 40.
\(^{8\text{1}}\) Id.
would move unless it was absolutely necessary. It is also more likely that the elderly will not have the means to cover their moving costs and increased rents.\textsuperscript{82}

Most present revitalization occurs in predominantly white neighborhoods; therefore, it is not surprising that most outmovers are white.\textsuperscript{83} Whites constitute 69\% of all outmovers in Washington, D.C., 90\% in St. Louis, 92\% in Seattle, and 93\% in St. Paul.\textsuperscript{84} However, revitalization displacement is starting to affect significant numbers of minorities. In some cities in which it has already progressed through the most desirable white neighborhoods, revitalization is reaching into more deteriorated, primarily minority neighborhoods.\textsuperscript{85} If the revitalization trend continues, more minorities will likely be displaced than in the past.

City and neighborhood revitalization displacement studies generally report that the average outmover income fell in the lower middle range, typically between $8,000 and $14,000 in 1980 dollars.\textsuperscript{86} Studies which recorded specific levels of outmover income showed quite a range. Generally, the results of those studies displayed substantial numbers of low and very low income outmovers, and a smaller, though significant, number of high income outmovers.\textsuperscript{87}

A range of family structures was reported among outmovers, including single individuals, married couples, families with children, and alternative household structures. Between 32\% and 55\% of the households contained children.\textsuperscript{88} Some neighborhoods included a number of extended families and households comprised of unrelated persons.\textsuperscript{89} Outmover households represented a great diversity of family types.\textsuperscript{90}

\begin{thebibliography}{99}
\bibitem{82} See President's Report, supra note 3, at 4-3 to 4-5.
\bibitem{83} LeGates & Hartman, supra note 12, at 40-41.
\bibitem{84} Id. at 41.
\bibitem{85} Id.
\bibitem{86} Id. at 42.
\bibitem{87} Id. at 43.
\bibitem{88} Id. at 44.
\bibitem{89} Id.
\bibitem{90} Id.
\end{thebibliography}
F. Post-Displacement Housing

The most striking feature of outmovers' relocation is clustering. All studies found that outmovers tend to resettle close to or within the neighborhoods from which they move. Most outmovers who do not resettle within or next to the same neighborhood resettle within the same city.91

Revitalization displacement studies report that outmovers' shelter costs generally increase, sometimes modestly and sometimes dramatically. In Seattle, Washington, D.C. and Portland, post-move rents increased between 2% and 13% for a majority of outmovers.92 Two studies found substantial post-move rent increases. In St. Paul, post-move rent increased 33%, in Baltimore, 53%.93 No study reported a decrease in rent.94 Although some increases in rent appear modest, the hardship of these increases is more apparent when rent is considered as a percentage of income.95

Because ethnic minorities and female-headed households have significantly lower average incomes than other outmovers, the burden of increased rent, as measured by a rent-income ratio, falls disproportionately on these two groups.96 Minorities or not, the very poor suffer the worst consequences of revitalization. Poor people are less likely to have financial reserves to draw upon to pay moving expenses, housing deposits and increased rents. As is true of the other adverse effects of revitalization, these burdens are imposed on the people least likely to be able to bear the burden.

Outmovers' evaluations of the comparative quality of their pre-move and post-move dwelling units and neighborhoods show a considerable range of subjective feelings. Outmover satisfaction seems directly correlated to income. Outmovers with lower household income are generally less satisfied with their new dwellings and/or neighborhoods.97

91. Id. at 46.
92. Id. at 47.
93. Id. at 48.
94. Id.
95. See President's Report, supra note 3, at 5-7 (Tables 5-5 & 5-6).
96. Sternlieb & Hughes, supra note 59, at 118-19.
Existing revitalization studies have relied on the subjective evaluation of the tenant because objective measurements of dwelling unit quality such as size, condition or site characteristics are notoriously difficult to obtain and analyze. The employment of the same objective criteria used to determine if a unit is substandard, i.e., hot and cold water, common kitchens, etc., would be helpful in future displacement studies in order to obtain more objective data.

G. Integration

The influx of white professionals into low income neighborhoods has not produced a harmonious and exciting mixture of people of different races and lifestyles. Although census statistics in some neighborhoods seem to indicate fully integrated neighborhoods, micro-level analysis shows these areas to be quite segregated into clearly defined racial and class enclaves.\(^9\) Other studies which might appear to show stable integration actually show an integrated neighborhood in its transition from all black to a virtually all white neighborhood.\(^9\)

Redevelopment in Boston’s south end has caused conflict between the long-term residents, who represent a mix of races and classes, and higher status (primarily white) inmovers.\(^1\) Both groups have responded to each others’ presence with “raucous shouting matches, litigation, picketing and inflammatory press releases.”\(^1\) Long-term white residents and higher status inmovers teamed up in Philadelphia’s revitalizing Fairmont Area to keep out lower income blacks from an adjacent neighborhood.\(^1\)

Revitalization has frequently been found to produce racial and class conflict. There is no evidence that it will necessarily lead to integration and understanding among people of different races and economic levels.

---

98. Id. at 51.
99. Id.
100. Id. at 52.
101. Id.
102. Id.
The costs borne by the involuntarily displaced tenant can be divided into two basic categories: monetary costs and emotional costs. Monetary costs are more tangible and, therefore, easier to identify. Emotional costs vary according to the value an individual places on living in a particular neighborhood, and, perhaps as well, in a particular dwelling unit. Some outmovers find moving to be a financial burden; other outmovers experience a loss similar to losing a close friend. If there are no controls on revitalization-caused displacement, tenants must bear their own costs. Whether they should be forced to bear these costs is a matter of social policy. Traditionally, it has been governmental policy to create, or at least foster, conditions to provide safe and adequate housing for the nation’s poor. Many federal programs have tried to alleviate the low income housing shortage through the construction of public housing or through rent subsidies. Federal and local governments have made some efforts to mitigate the effects of revitalization-caused displacement.

