NOTES

DWELLING TOGETHER: USING COOPERATIVE HOUSING TO ABATE THE AFFORDABLE HOUSING SHORTAGE IN CANADA AND THE UNITED STATES

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* J.D. 2004, University of Georgia School of Law; Master of Historic Preservation 2003, University of Georgia; B.A. with Honors 2000, University of Arizona. To my father for his arguments—you are missed. To my mother for her faith and to Elijah for his resilience—I am blessed.
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"[C]o-operatives, by their very existence, contribute to the achievement of broad social progress."1

I. INTRODUCTION

The United States maintains the highest poverty rate and the highest child poverty rate among developed countries.2 As a result, the United States is in a state of "shelter poverty" in which thirty-four percent of the population "face so great a squeeze between inadequate incomes and high housing costs that after paying for their housing they are unable to meet their non-shelter needs."3 Frustrating the situation is the disproportionate government commitment to combating the affordable housing crisis in the United States; "in 1985, there were 3.7 million fewer low-rent units than low-income renter households."4 By 1989, that deficit had grown to 4.1 million, and the trend in housing stock depletion continued into the 1990s.

The affordable housing shortage is not unique to the United States. While European Union national housing policies continue to include a supply objective related to increasing the housing stock, in the 1990s, many European Union national governments came to believe that "major quantitative shortages of housing no longer exist."5 However, supply of an adequate number of units does not assure that the units are affordable. The predicament remains; there is a significant shortage of affordable housing in many nations, ranging from regional discontent to national crisis. To understand the shortage, it is necessary to understand how it is measured.

First, what is affordable? The United States government defines rental housing as affordable when rent alone is not greater than thirty percent of the

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4 Id.

5 MICHAEL OXLEY & JACQUELINE SMITH, HOUSING POLICY AND RENTED HOUSING IN EUROPE 22-23 (1996). In the last fifty years, European policies have had a new found focus on improving the quality of housing, increasing owner-occupation, and privatizing housing (promoting market control). Id.
maximum income for the tenant’s income category. Abroad, the standard for affordability is an even lower income-rent ratio. Regarding the nations of the European Union, the National Federation of Housing Associations (NFHA) argues that, in the European Union, “rents are not ‘affordable’ (at least for any length of time and for the average household) if they absorb more than 20% of the income of the tenant.” In a more recent statement, the NFHA concluded, “tenants should not pay more than 22% of their income as rent.” Despite a relatively generous standard of affordability, the United States still fails to provide adequate affordable housing, even by its own broad definition; in the 1990s, approximately 4.4 million American families spent “more than half of their income on rent and utilities.”

Second, how large is the shortage? Estimates on the number of homeless individuals in the United States, range between lows of 192,000 to 350,000 and highs of 1.5 to 3 million homeless people. “However, as many as 600,000 people remain homeless in America on any given night. Approximately seven million Americans have experienced homelessness at least once in their lives.” The most compelling evidence of the shortage is the estimated six million people living on the edge of homelessness and in a state of crisis poverty.

What causes or worsens the shortage, and what can be done to abate it? That a housing shortage is caused by inadequate provision of housing would seem to be common sense, but the blame for the deficit can be assigned to multiple sources. First, the private market typically fails to provide adequate affordable housing because the profit is less attractive than other types of development and other investments. Second, some observers argue that the
federal government fails to provide adequate housing directly. Other countries have taken radically different approaches to the provision of public housing; for example, in the United States, direct spending on housing by the federal government in 1980 comprised only 0.6 percent of public expenditures compared to 3.4 percent in Sweden, 5 percent in the United Kingdom and 7 percent in the Netherlands. The difference only worsened over the next ten years as the United States withdrew spending from existing affordable housing programs. The fraction of American families in public housing has never been greater than two percent.

Production of low-income housing in the United States through assistance and subsidies declined substantially between 1985 and 1995. Net new pledges to provide assisted housing fell below 10,000 units between 1988 and 1993, a dramatic drop from the 300,000 to 400,000 units in the late 1970s. In addition, the loss of existing units to demolition and to the displacement that follows gentrification also contributed significantly to the shortage.

Ruth Glass originally coined the term 'gentrification' to describe "the movement of the ‘gentry’ into existing lower-income housing which they subsequently rehabilitated and upgraded." As such, displacement is the real problem affecting the supply of affordable housing, not the mixing of incomes

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14 One Nation's Dream, supra note 2, at 69.
15 Id. at 66.
16 Id. at 66-67.
18 One Nation's Dream, supra note 2, at 69.
19 Id. at 66.
20 See Deliah D. Lawrence, Can Communities Effectively Fight Displacement Caused By Gentrification?, 111 AFFORDABLE HOUSING & COMMUNITY DEV. L. 357, 360 (2002), when low-income residents are displaced by the conversion of low-income housing into higher-income housing, those units are lost from the stock.
21 DAVID LEY, THE NEW MIDDLE CLASS AND THE REMAKING OF THE CENTRAL CITY 3 (1996). Early recognition of the processes of gentrification and displacement included local studies of "middle-class settlement in the inner city," which gave the events a variety of different names. Id. at 34. Gentrification scholar David Ley writes, "[O]ne count found a total of fourteen general descriptive terms in the literature," including 'upgrading,' 'reinvestment,' 'resettlement,' and the so-called 'back-to-the-city' movement. Id. Other local expressions include " 'brownstoning' (New York) and 'whitepainting' (Toronto)." Id. at 33. The gentry are "the people next below the nobility in position and birth." OXFORD ENCYCLOPEDIC ENGLISH DICTIONARY 587 (1991) [hereinafter OXFORD'S ENGLISH].
known as gentrification. An argument can even be made that planning authorities need not discourage higher-income residents from entering a traditionally low-income neighborhood in small numbers because that serves only to create a mixed-income environment, a situation favored by many planners and by current federal housing policy.