The government can reduce the low income tenant displacement problem with a minimum amount of interference in

103. See infra text accompanying note 131.
104. See supra text accompanying note 97.
105. See supra text accompanying note 93.
106. See supra text accompanying note 41.
107. President's Report, supra note 3, at 5-1.
108. These programs include general revenue sharing, block grant programs, and categorical grant programs. See supra text accompanying notes 55-56.
109. See Note, supra note 32, at 962-63. However, the federal government's displacement plan, the Uniform Relocation Assistance Act, does not offer assistance to those displaced by private action. See 42 U.S.C. § 4601(6) (1970).
There have been some efforts at mitigating the effects of private activity. The City of Duarte, California, forces developers to pay displaced tenants one and a half month's rent. The City of Walnut Creek, California, forces developers to pay displaced tenants two months' rent. Office of Policy Dev. & Research, U.S. Dep't of Hous. & Urban Dev., The Conversion of Rental Housing to Condominiums and Cooperatives: State and Local Regulation, XII-16 n.28 (1981). The Uniform Relocation Assistance Act is discussed later in this article. See infra text accompanying notes 195-211.

Using Community Development Block Grant funds, the City of Charlottesville, Virginia, has developed a program to provide counseling on housing and temporary relocation assistance. This program provides financial assistance to low income families through the use of deferred and short-term revolving loans for home purchase and rehabilitation. The City of St. Louis, Missouri, funds a relocation clearinghouse that has been established in conjunction with local social agencies to assist displaced persons. Genung, supra note 74, at 14.
PRIVATE REVITALIZATION AND HOUSING

the marketplace and with a minimum number of tax dollars by controlling revitalization so that it only occurs when it is efficient. A regulatory scheme will be efficient if it reimburses tenants for expenses associated with moving and if those costs are borne by the revitalizer. The revitalizer will therefore only proceed with a project if the benefits exceed both the internal costs and those external costs he or she has been forced to internalize. A regulatory scheme that provides for efficient revitalization will also stem an inequitable flow of wealth from the displaced tenant to the revitalizer.\textsuperscript{110}

III. COST INTERNALIZATION AS A LIMIT ON REVITALIZATION

As the prior section establishes, revitalization requires limitations. The purpose of this section is to establish efficiency as an appropriate and effective limit on revitalization. While revitalization may promote other values, a revitalization project should only proceed if it is efficient; the benefits of the project should exceed its costs.\textsuperscript{111} The obvious problem of determining whether a particular revitalization project is efficient can be solved by forcing revitalizers to internalize the costs of their projects. If the benefits of the project exceed its costs, the revitalizer will proceed. If, on the other hand, the costs of the project exceed its benefits, the revitalizer will either rework the project to make it efficient or abandon it.\textsuperscript{112}

A revitalizer who does not have to internalize all the costs of a project may choose to undertake an inefficient project. Some of these costs are then borne directly by persons who are forced out of their homes or who must pay higher rent and, perhaps indirectly, if at all, by the taxpayers whose govern-

\begin{footnotes}
\footnotetext{110}{See supra text accompanying notes 59-74; see infra text accompanying notes 130-58.}
\footnotetext{111}{In this context, efficiency may seem too sterile a concept; the argument may be that there is more to revitalization than just cold dollars. Efficiency, however, need not ignore the "other values" of revitalization. The point of this section is that all costs and benefits of revitalization should be taken into account to the extent possible. See infra text accompanying notes 116-26.}
\footnotetext{112}{This assumes, of course, that revitalizers will act rationally and undertake only projects that are efficient. The revitalizer may, of course, look beyond a particular project and undertake it believing that, even though it might be inefficient by itself, it will facilitate other projects which in the aggregate are efficient. Moreover, the abandonment of a project is efficient if the project's costs are greater than its benefits.}
\end{footnotes}
ments will sometimes provide assistance to people forced to relocate. Allowing the revitalizer to externalize the project’s costs is inequitable and potentially inefficient.

This section first establishes how the costs of a revitalization project can be best accounted for by forcing revitalizers to internalize their costs. The section then discusses specific proposals for forcing revitalizers to internalize their costs and advances proposals for promoting further efficiency and equity.

A. The Benefits of Cost Internalization

In order to determine the efficiency of a revitalization project, it is first necessary to identify all the project’s internal and external benefits and costs. The major problem is the identification of external costs, or “externalities,” because the revitalizer has already accounted for the internal costs. Implicit in the notion that efficiency can be determined by


It is inequitable to shift the costs of revitalization from the revitalizer to the tenant for two distinct reasons. First, as a member of society, the tenant bears a disproportionate amount of the cost to the extent the societal benefit of the revitalization is shared. Members of society inevitably bear different costs from different actions because it would be inherently costly to allocate all costs according to who received the benefit. However, in this case the costs are clearly identifiable and the party receiving the benefit is also identifiable. Second, it is unlikely that society will consciously choose to allocate wealth from the poor to the wealthy, or, to put it more bluntly, from tenants to real estate developers, which is what currently occurs in revitalization.

114. The potential for inefficiency arises because the revitalizer may proceed with a project even though the internal and external costs of the project exceed its benefits.

115. Efficiency, as it is used in this article, does not necessarily account for distributive consequences. See infra note 126. It does, however, in a revitalization project where the revitalizer must account for the internal and external costs, because individual wealth of those other than the revitalizer should be unaffected by the revitalization project.

116. The following example is drawn from Durham, Efficient Just Compensation as a Limit on Eminent Domain, 69 MINN. L. REV. 1277, 1301-04 (1985).

117. Internal benefits and costs are those realized directly by the revitalizer. External benefits are those bestowed on persons other than the revitalizer. The revitalizer may or may not receive any internal benefit from the external benefits; the point is that others are benefitting from the project. External costs are those borne by persons other than the revitalizer for which the revitalizer need not account.

118. Externalities, or spillovers, have been described as “[t]he differences between true social cost and unregulated price. . . .” S. Breyer, Regulation and Its Reform 23 (1982).
weighing an action’s costs against its benefits is that both the costs and benefits can be reduced to one uniform method of valuation. The most intuitive method of valuation is monetary value, but not all externalities of a revitalization project can readily be given monetary value. Judge Stephen Breyer states that the efficiency analysis should recognize only those externalities which are “large, fairly concrete, and roughly monetizable.” If all costs currently not borne by revitalizers are externalities, those costs can be internalized. This would both deter the inefficient project and, if revitalizers are forced to make direct payments to offset costs, compensate those bearing the costs of the efficient project.

To illustrate this method of determining the costs of a project, consider a situation in which a coal-fired electrical generating plant equipped with the best pollution control devices is located near a residential neighborhood. To produce one unit of electricity, the plant can burn either scarce and expensive hard coal for five dollars, or plentiful and cheap soft coal for four dollars. With no other factors entering the efficiency analysis, the plant should burn soft coal because it costs less than hard coal.

Further assume, however, that the plant’s pollution control devices prevent any smoke emissions when hard coal is burned, but permit a substantial amount of smoke to be emitted from the plant when soft coal is burned. The smoke primarily affects people living in the adjacent residential neighborhood, with only a negligible effect on the overall air quality of the city in which the plant is located. The efficiency analysis must now include externalities, i.e., those effects on other persons that are “large, fairly concrete, and roughly monetizable.”

The physical damage to surrounding residents by the smoke clearly should be regarded as one of the costs of burning soft coal. It is large, concrete, and roughly, if not exactly,
monetizable. On the other hand, the physical damage suffered by the city's citizens also is arguably concrete and monetizable but is not large because the smoke has only a negligible effect on the city's air quality as a whole. Therefore, under Judge Breyer's assertion that only externalities that are large should enter into an efficiency analysis, the physical damage to the citizens is not included as a cost of burning soft coal.

Another externality to be considered is the demoralization costs suffered by the adjacent residents and the citizens of the city. Professor Frank I. Michelman has defined "demoralization costs" as

\[
\text{Demoralization costs} = \text{the total of (1) the dollar value necessary to offset disutilities which accrue to losers and their sympathizers specifically from the realization that no compensation is offered, and (2) the present capitalized dollar value of lost future production (reflecting either impaired incentives or social unrest) caused by demoralization of uncompensated losers, their sympathizers, and other observers disturbed by the thought that they themselves may be subjected to similar treatment on some other occasion.}
\]

Demoralization costs can be divided into specific and general costs. Adjacent property owners, for example, suffer specific demoralization costs because they are directly affected by

\[121\text{. Physical damage to or diminution in value of real and personal property may be difficult to ascertain but is monetizable. The same can be said about the costs of avoiding the effects of the smoke. It will be more difficult both to ascertain and monetize any shortening or loss of life, but to the degree that they can be ascertained and monetized they should be included.} \]

\[122\text{. The damages should be as readily monetizable as the physical damage to surrounding residents. See supra note 121. In an absolute sense, the damages should also be as concrete. See id. The smoke only negligibly affects the city's air quality, however, and the physical damage incurred by citizens may be minimal and defy easy detection. For example, the smoke may noticeably and rapidly deteriorate the paint on an adjacent resident's house but only slightly affect the paint on houses in other parts of the city. The damage is concrete nonetheless, but finding the damage and linking the damage to its cause is another matter.} \]

\[123\text{. Michelman, Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law, 80 HARV. L. REV. 1165, 1214 (1967) (footnote omitted). Although Professor Michelman's brilliant article dealt with the problem of uncompensated takings resulting from governmental actions, his definition of demoralization costs is adaptable to losses suffered by private individuals resulting from activities sanctioned and encouraged by government and undertaken by other private parties.} \]

\[124\text{. See Ross, Transferring Land to Private Entities by the Power of Eminent Domain, 51 GEO. WASH. L. REV. 355, 377 nn.89-90 (1983).} \]
the smoke. The city's citizens are indirectly affected by the small, immeasurable impact of the smoke when combined with other air pollution, and thus suffer general demoralization costs.

In this hypothetical, both specific and general demoralization costs may not be large or concrete, and are difficult to monetize. Indeed, ascertaining the very existence of such costs is a formidable task. As Professor Michelman noted:

[I]t obviously will not do to interview every potential compensation claimant and ask him how demoralized he expects to be if a given measure is adopted without provision for compensation. . . . The interviewee probably will not himself know the answer to the question (putting aside the difficulty of his attaching a dollar value to his outrage and his loss of incentive even if he could appraise those subjectively) and, for strategic reasons, would not reveal the true answer if he knew it.

We are compelled, then, to frame the question about demoralization costs in terms of responses we must impute to ordinarily cognizant and sensitive members of society.\footnote{See Michelman, supra note 123, at 1215-16.}

Consequently, the specific and general demoralization costs resulting from a decision to burn soft coal do not meet the test for externalities suggested by Judge Breyer and should not be considered costs of burning soft coal in an efficiency analysis.

The only externality entering into the analysis, therefore, is the physical damage to persons living in surrounding residences. If the damage is less than the one dollar per unit differential between the cost of hard and soft coal, the plant should burn soft coal. On the other hand, if the damage is more than the one dollar per unit difference, the plant should use hard coal.\footnote{See Coase, The Problem of Social Cost, 3 J. LAW & ECON. 1 (1960). Coase stated that, ignoring transaction costs, the assignment of a legal entitlement will not affect the efficiency of the outcome of a situation. If transaction costs are considered, however, the
B. Determining the Costs of Revitalization

Just as efficiency was initially determined in the power plant hypothetical by looking only at the internal costs of burning hard or soft coal and ignoring the external costs, allowing revitalizers to ignore the external costs of their revitalization projects limits the ability to determine the efficiency of their projects. As with the power plant, a revitalization project's efficiency can only be determined when both internal and external costs and benefits are considered. A revitalizer's decision to engage in a project should be based, then, on not only its internal costs and benefits, but on all externalities that are "large, fairly concrete, and roughly monetizable."

Externalities can be either "external diseconomies" (costs) or "external economies" (benefits).\(^1\)\(^2\) This section focuses on costs for two reasons. First, benefits are extremely difficult to internalize.\(^8\) Second, many benefits of revitalization will be

---

2. Judge Breyer states the following about externalities:

If a train emits sparks that occasionally burn the crops of nearby farmers, the cost of destroyed crops is a spillover [external] cost imposed upon the farmers by those who ship by train — so long as the shipper need not pay the farmer for the crop lost. Similarly, if honeybees fertilize nearby apple orchards, the beekeepers provide a spillover [external] benefit to the orchard owners — so long as the latter do not pay the former for their service. Spillover benefits have sometimes been thought to justify government subsidy, as when free public education is argued to have societal benefits far exceeding the amount which students would willingly pay for its provision.
difficult to monetize\textsuperscript{129} and, therefore, under Judge Breyer's formulation of externalities will have to remain uninternalized.