Above all, rejecting rehabilitation and physical restoration of historic structures in an effort to prevent displacement is tantamount to throwing the baby out with the bathwater. This Note is premised on the argument that displacement is not a necessary result of gentrification or the physical rehabilitation of an historic area. More accurately, it is an externality of gentrification—a side effect bearing on the current tenants, who are third parties to the rehabilitation of housing or its sale for conversion. For this Note, the definition of gentrification is the influx of a higher-income population into a typically urban district as the result of an effort to revitalize an area or rehabilitate historic structures. Emphasis on physical development

22 "Older neighbourhoods, benefiting from the protective policies of the 1970s, have undergone piecemeal gentrification, site by site, lot by lot . . . . In a few neighbourhoods, there is little scope for further embourgeoisement, and with the planning gains of down-zoning and amenity enhancement, house-price inflation has diverted demand elsewhere." LEY, supra note 21, at 55.

23 "This year's housing bill passed both houses of Congress by overwhelming majorities. Its aim is to change how public housing works—by providing more money for housing that mixes people of different incomes, public and private ownership, and new construction and scattered sites . . . ." James H. Andrews, Agencies With an Attitude, PLANNING, Nov. 1998, at 10, 12.

24 The economic benefits of historic preservation include job creation, small business development, improved quality of life, raw material and infrastructure conservation, and sprawl prevention. DONOVAN D. RYPKEMA, NAT'L TRUST FOR HISTORIC PRES., THE ECONOMICS OF HISTORIC PRESERVATION: A COMMUNITY LEADER'S GUIDE 13-14, 25, 28, 37-39 (1994). In addition, heritage preservation is a benefit in and of itself, independent of economic benefits. Neither the public nor the planning community should denounce rehabilitation for displacing the poor without exploring a way to continue physical restoration without this negative effect. According to one author, "the revitalization trend should be viewed at least as much as a 'promise' as it is a 'threat.' " Howard J. Sumka, Neighborhood Revitalization and Displacement: A Review of the Evidence, in HOUSING REHABILITATION: ECONOMIC, SOCIAL AND POLICY PERSPECTIVES, 157, 158-159 (David Listokin ed., 1983) (quoting a WASHINGTON STAR article).

25 The process of gentrification is a transaction between a seller/landlord and a buyer/gentrifier with negative side effects on the tenants. An externality is, by definition, "[a] social or monetary consequence or side effect of one's economic activity, causing another to benefit without paying or," as is the case here, "to suffer without compensation." BLACK'S LAW DICTIONARY 604 (7th ed. 1999).

26 This definition is the author's own, based on experience in historic preservation and
rather than neighborhood improvement is a more equitable portrayal of the existing community than some definitions provide.\textsuperscript{27}

If inadequate provision of housing and displacement combine to create an affordable housing shortage, what are the potential solutions? Can preventing displacement be a part of the solution? It is the supposition of this Note that greater exploration of alternative forms of homeownership\textsuperscript{28} may abate the shortage and prevent gentrification concurrently, and that such a solution would be appropriate in both the United States and Canada.

The gentrification process in Canada parallels that of the United States because of similarities in the timing, the actors, and the beginnings of gentrification in the two countries.\textsuperscript{29} Both nations have also taken an approach of privatization to improve the housing situation, including occasional use of housing cooperatives. The question then is a considerable one: whether housing law in Canada and the United States adequately addresses the housing shortage and the problem of displacement, and whether it fully takes advantage of alternative forms of ownership, specifically, cooperative homeownership.

This Note will discuss the context that surrounds gentrification and displacement, including the legal tools advocated by equitable developers, and it will examine the laws of cooperative development and affordable housing in the United States, Canada, and parts of Western Europe. There are fundamental differences in the approach taken by individual governments to the problem of affordable housing and specifically to the issue of displacement. This Note will analyze and contrast the strengths and weaknesses of the housing laws of the United States and Canada in order to suggest changes in these housing laws that reflect the advantages of different systems and capitalize on privatization into cooperative ownership.

II. BACKGROUND

Where private supplies fail to provide adequate housing for the people of a nation, the government must step in to fill the gap, and most likely the method will be either provision of housing or intervention in the market. Public housing is built and maintained by a government authority or office.\textsuperscript{30}
This is distinct from social housing, a third-sector of non-profit, non-governmental housing.\textsuperscript{31} Social housing includes cooperatives that are not managed by government entities, as well as housing associations and community land trusts.\textsuperscript{32} Sometimes social housing is affected by government intervention, such as by subsidies or privatization programs.

Privatization is the "paring down of government participation in a given market sector in order to promote efficiency."\textsuperscript{33} There are two essential types of privatization: load shedding and empowerment.\textsuperscript{34} Load shedding is exemplified by the sale of government assets or budget cutbacks, while the key to empowerment programs is allowing the government to relegate production and distribution while still supporting a policy goal with funding.\textsuperscript{35}

A prime example of load shedding from the early 1980s is the directed sale of British council housing to the tenants in occupation.\textsuperscript{36} In a different example of privatization, in the early 1990s, former Secretary of the Department of Housing and Urban Development (HUD), Jack Kemp, "led efforts to sell public housing to tenants and to give tenants associations the right to participate in the management of their properties."\textsuperscript{37} The former exemplifies load shedding, while the latter is a better example of empowerment privatization. The best way to comprehend the distinction is that load shedding implies the "dumping" of assets.\textsuperscript{38} The impact of the shedding on the load recipient and third parties must be considered.\textsuperscript{39} It may be that redistributing the load to experienced organizations or non-profit cooperatives with sufficient funding would be the cure to some affordable housing ills.\textsuperscript{40} Shedding the burden only onto the private market may satisfy the politicians and taxpayers, but will have little effect on shelter poverty and the actual supply of affordable housing.\textsuperscript{41}

\textsuperscript{32} Salsich, \textit{supra} note 13, at 285.
\textsuperscript{33} \textit{Id.} at 275.
\textsuperscript{34} \textit{Id.} at 279.
\textsuperscript{35} \textit{Id.}
\textsuperscript{36} \textit{See Smith, supra} note 17, at 42.
\textsuperscript{37} \textit{Id.} at 63.
\textsuperscript{38} Salsich, \textit{supra} note 13, at 284.
\textsuperscript{39} \textit{Id.}
\textsuperscript{40} \textit{Id.}
\textsuperscript{41} \textit{Id.} at 289.
Our market system has failed to provide sufficient affordable housing, but government intervention in the housing market does not always improve the housing situation, as can be the case with privatization. Some government regulations and programs do more harm than good. One example is urban renewal, discussed infra, in Part II.A.2. Government intervention, as discussed here, includes regulations of housing through quality-control and housing-related government programs.

A. Government Interventions in Housing Markets

How has government intervention in the housing market affected the supply of affordable housing? "The degree of involvement by governments in housing markets cannot be assessed simply in terms of expenditure on housing. . . . The range of government involvement goes far beyond direct expenditures and into such areas as tax concessions, effects on land supply and the provision of financial guarantees," as well as into specific programs like privatization plans and urban redevelopment.

1. Regulations of Housing Quality

a. Code Enforcement

One rising form of government intervention is code enforcement, which refers to the imposition of penalties on landlords for maintaining housing below the standards established by local housing codes. In tenant-friendly jurisdictions, code enforcement can be used to seize the property and place it in the control of the tenants. The difficulty with this tool is that some local
governments in the United States would prefer to give the properties to for-profit developers, which would likely lead to displacement. Also, "[m]any buildings transferred to tenants and community organizations are in poor condition and burdened with substantial debt," which requires more expertise and resources than some tenant groups possess. When the government pursues code enforcement, "[c]oercing payment for improvements and repairs from landlords constitutes highly visible intervention" by the government into the rental market when compared to rent controls, which are arguably just "preserving the status quo."

b. Rent Controls

Rent control laws protect vulnerable tenants from excessive or sudden increases in rent. In the early 1980s, rent control laws—ordinances fixing local rents—were enacted in almost 175 municipalities in the United States. "During the more conservative political climate of the past two decades, rent control has been weakened by landlords and the real estate lobby." Rent control laws continue in approximately 140 jurisdictions within the United States today.

c. Land Use Controls

Municipalities are developing an increasing arsenal of land use tools to prevent low-income housing from entering the community: large building lot requirements; restrictions on the subdivision of property; restrictions on infrastructure access; impact fees; expensive standards of construction and design; moratoria on permits; and zoning against multifamily development. The bias against low-income housing is expressed in the words of author Roy

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47 Id.
48 Smith, supra note 17, at 30.
50 Id.
51 Id.
52 Id.
53 Gerrard, supra note 3, at 500.
Khan; "If the house being renovated is the one next door to you and the poor are going to be put in it, then all of a sudden housing for the poor may not be something you are devoted to." Forceful action by local residents to prevent a low-income housing development from encroaching into their community can increase property values up to fifty percent. Worse, even government and community actions not directed at deterring affordable housing development, like historic district designation, affect the affordable housing supply. There is a demonstrated connection between designation and an increase in tenant displacement.

2. Government Programs Affecting Housing

Displacement has sometimes occurred as a direct result of a government program, with urban renewal serving as the best example. Urban renewal is the name for various planning schemes intended to revitalize, secure, and generate economic development within inner cities.

[U]rban renewal often eliminated poor and working class neighborhoods and replaced them with high-rise, luxury structures for the more affluent. Often poor neighborhoods just outside the revitalized business districts benefit, if at all, only to the extent that the neighborhoods become attractive to young urban professionals. However, the gentrification usually results

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55 Gerrard, supra note 3, at 507.
57 Id.
59 "The process of redeveloping urban areas by demolishing or repairing existing structures or by building new facilities on areas that have been cleared in accordance with an overall plan." BLACK'S LAW DICTIONARY 1539 (7th ed. 1999).

Through the redevelopment process, a city creates a redevelopment agency, exercises its power of eminent domain to impose an urban redevelopment zone and plan upon a blighted area, freezes tax assessments based on a certain date, and uses the revenue from the tax increment increase resulting from new assessments to renew the area with safety, lighting, public space reconstruction, beautification, and other projects.

in displacement of the existing residents who are forced to seek affordable housing elsewhere.\textsuperscript{60}

Other commentators agree: “Low-income residents have been displaced for years as the result of, among other things, urban renewal projects during the 1950s and 1960s.”\textsuperscript{61} Other government intervention, even code enforcement, sometimes backfires on low-income tenants and affordable housing advocates.\textsuperscript{62} For example, when tenants gain control of their housing after code enforcement (or through active privatization), they are sometimes ill-prepared for ownership.\textsuperscript{63}

**B. Gentrification and Displacement**

One source frequently blamed for the shortage of affordable housing is gentrification.\textsuperscript{64} Some definitions of gentrification base judgments about the quality of the area on economic factors,\textsuperscript{65} but others extend a more harsh valuation to the district as a whole.\textsuperscript{66} To avoid these unwarranted prejudices and other problematic areas as described above, this Note defines gentrification as in Part I.\textsuperscript{67}