1. Externalities of Outmovers

Three categories of external costs borne by outmovers\textsuperscript{130} can be easily identified: moving costs, including the termination and start-up costs of utilities and other services; increased housing costs, if any; and specific demoralization costs. Moving costs are the easiest to calculate; they are large,\textsuperscript{131} they are concrete, and they are not only monetizable but are generally monetized. Most moving costs can be shown by the actual expense the outmover incurs. To the degree that too much is claimed, it should be relatively easy for the revitalizer to establish what reasonable moving expenses should have been.\textsuperscript{132}

Increased housing costs are more difficult; while large and concrete, they may be difficult to monetize. The problem is not, of course, that it will be difficult to monetize the difference between two rents, the one previously paid by the outmover and the one now being paid by the outmover. The problem is one of comparability; the difference in rent is only meaningful by itself if the two housing units are comparable.

\textsuperscript{129} Breyer, \textit{supra} note 118, at 23 (footnotes omitted).

\textsuperscript{130} Government subsidy is appropriate for the creation of external benefits because those benefits are either difficult to measure on an individual basis, as with Judge Breyer's beekeeper hypothetical, or the benefits are bestowed on the public at large, as with Judge Breyer's example of public education. The external benefits are not, then, "large, fairly concrete, and roughly monetizable." In addition, the transaction costs of determining who is benefitted by what action, and therefore who should be taxed and who should receive a subsidy, would appear to be quite large and, in many if not most cases, would be greater than the external benefit.

\textsuperscript{131} They will be difficult to monetize because, as discussed earlier in this article, a major benefit of revitalization is the perception that the city is either retarding its decay or is once again "on the move." \textit{See supra} text accompanying note 32. These benefits may be large, but they are not at all concrete and thus will be difficult to monetize.

\textsuperscript{132} "Outmovers" are those who either are evicted by the revitalizer or choose to move because they are unable to pay the increased rent a revitalizer will charge after revitalization is completed.

\textsuperscript{133} While an outmover's actual moving expenses may be minimal when compared to the revitalizer's overall costs, they may be large to the outmover.

\textsuperscript{134} Moving costs really are the easiest. The revitalizer could offer to provide the actual moving service. There would be no dispute about its cost, nor any transaction costs incurred in negotiating the amount to be paid to the outmover. Moreover, termination and start up costs of utilities and other services are generally fixed fees.
If they are different, it is more difficult to monetize any increased cost of housing. The problem of comparability could be solved relatively easily by using real estate appraisers. Real estate appraisers face the problem of comparability in a variety of legal matters; the legal system would be able to use appraisers to determine increased housing costs for outmovers.

Demoralization costs raise even greater problems. In the power plant hypothetical, the demoralization costs suffered by the adjacent residents and the city's citizens did not meet the externalities test and consequently were not internalized as costs of burning soft coal. Tenants frequently suffer demoralization costs when revitalizers force them out of their homes. In some cases these demoralization costs are not sufficiently large or concrete to be treated as externalities. For at least some tenants, there is little, if any, demoralization because they are relative newcomers and have developed little emotional attachment to their homes or their neighborhoods. On the other hand, there may be tenants for whom demoralization is quite high because they have become emotionally attached to their homes through their long-term residence.

Long-term residence should provide the key. Residents living in the same house for several years should have the opportunity to show the damage suffered by a forced move. These demoralization costs should be as monetizable as damages compensated in any emotional distress tort case. Demoralization costs of outmovers should be internalized by revitalizers because, having been empirically demonstrated,

133. For example, appraisers must be used to establish the value of stolen property in a dispute between an insurance company and its insured, or to establish the value of property taken by the government in an eminent domain proceeding.

134. See supra notes 123-25 and accompanying text.

135. See supra text accompanying notes 104-06.

136. Long-term residence is the key because the threshold of demoralization can be calculated easily, and it thus avoids the costs of dealing with short-term residents claiming demoralization they cannot prove.

137. Any concern that compensation for demoralization costs will be a windfall for outmovers or an unfair burden on revitalizers would be alleviated if an outmover had to establish that demoralization costs exceed a statutory minimum amount to which each long-term resident is entitled without proof of actual demoralization costs. This presumption of demoralization costs avoids the transaction costs of litigation in cases where demoralization costs are low.

138. See supra text accompanying notes 104-06.
they may be large and are susceptible of concrete monetization.

Although requiring revitalizers to internalize their costs should increase the efficiency of revitalization, the benefits must outweigh additional transaction costs\(^{139}\) caused by internalization. When transaction costs are considered in an efficiency analysis, legal entitlement should be assigned to minimize transaction costs, resulting in maximized aggregate wealth.\(^{140}\) Therefore, if the transaction costs of requiring revitalizers to internalize their external costs exceed the benefits of internalization, revitalizers should not be forced to internalize those costs.

Forcing revitalizers to internalize the external costs of their revitalization projects should not significantly raise the transaction costs of evicting their tenants in order to proceed with projects. Even without displacement regulation, where the tenant refuses to leave voluntarily, the revitalizer is forced to bring a legal action to evict the tenant. The tenant should have the burden of proving the costs of moving and any costs of increased rent and demoralization, so the burden on the revitalizer should be similar.

In those present cases where the tenant voluntarily leaves upon the revitalizer’s request, calculating transaction costs is more difficult. Two obvious possibilities result: the parties will agree, thereby avoiding a lawsuit, or the parties will disagree and take their dispute to court. If the parties agree, there should be no significant increase in transaction costs.\(^{141}\) On the other hand, if the parties disagree and thereby force a lawsuit that would otherwise have been avoided,\(^{142}\) the transaction costs should not be great enough to make internalization by revitalizers inefficient. Both the revitalizer and the tenant should be aware of the costs and risks of litigation so that only

---

139. The transaction costs would include the cost of strategic bargaining, actual attorney and court fees, delay, time spent by the litigants and others, and the possibility that court decisions would be inefficient.

140. See supra note 126.

141. The primary problem would be the costs of strategic bargaining. Strategic bargaining should be minimized, however, because moving costs and increased costs of housing are relatively easy to monetize. Also, demoralization costs are nebulous enough so that each party should perceive an advantage in reaching agreement rather than risking a determination by a judge or a jury.

142. The lawsuit will therefore be a cost of strategic bargaining by the parties.
a few cases should be litigated. Moreover, the general societal gain of efficient revitalization, an external benefit, should offset internal costs caused by lawsuits, thereby resulting in an overall gain in efficiency.\textsuperscript{143} This would be true unless the transaction costs would prove to be very high, an unlikely possibility.

2. Externalities of Those Other Than Outmovers

There are three identifiable groups, other than outmovers, which are affected by revitalization: other tenants in the revitalizing neighborhood; owners of other buildings in the revitalizing neighborhood; and residents of the city other than those with direct interests in the revitalizing neighborhood.\textsuperscript{144} Although the interests of these three groups are very much entwined, it is important to consider them separately. Considering their interests separately facilitates determining how best to reach an efficient allocation of their respective rights.

At the outset, assume that as buildings in a neighborhood are revitalized, owners who are not presently revitalizing, or who do not have plans to begin revitalizing, will nonetheless raise rents.\textsuperscript{145} The impact of revitalization on tenants whose rents are raised without any improvements undertaken may be just as great as the impact on outmovers.\textsuperscript{146} Tenants who live in non-revitalized units should be entitled to the same

\begin{itemize}
  \item \textsuperscript{143} One external benefit of efficient revitalization is the moralization benefit of a program perceived as being a fair and equitable method of helping displaced tenants. Tenants compensated by such a program would be less likely to feel wronged, either by the government through its inaction or by the revitalizers themselves. As with other external benefits, however, such moralization benefits would rarely be “large, fairly concrete, and roughly monetizable,” and it would be difficult to internalize them. See supra note 128.
  \item \textsuperscript{144} It is tempting to designate the “city” as an affected party as well. This article assumes, however, that the city’s residents and the city are essentially the same; one is just a representative of the other.
  \item \textsuperscript{145} This assumption is based in turn on the assumption that individuals maximize their utility. See supra note 31. This is probably particularly true of urban landlords. An owner of an unrevitalized building will doubtlessly see little disadvantage in raising rents to as high a level as the market will bear. See infra note 150.
  \item \textsuperscript{146} This assumes that the most likely way in which a tenant can benefit from revitalization is by improvements to the premises.
  \item \textsuperscript{147} The newly raised rent may be so high that tenants are unable to pay it and will have to move. They are then in exactly the same position as the outmovers.
\end{itemize}
benefits as the tenants of revitalizers. The case for forcing non-revitalizing landlords to internalize their tenants’ costs is just as strong as for revitalizing landlords, and given that non-revitalizing landlords may be free-riding on the revitalizing trend, is even more politically appealing.

Whether the non-revitalizing landlord is free-riding is the key to ascertaining the remedy. A non-revitalizing landlord may benefit from the revitalization of the neighborhood, without being a free-rider, through increased rents from new tenants, decreased vacancies or decreased maintenance costs. The upswing in the neighborhood is an external benefit of the revitalizing neighbors. It is extremely difficult to force a third party to share another’s internal cost which made possible the external benefit, however. Therefore, third parties are only free-riders if they avoid external costs which they efficiently could be forced to internalize. A non-revitalizing landlord efficiently could be forced to internalize the tenants’ increased living expenses through restrictions on raising rent unless improvements were made, or as with the revitalizing landlord, through forced internalization of the tenants’ moving costs.

Non-revitalizing landlords are thus left with three alternatives: raise rent and pay the current tenants’ moving expenses, not raise rent, or become revitalizers themselves. Like revital-

---

148. See supra text accompanying notes 129-35. In addition, the tenant of the non-revitalizing landlord should be protected from having rent raised until the landlord improves the premises.

149. The only difference between them is that the revitalizer directly acts, and the non-revitalizer passively accepts some of the benefits of revitalization. Each should still have to internalize external costs resulting from any action taken in order to generate an internal benefit.

150. “Free-riding” is a term frequently used in legal and economic discussions of antitrust law. It refers to parties who share in the benefits of the activity without bearing their full share of the costs of the activity. See J. Hirshleifer, Price Theory and Applications, 562 (2d ed. 1980).

151. It is more politically appealing because the non-revitalizer is, in the eyes of the public, trying to get something—higher rents—for nothing.

152. As the area becomes more appealing to potential renters, some may choose a non-revitalized building because it should offer lower rents. If the landlord had experienced vacancies, this increased demand should cause a decrease in his vacancy rate.

153. The new higher class of tenant may take better care of the building, or the change in the neighborhood may lower the incidence of vandalism.

154. See supra note 128.

155. See supra text accompanying notes 131-32.
izing landlords, they then face the costs of each alternative so that they can make efficient decisions. They will only choose to revitalize when it is efficient to do so. Assuming that their costs otherwise stay the same, they will base decisions on current income and costs as compared to either the costs of revitalization and potential income, or the costs of raising rent and the potential income.

Another category of benefit and cost analysis is property taxes and assessments. Any increase in property taxes and assessments based on an increase in the value of the property should be borne by either revitalizers or by non-revitalizing landlords who choose to raise rent. Revitalizers and non-revitalizing landlords benefit from revitalization; each should have to bear any increased tax burden based on an appreciation in the assessed value of the property. On the other hand, non-revitalizing landlords who do not raise rent should not have to bear the costs of higher taxes. To the degree that non-revitalizing landlords are unable to avail themselves of the benefits of revitalization by raising rents, they should be relieved of tax increases resulting from increased values of their buildings.

It is also appropriate to restrict the city from increasing the valuation of non-revitalized buildings where rents have not been raised. A city benefits significantly from revitalization through an increased tax base. If a building has not been revitalized and the landlord has not raised rent, the city has not benefited from that property and should be restricted from raising the valuation of it.