1. **Value Gap and Rent Gap Theories**

Interrelated theories of how government intervention affects housing supply are the value gap and rent gap theories of the origins of gentrification. The

\begin{footnotes}
\item[60] McFarlane, \textit{supra} note 58.
\item[61] Lawrence, \textit{supra} note 20.
\item[62] Policylink, \textit{supra} note 46 (“A danger of many tools ... is that revitalized communities may attract the kind of investments that then displace lower-income residents.”).
\item[63] \textit{Id.}
\item[64] \textit{See generally} Lawrence, \textit{supra} note 20 (discussing the connection).
\item[65] “A term used in land development to describe a trend whereby previously underdeveloped areas become revitalized as persons of relative affluence invest in homes and begin \textit{to upgrade the neighborhood economically.}” \textit{BLACK'S LAW DICTIONARY} 473 (6th ed. abr. 1991) (emphasis added); compare “The restoration and upgrading of a deteriorated or aging urban neighborhood by middle-class or affluent persons, resulting in increased property values and often in displacement of lower-income residents.” \textit{BLACK'S LAW DICTIONARY} 695 (7th ed. 1999).
\item[66] “The social advancement of an inner urban area by the arrival of affluent middle-class residents.” \textit{OXFORD'S ENGLISH}, \textit{supra} note 21, at 587.
\item[67] \textit{See supra} note 26 (the influx of a higher-income population into a typically urban district as the result of an effort to revitalize an area or rehabilitate historic structures).
\end{footnotes}
value gap theory is credited to C. Hamnett and W. Randolph; "where a gap has emerged in the value of a rental property, measured by some multiple of its existing rental income, compared with the value of the same property if placed on the ownership market," the property is likely to be targeted for conversion, hence the potential for gentrification arises.

On the other hand, "a rent gap between a present devalued ground rent and a future or potential ground rent with redevelopment to a highest and best use" has also been said to be an indicator of impending gentrification. The originator of the rent gap theory, Neil Smith, believes that when the gap grows large enough, renovation or rehabilitation of those properties has a rate of return sufficiently great to compete with the suburbs, and investment begins to come back to the inner city.

Smith's theory fails to take into account the effect the regulatory context can have on the use and direction of capital; in Canada, some studies of gentrification in the 1970s have shown that gentrification did not occur in some areas with greatly depressed ground rent but occurred in areas where the ground rent, "while depreciated, has not fallen as low as in other inner-city areas."

Other unnamed theories exist to explain gentrification, such as the belief that restructuring of urban job markets due to the 1970s shift to technology left many low-wage earners with even fewer resources, making them "prey for exploitation by landlords." This hypothesis appears to assume the heartlessness of landlords rather than their reasonable desire for profit.

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68 LEY, supra note 21, at 34.
69 Id. at 42.
70 Id.
71 Id. at 42-43. If the impetus is not the potential increase in available ground rent (rent gap), or the value gap as 'Atlantic gap' proponents claim, it is also not the condition of the housing alone. "During the boom of the 1970s, when some 3,000 rental units were demolished in Vancouver, principally in the inner city, a planning document reported that 90 per cent were in reasonable structural repair." Id. at 50.
72 Lawrence, supra note 20, at 357. "Abandonment, changes in income, employment location, transportation costs, concentration of minority populations living in low-cost housing, and the federal government's inducement to homeownership are other factors that trigger neighborhood revitalization." Id. at 369 n.8 (citing JOHN F. KAIN & WILLIAM C. APGAR, JR., HOUSING AND NEIGHBORHOOD DYNAMICS: A SIMULATION STUDY 1, 3-4 (1985)).
2. *The Atlantic Gap: Comparing the United States and Canada to Western Europe*

Gentrification may be inherently parallel in its beginnings in Canada and the United States but divergent from Europe—a theory called the Atlantic gap.\(^7^3\) This third "gap" theory is the notion that Western European governments have typically been more active in their real-estate markets, a difference that may make the idea of the value gap more relevant to Europe and the rent gap theory more pertinent in North America.\(^7^4\) On the other hand, it may be that the regulations Smith overlooked create a unique environment in the United States and Canada that creates the Atlantic gap—meaning that in the United States and Canada the process and cause of gentrification are actually indistinguishable when compared to Europe. In the alternative, the gap may be a fiction; the differences between the United States and Canada may be as substantial as any difference either country has with European nations.

The process of gentrification is nearly universal and advances with nearly the same pace worldwide. Globally, the costs of gentrification have been steep; "in central London, the breakup of the private rental market in favour of condominium tenure is estimated to have removed 45 per cent of the purpose-built rental stock between 1966 and 1981."\(^7^5\) The figures for the United States are more elastic, but equally disturbing; annually, between 10,000 and 40,000 *households* were displaced from their rental units in New York City by the end of the 1970s.\(^7^6\)

The long-term effects of gentrifications have created a severe lack of home ownership opportunities for the poor in urban America,\(^7^7\) and the same is true

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\(^7^3\) Ley, *supra* note 21, at 51.
\(^7^4\) Id. at 51.
\(^7^5\) Id. at 3.
\(^7^6\) Id. at 65.
\(^7^7\) Although ownership rates are up nationwide, they've been stagnant for a decade in San Francisco, which, apart from New York City, has a lower homeownership rate than any other metropolitan area in the United States. Only 35 percent of San Franciscans own homes, compared with 68 percent nationally. As of 2000, Boston outranked San Francisco with 59 percent, Seattle with 63 percent, and Chicago with 66 percent. The San Francisco Planning Department reports that, at current prices, only 11 percent of city residents could afford to buy a home.

in Canada. In the city of Toronto, "[d]emolitions, renovations, and condominium and other conversions removed in excess of one thousand rental units a year between the mid-1970s and mid-1980s." Furthermore, additional losses from "deconversion of existing joint owner-tenant occupancy to owner-occupation alone . . . . led to a net loss of almost 18,000 units, a third of the total stock, over the decade, with a displacement of almost 54,000 people." Ley reports that "[e]vents have been similar in Vancouver," and "[t]he same story has been repeated in Ottawa."