C. Internalizing the Costs of Revitalization

This section proposes specific measures for internalizing the external costs of revitalization. Taken together, these measures should further revitalize that truly benefits the

---

156. At least in the short run, most of the non-revitalizer's costs should be relatively stable. Any decrease in costs related to the improvement in the neighborhood should be gradual, if any exists at all. One immediate variable which can be controlled is the ability of the city to increase the non-revitalizer's costs by increasing taxes and assessments. See infra text accompanying note 217.

157. See supra text accompanying note 33.

158. The city has, of course, benefited from the overall revitalization of the area, but not as to that building. If the city is allowed to increase the valuation of such buildings, the city is free-riding.
PRIVATE REVITALIZATION AND HOUSING

1986] 31

cities, their residents, and landowners. The three proposed measures are: a limited form of rent control; a program for revitalizers to reimburse outmovers from their buildings for moving and increased living costs; and control of property taxes and assessments for non-revitalizers. These mechanisms should encourage efficient action and deter free-riding.\textsuperscript{159}

Central to each of the proposals is the identification of the area or areas of a city undergoing revitalization. Any control of revitalization necessarily incurs transaction costs which should be minimized. Areas designated as revitalization areas should therefore be as narrowly drawn as possible. A city should first determine where revitalization displaces poor tenants. This process should not be too burdensome because cities’ neighborhoods are identified for other purposes.\textsuperscript{160} Many central city neighborhoods may also have neighborhood organizations, tenant associations or landlord associations which could provide information regarding the extent of revitalization and displacement.\textsuperscript{161}

1. Rent Control

The first element of the proposal is rent control for existing tenants. Numerous scholarly articles discuss the economic and governmental effects of rent control.\textsuperscript{162} They will

\textsuperscript{159} They will encourage efficient action because landlords and cities will have to bear the costs of their activities. They will deter free-riding because the cities will be able to raise taxes only when revitalization has occurred, new tenants will have to pay market rents, and landlords will not be able to raise rents unless their tenants voluntarily move or they have compensated their tenants for having to move.


\textsuperscript{161} A city should use all available sources of information and not rely on one source alone. Groups such as tenant or landlord organizations will likely provide information they feel furthers their interests.

not be duplicated or outlined in this article. Suffice it to say that many commentators\textsuperscript{163} argue that rent control is inefficient because governmental mechanisms are unable to quickly and adequately respond to changing economic conditions.\textsuperscript{164} This proposal should minimize the problem. One commentator, Kenneth Baar, has exhaustively described the various forms of rent control currently used in the United States.\textsuperscript{165} Baar suggests that there are many issues surrounding rent control laws, including how to assess the administrative costs of rent control,\textsuperscript{166} what units should be covered,\textsuperscript{167} methods of setting base rent\textsuperscript{168} and of determining rent increases,\textsuperscript{169} and removal of the unit from rent control.\textsuperscript{170} Baar is a proponent of rent control;\textsuperscript{171} his analysis is oriented toward universal and permanent rent control.\textsuperscript{172} This proposal advocates limited and, in most cases, temporary rent control.\textsuperscript{173} Nonetheless, Baar's considerations are helpful in determining what the scope of rent control should be in a revitalizing area. Baar

\begin{itemize}
\item \textsuperscript{163} See generally Olsen, \textit{An Econometric Analysis of Rent Control}, 80 J. Pol. Econ. 1081 (1972); Rea & Gupta, \textit{supra} note 162.
\item \textsuperscript{164} Id.
\item \textsuperscript{165} Baar, \textit{Guidelines, supra} note 162.
\item \textsuperscript{166} Id. at 762-65.
\item \textsuperscript{167} Id. at 756-60.
\item \textsuperscript{168} Id. at 765-67.
\item \textsuperscript{169} Id. at 765-817.
\item \textsuperscript{170} Id. at 817-29.
\item \textsuperscript{171} The author's acknowledgment to Baar's article states: The author is a housing policy analyst and attorney in Berkeley, California. He has authored numerous articles and reports about rent controls, including a guide for New Jersey rent control boards, has worked as a consultant to rent control boards, and has been an expert witness in fair return cases. Id. at 723.
\item \textsuperscript{172} Many rent control statutes allow for decontrol whenever a current tenant moves out, leaving the landlord free to find a new tenant who will pay a market price. Baar states: "Vacancy decontrols are inconsistent with rent control policies of providing incentives for maintenance and stabilizing rents and net operating incomes." Id. at 827.
\item \textsuperscript{173} This proposal is for rent control that is limited by geographic area to revitalizing neighborhoods, and is temporary because, if revitalization is efficient, landlords will decide to buy their way out of rent control in order to revitalize their units.
\end{itemize}
asserts that almost all rent control ordinances exempt two, three or four-unit buildings where one of the units is owner occupied. Baar states that there are two reasons frequently given for exempting small, owner-occupied buildings: that such landlords are unequipped to deal with the complexities of rent control, and that the exemption will neutralize political opposition by a potentially large group of landlords. While these reasons have definite political appeal, they do not further the efficiency of rent control. Although it is difficult to determine what percentage of apartment buildings have an owner-occupant, there is no clear reason why such buildings should be exempted; a tenant displaced by an owner-occupier revitalizer is in the same position as a tenant displaced by a non-occupier revitalizer. This proposal for rent control therefore includes all rental units within the identified revitalizing neighborhood.

The next determination is what the controlled rent should be, i.e., how the base rent should be set for the purposes of rent control. Baar found that the typical rent control statute "rolls back" rent to a date preceding the adoption of the statute. The purpose of the rollback is to negate any rent increases made in anticipation of the enactment of the rent control law. If rent control is going to work in any setting, particularly in an attempt to control revitalization, rollback appears to be imperative. Most rollback statutes specify a particular date for all units, and courts have consistently upheld rollbacks of up to one year. While a uniform rollback would minimize transaction costs, it would probably not deal with all rent increases made in anticipation of rent control or made as attempts to free-ride. A more precise, and undoubtedly more expensive, method of determining a rollback date would be to evaluate the rental history for each unit in the revitalizing neighborhood and to determine when

174. Baar, Guidelines, supra note 162, at 757.
175. Id. at 758.
176. Id. at 757.
177. Id. at 765-66.
178. Id. at 766.
179. Id.
180. It would be easy for the parties, any governmental agency, or a court to determine what the rent was as of a particular date.
181. See supra note 150.
rent may have departed from pre-revitalization market conditions. It is likely that the transaction costs of individual determination would be so high as to render it inefficient. Therefore, the rent control proposal is to roll back rents to the point best approximating the time rents began to rise overall in non-revitalized units due to the revitalization of other units in the neighborhood.

The main concern about any rent control program is the mechanism for allowing rent increases. Landlords obviously desire to raise rents to market levels, and tenants (assuming that tenants act in their self-interests) desire no rent increases. This is hardly surprising, and it well represents the inherent tensions in any rent control program. There are two popular approaches: either evaluate each case based on the landlord's expenses and/or return on investment,\textsuperscript{182} or grant across-the-board rent increases based on some external measurement of inflation or landlords' expenses,\textsuperscript{183} with many positions in between.\textsuperscript{184} This article assumes that pre-revitalization rents are at market levels. Ideally, therefore, it would be efficient to tie rent increases for a particular unit to landlords' increased maintenance and repair costs. Landlords should not be penalized for not revitalizing and the tenants should have to pay their own way. The problem is that the transaction costs for such a specific system might be prohibitive.

There is no easy prescription for solving the transaction cost problem inherent in calculating rent increases. Administration of a rent control program where rent increases must be proven for each unit might be easily assumed by an existing department at little cost in a small city or larger city with little revitalization. On the other hand, in a city with a great deal of revitalization, the costs of administering such a specific system might be prohibitive. Those transaction costs would dictate a less specific system with the potential for inefficiency in individual cases. Administrative costs are the key; the higher they are, the better the argument for a system of across-the-board rent increases based on an external measurement.

\textsuperscript{182} Baar, \textit{Guidelines, supra} note 162, at 767-81.
\textsuperscript{183} \textit{Id.} at 781-817.
\textsuperscript{184} \textit{Id.} at 767-817. Baar cites numerous examples of approaches to rent adjustments. The point here is not to recite them but to raise them for broad consideration.
The final concern about the substance of a rent control program which envisions that many units will be removed from the control is just how they will be removed. First, as is the case with many existing rent control laws,\textsuperscript{185} any time a tenant voluntarily\textsuperscript{186} vacates a unit the landlord should be able to rerent it at whatever rent the market will bear. If the tenant has moved voluntarily, there is no concern about displacement because the tenant has chosen to leave for his or her own reasons. Second, a landlord deciding either to revitalize the building or to evict the tenant should be free to do so,\textsuperscript{187} but the landlord should have to bear the tenant's costs resulting from the decision. This, of course, is a statement in a nutshell of the thesis of this article, and what the landlord should have to pay is discussed in the next section.\textsuperscript{188}

Finally, this proposal for rent control differs from other aspects of the overall proposal in that, as with any rent control program, there are significant and identifiable administrative costs. Ideally, those costs, which are transaction costs of avoiding an externality of revitalization, should be borne by revitalizing landlords because revitalization necessitates rent control on non-revitalized units.\textsuperscript{189} As suggested before,\textsuperscript{190} if the rent control function can be easily and inexpensively absorbed by an existing rent control board or another department, it would be more efficient for a city to absorb those costs rather than incur the costs of assessing them against revitalizing landlords. The costs then would not be true externalities because they would not be "large." If the costs are identifiable and large, they should be assessed against revital-

\textsuperscript{185} Id. at 826-32.

\textsuperscript{186} If one allows what Baar calls "vacancy decontrols," id. at 826, there is significant concern that landlords will attempt to force their tenants out. Baar discusses various forms of eviction controls. Id. at 833-35. That is not a problem under this proposal because evicted tenants, or tenants who are constructively evicted, will have a claim for compensation for their losses. See infra text accompanying notes 193-216.

\textsuperscript{187} This assumes that such an eviction would otherwise be valid under prevailing state law.

\textsuperscript{188} See infra text accompanying notes 193-216.

\textsuperscript{189} The other option would be for revitalizing landlords to subsidize tenants in non-revitalized units. This would involve a wealth transfer from revitalizing landlords to non-revitalizing landlords which would deter revitalization and encourage free-riding by non-revitalizing landlords. Further, the transaction costs of such a subsidy program would undoubtedly be greater than the transaction costs of a rent control program.

\textsuperscript{190} See supra text accompanying note 184.
izing landlords, probably through some form of occupancy tax. 192

2. Relocation Costs for Outmovers

Whether outmovers are evicted or their landlords raise rent, they should be paid their moving expenses and increased living costs. 193 Demoralization costs are trickier 194 and require special attention. One approach to the displacement problem which adopts the payment of both moving costs and increased living costs is the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs Act (Federal Act), 195 enacted by Congress in 1971. The Federal Act applies to federal projects and state projects using federal funds. 196 The Act applies to residents and businesses displaced by having land sold to a government, either through negotiation or the use of eminent domain. 197 Although, arguably, private revitalization is different from a governmental project, essentially the same efficiency considerations may operate in the use of eminent domain, 198 thus making the two situations analogous.

The Federal Act is very straightforward in providing relief for residential tenants. 199 First, a displaced residential tenant is entitled to “actual reasonable expenses in moving him-

191. The costs would be assessed against the revitalizing landlords and not their tenants if the rental market is elastic and the revitalizing landlords have, or intend to, raise their rents to market levels.
192. This is the method which Baar suggests is most efficient for funding a broader-based rent control program. Baar, Guidelines, supra note 162, at 842-43. The one drawback is that occupying revitalizers and their buyers will avoid a tax based on current rents.
193. See supra text accompanying notes 131-33.
194. See supra text accompanying notes 134-37.
197. 42 U.S.C. § 4601(6).
198. Efficiency through cost internalization as a limit on the governmental use of eminent domain is the thesis of a prior article by one of the authors of this article. See Durham, supra note 116.
199. The Federal Act also provides relief for business tenants, 42 U.S.C. §§ 4622(a)(2) & (3), and residential property owners, id. at § 4623.
200. The Federal Act defines a displaced person as “any person who . . . moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property.” 42 U.S.C. § 4601(6).
self, his family . . . or other personal property." Alternatively, the displaced residential tenant may elect to receive a moving expense allowance, not to exceed $300, and then also get a dislocation allowance of $200. In addition, according to § 4624 of the Federal Act, a residential tenant who has occupied a dwelling at least ninety days is entitled to either:

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed 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 reasonably accessible to his place of employment, but not to exceed $4,000, or

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses described in section 4623(a)(1)(C) of this title) on the purchase of 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, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment.