Canada and the United States are analogous regarding both the problem of gentrification and the response to it. First, the problem of gentrification became substantial in both nations at approximately the same time and without being noticed sooner, due in part to the effect and timing of an increase in the population. The baby boom generation entered the housing market at the same time gentrification reached an observable magnitude.

In the United States, for example, where some fifty per cent of the population had been under the age of 25 in the late 1960s, the 25—35-year-old age cohort expanded by 11 million between 1965 and 1976 . . . . In the City of Vancouver, for example, 60 per cent of net immigrants fell into the 20-24 age cohort between 1966 and 1971, and during the next five years, this trajectory was continued with a net growth in the city of almost 10,000 adults aged 25-34, accompanied by a rise in purchasing power that opened up the new inner-city condominium market to them.

Contemporary authors in both nations mistakenly attributed the signs of gentrification in the 1970s—low vacancy rates and price rises—to the baby boom demand surge. Second, the gentrifiers—those entering a lower-income neighborhood and therefore displacing the poor—are demographically similar people in both nations:

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78 LEY, supra note 21, at 66.
79 Id.
80 Id.
81 Id. at 67.
82 Id. at 41.
83 Id.
One of the earliest surveys of gentrifiers, in Washington DC, revealed an ideal type that has been repeated many times since: middle-class households were small and usually childless; often unmarried; primarily under 35 years of age; employed overwhelmingly in ... professional, administrative, technical, and managerial occupations; highly educated, with a majority having at least one university degree; receiving moderate or high incomes despite their youthful age; and containing small proportions of racial or non-English-speaking minorities. These characteristics have been confirmed in a number of studies in urban Canada.\(^4\)

Canadian federal housing law is remarkably simpler than the corresponding American law, but it fails to address certain issues, like displacement, key in today's housing crisis. The laws of the United States only begin to fill those gaps and fail to offer the flexibility in housing provision and funding available in the more straightforward Canadian statutes. Neither approach adequately addresses the shortage, as demonstrated by the continuation of the shortage itself.

III. THE COMPARISON

Canadian, European, and American housing systems have had varying degrees of success at supplying adequate affordable housing. The Canadian federal government has accomplished much with its cooperative housing projects,\(^5\) as have Scandinavian nations.\(^6\) Britain has a high ownership rate, which markets in the United States still seek. Both the Canadian and United States federal governments can learn from each other and from other systems, as this comparison aims to demonstrate.

Differing valuation of the concept of decent living for all citizens constitutes a large part of the difference between the United States and European nations, especially Scandinavian nations, with successful affordable

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\(^{84}\) Id. at 35.


\(^{86}\) See generally *One Nation's Dream*, supra note 2, at 103 (describing relative success of Scandinavian policy).
housing programs. Sweden has the 'advantage' of being a welfare state where direct government intervention is accepted, even applauded. In contrast, the federal government of the United States has been involved in the housing market more "by mixtures of controls, subsidies and taxes." 

A. Alternative Forms of Ownership: Their Acceptance and Use

A very basic understanding of the European governments' involvement in public and social (third-sector) housing is necessary to comprehend the context of this discussion. In general, non-profit housing has been much more successful outside the United States than within the United States. Western countries, such as Sweden, Denmark, France, and Germany, give substantial assistance to tenant-owned cooperative housing where long-term affordability protections exist. In Sweden, "government planning and funding have combined to steer new housing construction away from the private, for-profit sector and toward a combination of publicly owned rentals and private, price-restricted cooperatives." Public housing is almost nonexistent in Denmark, where aid to affordable housing comes mainly in the forms of grants, low-interest loans and subsidies to non-profit and cooperative housing associations.

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87 One Nation's Dream, supra note 2, at 103.
88 Id. at 77.
89 OXLEY & SMITH, supra note 5, at 3. An example of such a control is 12 U.S.C. § 1701z-11(b)(b) (2002), a section of the National Housing Act, which defines affordability:

A unit shall be considered affordable if—

(A) for units occupied—

(i) by very low-income families, the rent does not exceed 30 percent of 50 percent of the area median income, as determined by the Secretary, with adjustments for smaller and larger families; and

(ii) by low-income families other than very low-income families, the rent does not exceed 30 percent of 80 percent of the area median income, as determined by the Secretary, with adjustments for smaller and larger families; or

(B) the unit, or the family residing in the unit, is receiving assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. § 1437f (2000)].

90 See Davis, supra note 31, at 16.
91 Id. (referring to West Germany before re-unification). Note that Canada can be included in this statement as well. Id.
92 Id.
93 Id. "Fully half of all housing units constructed in Denmark between 1945 and 1970..."
1. The Condominium and the Land Trust—Briefly

Alternative forms of homeownership in addition to the cooperative include the condominium and the land trust. Condominium ownership means possession of separate title in a unit with shared title in common resources. A creature of statute rather than common law, the condominium appears in the United States and Canada, as well as under the label of "strata title" in Australia and New Zealand. This form offers many advantages to both buyers and sellers; the builder has a better guarantee of an acceptable return on investment, and for the buyer there is equity, mortgageability, a more controlled living environment, and in the case of professionally managed properties, less upkeep than a single-family home. However, condominiums have an unfortunate reputation as a source of displacement because low-income residents are displaced by private conversion of their buildings to higher-priced condominiums.

were constructed by these third sector organizations." Id.

Condominiums are essentially "a merger of two estates in land: the fee simple ownership of apartment or unit in a condominium project and tenancy in common with other co-owners in the common elements." BLACK'S LAW DICTIONARY 204 (6th ed. abr. 1991).