Finally, the Federal Act also provides for relocation assistance services to be provided to displaced persons.

The Federal Act requires that outmovers from governmental projects be compensated for moving expenses and, with the $200 dislocation allowance, provides some compensation for demoralization costs. Further, the Federal Act clearly attempts to offset increased costs of housing by requiring payment up to $4,000 either of all rent or of a downpayment on a house. Thus the Federal Act requires governments to internalize the costs of projects relating to moderate and low income tenants.

204. 42 U.S.C. § 4625(a).
205. The Federal Act is not, of course, limited to providing relief from low income tenants only. On the other hand, the $4,000 limits on rent and down payments indicate that only moderate and low income tenants would receive significant advantages from the Federal Act.
This proposal follows the Federal Act in several significant respects, yet recognizes that questions about the impact of transaction costs remain. The Federal Act adopts an across-the-board approach in determining what a tenant should be paid. The tenant may opt for a flat moving expense and therefore get a $200 dislocation allowance. Moreover, the tenant need only prove the actual rent or down payment and is entitled to up to $4,000. These rules are simple and easy to administer, and therefore minimize transaction costs.

As with rent control, the question is whether the transaction costs are great enough to dictate an across-the-board approach. Again, there can be no answer for all situations, but it is more likely than with rent control that an across-the-board approach will be efficient in providing for moving, increased living, and demoralization costs. Moving costs may be the exception. As stated earlier, and as apparently Congress concluded, moving costs can easily be proven. Further, Congress wisely provided a floor below which the tenant need not prove costs, again as an apparent realization that the transaction costs might exceed the compensation provided. This proposal adopts Congress' approach to moving costs.

The dislocation allowance that Congress provided for displaced tenants is attractive because it essentially becomes the quid pro quo for accepting across-the-board moving expenses rather than proving actual moving expenses. The across-the-board provision of up to $4,000 in rent or down payment on a house is more troublesome. The $4,000 will over-compensate some and under-compensate others. A blanket payment may be preferable to incurring the transaction costs of calculating and proving increased rent on a comparable living unit and demoralization costs based on longevity of residence. However, calculating and proving comparability may not be pro-

207. 42 U.S.C. § 4624.
208. See supra text accompanying notes 162-92.
209. See supra text accompanying note 132.
210. By providing for the payment of "actual reasonable expenses in moving himself, his family ... or other personal property." 42 U.S.C. § 4622(a)(1).
211. 42 U.S.C. § 4622(b).
This proposal advocates the payment of all actual moving expenses, with some minimum being provided to which a tenant will be entitled without proof. Further, much like the proposal on rent control, a city will be better able to determine, based on how many cases arise, whether it should adopt across-the-board provisions for increased rent or incur administrative costs of determining actual increased rent. Finally, it is likely that demoralization costs should be based on longevity. The only alternative appears to be a full hearing which, unlike in the eminent domain context, can probably be avoided where a tenant is displaced by revitalization.

3. Property Tax Assessments

The final aspect of this proposal on properties subject to rent control provides that neither property tax assessments be increased, nor special assessments be made for neighborhood improvements. This is the simplest and probably the least controversial element of the proposal. If non-revitalizing landlords are restricted in what they can charge tenants, the city should be similarly restricted in what it can charge landlords.

Property tax assessments should therefore be based on the value of the building as it is restricted by rent control. Similarly, non-revitalizing owners should be exempt from any special assessments for neighborhood improvements, but should not be exempt from any special assessments for neighborhood repairs or those applied to properties citywide. The exemption should be removed as the building is freed from rent con-

212. See supra text accompanying note 133.
213. See supra text accompanying notes 136-38.
214. If long-term residence is used to calculate demoralization it will still be an imperfect measure. Some long-term residents may actually be pleased at seeing the neighborhood revitalized, and see their displacement, with moving and increased housing costs being covered, as a necessary and acceptable action to further that revitalization. Such specific determinations would clearly require a finding by a neutral judge or jury, which would substantially increase transaction costs. Basing demoralization on longevity, then, may be a good balance.
215. See supra text accompanying notes 182-84.
216. See Durham, supra note 116, at 1309. Eminent domain actions not only involve much more money, but there is little that is "across-the-board" in eminent domain actions. Any time the parties do not agree, all issues must be litigated.
In this manner, the city cannot free-ride on the revitalization of the neighborhood, and non-revitalizing owners are unaffected by the revitalization unless or until they choose to revitalize.

IV. CONCLUSION

This article has proposed a solution to a problem, the displacement of poor tenants by private urban revitalization, which will not disappear by itself. As the first section of the article discussed, displacement is an important problem, and urban revitalization has significant costs as well as having only some of the benefits extolled by its proponents. There are several ways in which one might rationalize doing nothing about displacement from revitalization: either those who must move are poor and therefore undesirable so that any costs borne by them are justified by the benefit of getting rid of them; because they are poor the government will somehow take care of them; or the displacement of the poor is an inevitable price of progress. These rationalizations are myopic and, as to the assumption that government can or should without cost deal with the problem, incorrect. The poor's costs must be considered, and the poor are not the only ones burdened by revitalization. Moreover, in some situations revitalization imposes greater costs on a city than the benefits it generates.

If a city adopts the proposed plan (rent control; compensation for moving, increased housing, and demoralization costs; and reduction of property tax assessments), displacement will still occur when revitalization is efficient, though displaced tenants would be compensated for their costs. This is not a perfect solution, but it would be a start in the right direction.

217. The proposal for rent control envisions a unit by unit application of rent control rather than a building by building application. See supra text accompanying notes 165-68. Therefore, there will likely be buildings where some units are subject to rent control and some are not. Property tax assessments should reflect the value of a building based on the return as it is, so there will be an interim period between total regulation and total deregulation.