See generally Louis Charlebois, Commonhold: Lest We Forget, CONV. & PROP. LAW. May/Jun 1997, 169. Britain has recently adopted commonhold in 2002 legislation to take effect within a year. "We could have copied a perfectly good strata title or condominium schemes from our Commonwealth cousins but this is Britain and here so far as law reform is concerned we are prepared to forget that there is a pneumatic tyre in existence elsewhere and reinvent the cartwheel." Phillip H. Kenny, Commonhold—Can't Sing Can't Play the Mouth Organ but Nevertheless a Star, CONV. & PROP. LAW. May/Jun 2002, 208 n.5.

LEY, supra note 21, at 48-49.

Lawrence, supra note 20, at 360. The author goes on to list condemnation and demolition for housing code violations and mid-19th century urban renewal projects in the United States as sources of displacement, which is "not a new problem." Id. "Nationally, approximately 22 percent of tenants in projects undergoing conversion purchase their units," even when 90 percent of tenant buyers receive discounts. JOHN A. CASAZZA, CONDOMINIUM CONVERSIONS 9 (1982). Specifically, in San Francisco:

"I do not believe we have a crisis in homeownership," [said Calvin Welch, co-director of the Council of Community Housing Organizations] . . . .

"Eighty to 90 percent of what's been built in the past five years has been condos." But Welch admits that those condos . . . have done nothing for San Francisco's working class.

Feldman, supra note 77. "In Kitsilano [an inner district of Vancouver], examination of twenty-four properties showed an increase in the share of professionals, managers, and administrators from 20 per cent of listed households in 1971 to 70 per cent in 1978, when all the sites had been redeveloped to condominiums." LEY, supra note 21, at 49.
In contrast, land trust resident-owners have title only to the unit or residence while the land trust retains title to the land itself, a technique used to make housing more affordable and retain ownership within the community. Ownership of the land, and the buildings upon it, is severed so that the community can retain title to and control of the land. Journalist Cassi Feldman writes, "In exchange for a cheap house, the owner gives up the right to use housing as an investment capable of doubling or tripling in value. This simple choice profoundly changes the real estate market by creating a stock of homes that can never be gentrified."

Both the condominium and the land trust may be constrained to a particular income range; condominium developments are limited to those that can afford to purchase, while land trusts exclude upper- and even middle-income buyers based on the standards of the agency or non-profit organization administering the trust. In contrast, cooperatives can be and often are mixed income.

Unlike condominiums, land trusts carry resale restrictions often based on a formula in the ground lease. To maintain affordability, the resale price may be the original purchase price plus the value of any trust-approved improvements to the unit plus some portion of the equity as specified by the formula. Some capital appreciation is allowed as a result, but the amount is restricted, as is true in limited-equity cooperatives.

In some situations, the land trust and cooperative ownership models are successfully combined where the cooperative owns buildings on land trust property. This can further guarantee long-term affordability by preventing

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99 Lawrence, supra note 20, at 365. The purchase of the home may take the form of a ground lease in some cases. Id.


101 Feldman, supra note 77.

102 Lawrence, supra note 20, at 365.

103 "Co-ops in particular have been committed to a principal of social mixing and have included a high proportion of family housing, and a range of incomes." LEY, supra note 21, at 36.

104 Paradise Unfound, supra note 100, at 79.

105 Id. at 79-80.

106 San Francisco’s historic East-West House is an example of this model, known as a collective land trust: In its current form, East-West house operates as an orderly co-op where, for around $500 a month, its low-income residents are about to become homeowners. When [Northern California Land Trust] took over the property from a defunct nonprofit in 1998, the agency immediately started preparing the residents to purchase the home while NCLT keeps the land. Each month
the cooperative from selling the entire property at post-rehabilitation market rates and divvying up the profits if the land trust has a resale agreement as described above. 107

Both the condominium and the land trust, as well as other alternative forms of homeownership, may help fill the affordable housing shortage. However, there are hurdles to overcome, including the condominium's history as a force behind displacement and the requirement of a considerable community force to establish a land trust. In contrast, the cooperative allows a small housing community to make a change by assuming ownership of its housing, and this flexibility makes it a powerful tool for affordable housing conservation.

2. The Owner-Occupied Housing Cooperative

Limited-equity housing cooperatives—the type examined in this Note—may be a powerful option for communities organizing against gentrification and displacement. 108 Some proponents maintain that cooperative housing is the ultimate solution to almost all urban and societal woes. For example, the International Co-operative Alliance claims, "Co-op housing has the answer to many of humanity's deepest needs: for shelter, for community, for control, for values." 109

Cooperative housing, sometimes called cooperative apartments, 110 is one variety of third-sector or not-for-profit housing. 111 The form exists in the United States, Canada, and the United Kingdom, 112 as well as in the Scandinavian nations, where it is particularly successful, and other nations they have mandatory trainings on how to elect their own officers, write bylaws, and manage their finances in case they need a new roof someday.

Feldman, supra note 77.

107 Paradise Unfound, supra note 100, at 83.

108 This Note uses the terms cooperatives and limited-equity cooperatives interchangeably; some housing cooperatives are zero-equity, meaning all capital appreciation is retained by the cooperative itself.


111 Paradise Unfound, supra note 100, at 84.

112 "No absolutely reliable information exists about the number of co-operatives in Britain or their sizes, types and locations." DAVID CLAPHAM & KEITH KINTREA, HOUSING CO-OPERATIVES IN BRITAIN: ACHIEVEMENTS AND PROSPECTS 1 (1992).
throughout Europe. A cooperative is a corporation owned by its member shareholders, though the interest held by them also includes a lease or occupancy agreement for their individual unit.

This definition presumes a cooperative to be fully mutual, meaning that all cooperative members are tenants or prospective tenants, and all tenants are members. This presumption does not always hold true, though in Britain, full mutuality offers the benefit of mortgage interest tax relief. A cooperative also does not have to be nonprofit, but the definition of a cooperative, at least in American law, takes for granted the non-profit nature of any cooperative. For example, Black's Law Dictionary defines a cooperative as a corporation "organized for the purpose of rendering economic services, without gain to itself, to shareholders or members." The available forms of cooperatives include, but are not limited to: credit unions, utilities and agriculture cooperatives, worker-owned companies, consumer cooperatives (such as insurance providers and grocery cooperatives), and housing cooperatives. A housing cooperative is unique; it is incorporated to provide services and benefits (shelter and amenities) but typically does not financially profit its shareholders, the residents. The shareholders do not own any real property, only equity, which is typically limited such that most of the earned monies go back into the facilities. Each shareholder possesses a proprietary lease on his individual unit, which will typically be for ninety-nine years to provide a greater sense of the security of ownership. The advantage for shareholders who lack resources or credit to obtain a mortgage independently is that the cooperative arranges financing.

113 Paradise Unfound, supra note 100, at 84.
115 CLAPHAM & KINTREA, supra note 112, at 3.
116 Id.
118 Id.
119 BECOMING A COOPERATIVE, supra note 114, at 10.
120 Id.
121 Id. at 32-35.
122 Id. at 13.
123 Paradise Unfound, supra note 100, at 81-82. This system boasts a significant advantage over condominium ownership, in which each unit is individually owned, or land trust arrangements, in which the residents still must have the capital to purchase the buildings. However, cooperative membership does not do away with housing costs. BECOMING A COOPERATIVE, supra note 114, at 12.
B. The Laws Regarding Cooperatives and Affordable Housing

In the United States, cooperatives are the oldest form of multifamily homeownership. However, government involvement parallel to that in Canada has been very limited at the federal level, though a number of states have enacted legislation regarding permanently-affordable cooperative housing. Pertinent portions of American federal law that address the issues of affordability and cooperative housing include Title 42 of the U.S. Code, where income brackets are defined; HUD's enabling legislation, the National Housing Act (U.S. N.H.A.); the Cranston-Gonzales National Affordable Housing Act (N.A.H.A.), specifically Title II, which is known as the HOME program; and more recent acts, like the American Homeownership and Economic Opportunity Act of 2000 (A.H.E.O.A.).

In Canada rental subsidies come from the provinces, not the federal government. Federal programs are still important, however, as are federal definitions and regulations. The major Canadian federal laws at issue include the Canadian National Housing Act (C.N.H.A.) and the Canada Cooperatives Act (C.C.A.).

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125 Davis, supra note 31, at 16.

Connecticut's programs for cooperatives, community land trusts, and other nonprofits guaranteeing the future affordability of state-assisted housing have survived [fiscal belt-tightening in the 1990s]. Vermont has made perpetual affordability a threshold criterion for most state assistance for affordable housing since 1987. Other states, such as Massachusetts and Minnesota, have made extraordinary financial commitments to limited equity housing cooperatives and to nonprofit developers of price-restricted rental housing.

Id.


128 Davis, supra note 31, at 17.


130 Cyrus Vakili-Zad, Public Housing: A Summary of Major Differences between the United States and Canada, 11 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 111, 112 (2002). These take the form of agreements with landlords, unlike Section 8 tenant vouchers. Id.


1. **Canadian National Housing Act**

The C.N.H.A. begins, like much legislation, with a slate of definitions, including a characterization of “family of low income”: “a family that receives a total family income that, in the opinion of the Corporation, is insufficient to permit it to rent housing accommodation adequate for its needs at the current rental market in the area in which the family lives.”\(^\text{133}\) The act goes on to define a “low-rental housing project”:

\[
\text{[A] housing project undertaken to provide decent, safe and sanitary housing accommodation, complying with standards approved by the Corporation, to be leased to families of low income or to such other persons as the Corporation, (a) in its discretion, in the case of a housing project owned by it, or (b) under agreement with the owner, in the case of a housing project not owned by it, designates, having regard to the existence of a condition of shortage, overcrowding or congestion of housing.}\(^\text{134}\)
\]

These definitions afford the administrative agency, the Canadian Mortgage Housing Corporation (CMHC), a measure of flexibility in allocating affordable housing assistance.

Though the term cooperative does not appear in the definitions section of the C.N.H.A.,\(^\text{135}\) section 61 specifically provides for the issuance and forgiveness of loans and contributions to a cooperative association or its members for a housing project or for refinancing related to the project.\(^\text{136}\) Besides the importance of making available funds for cooperative development, it is also significant that this provision of the act falls under Part VII, Facilitation of Homeownership and Occupancy.\(^\text{137}\) Canada appears to be approaching loans for cooperative development as one of a few select tools for encouraging homeownership.

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\(^{134}\) Id.
\(^{135}\) Id.
\(^{136}\) Id. § 61.
\(^{137}\) Id. §§ 57-61.
Section 95 allows for the unilateral or shared funding of housing by loans or contributions from CMHC under the designation of Housing Development.\footnote{Id. § 95.} Housing cooperatives created under section 95 are considerably less expensive to operate when compared to similar public housing.\footnote{Canadian Mortgage Housing Corporation, \textit{Tenant Involvement in Housing Co-operatives}, available at \url{http://www.cmhc-schl.gc.ca/en/imqual/afho/afadv/opma/intedema/case1.cfm} (last visited Jan. 10, 2003). Private Canadian nonprofit housing is administered by a community organization while its public nonprofit counterpart is predominantly municipal. The variation results from the fact that when comparing all provinces, the two figures are forty percent different, but when only comparing housing in the six provinces (Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, and Quebec) where ninety-five percent of cooperative housing is built, the difference is as great as sixty-six percent. \textit{Id.}} Perhaps this difference in cost exists because cooperative housing in Canada leans toward mixed-income communities while public housing is strictly low-income. Operating a section 95 cooperative is twenty percent less expensive than public or private non-profit housing, possibly because cooperatives are tenant-managed rather than controlled by staff like non-profits.\footnote{\textit{Id.}} It is this universal cost savings that establishes the success of CMHC cooperatives.

While the Canadian federal support was mainly limited to a public housing program similar to the United States before 1973, since that year more and more federal support has been directed to zero-equity cooperatives.\footnote{\textit{Id.}}

To maximize the purchasing power of government funds, co-ops were frequently constructed in cheaper inner city areas . . . . They were sometimes the first indicator of social upgrading in these areas; indeed in Montreal the argument has been made that, with their good quality design, co-ops suggested a local success story and thus acted as an \textit{instigator} of private reinvestment in formerly devalued districts.\footnote{\textit{LEY}, supra note 21, at 36.}

In Canada, “[b]y the early 1980s, almost all federal subsidies for new housing were being directed into this third sector, and about 25,000 new units were being produced each year.”\footnote{\textit{Id.}}
2. Canadian Cooperatives Act

The C.C.A. applies generally to all cooperatives, but Part 20 is devoted exclusively to non-profit housing cooperatives.\(^\text{144}\) Application is limited to cooperatives whose primary business takes the form of providing housing to its members\(^\text{145}\) without the purpose of financial gain.\(^\text{146}\) The concept of a non-profit housing cooperative is further delimited by the requirement that the cooperative may not distribute any of its assets to a member and may pay a member no more than eight percent dividends on membership shares or ten percent interest on member loans, "a sum equal to the member's investment," and "a reasonable amount of property or services provided by the member to the cooperative."\(^\text{147}\) The C.C.A. also includes a provision regarding special rules for the termination of a housing cooperative membership;\(^\text{148}\) because the nature of such membership is more personal than a typical cooperative. It is clear that the drafters intended the C.C.A. to encourage or at least allow non-profit housing cooperatives to function independently from C.N.H.A. assistance.

3. United States Code Title 42

It is important to understand the basic definitions involved throughout affordable housing legislation. The U.S. Code defines eligibility for Section 8 assistance on the basis of relative income,\(^\text{149}\) and these definitions apply to other programs as well. A family is "low-income" if its income does not exceed eighty percent of the median income for the area, and a family is "very low-income" if its income does not exceed fifty percent of the median family income for the area.\(^\text{150}\) A moderate income family earns between eighty and


\(^{145}\) Id. §§ 353(b) and 354(c).

\(^{146}\) Id. § 354(d). It seems reasonable that a for-profit cooperative could be formed; section 10(e) requires a cooperative to state in its articles of incorporation its intention to function as a Part 20 cooperative. Without such a declaration, the cooperative could presumably function under the requirements of the rest of the C.C.A.

\(^{147}\) Id. § 357(1) and 357(2)(b) and (c).

\(^{148}\) Id. § 44.


\(^{150}\) Id.

[A]s determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or
ninety-five percent of the area median family income.\(^{151}\) As a result, a family could qualify as low-income by earning fifty-one percent of the median income for the area and pay approximately forty-seven percent of their income in rent. Any family earning less than the maximum income in their category will pay more than thirty percent of their income in rent.

The income-based determination of need that is the basis of United States housing policy is flawed. The shelter poverty concept demonstrates that any standard of affordability that does not take into account both income and household size, as well as non-shelter costs, will be inadequate.\(^ {152}\) The current standard fails to reach those who need assistance most: very low-income, large families.\(^ {153}\)

4. United States National Housing Act

Two policies expressed in the U.S. N.H.A. are the interrelated goals of "minimizing the involuntary displacement of tenants" and maintaining housing for low-income persons, including co-operative housing.\(^ {154}\) There are two key financing provisions known as section 213\(^ {155}\) and section 221(d)(3).\(^ {156}\) Section 213 is a dividend returning program intended to be added to the Federal Housing Administration’s Multifamily Accelerated Processing Guide in fiscal-year 2002.\(^ {157}\) Section 221(d)(3) insures mortgages for qualifying cooperatives.

Third, in the section on rent supplements to housing owners on behalf of qualified tenants, the term "housing owner" is defined to include Section 221(d)(3) cooperatives.\(^ {158}\) Qualified tenants are those eligible for Section 8 assistance, and in respect to cooperative members, those who "will not be

\(^{151}\) 12 U.S.C. § 4119(5) (2003). "The term 'moderate income families or persons' means families or persons whose incomes are between 80 percent and 95 percent of median income for the area, as determined by the Secretary with adjustments for smaller and larger families." \(Id.\)

\(^{152}\) Salsich, supra note 13, at 279-81.

\(^{153}\) Id. at 282-83.


\(^{157}\) FHA Clarifies Its Position, supra note 124.

reimbursed for any equity increment" upon resale of his share. Further, in a mixed-income development financed under section 1701q, these section 1701s rental assistance payments may not be made for more than twenty percent of the development.

The result of these provisions in combination is that a mixed-income, limited equity cooperative could receive no assistance because of the zero-equity requirement. A mixed-income, zero-equity cooperative could receive assistance with respect to twenty percent of the units. This concession is worth little when those remaining members of the cooperative who need less assistance—those with at least moderate incomes—would not be eager to join a zero-equity cooperative, the only kind that can receive assistance, because of the restriction on their investment returns.

Rendered practically ineligible for rental assistance in section 1701s, limited-equity cooperatives can turn to section 1715z, which authorizes periodic assistance payments to mortgagees meeting the requirements of the section for lower income families. The payments are meant to aid such families in acquiring homeownership or membership in a housing cooperative. HUD is authorized to provide such assistance; moreover, the Secretary is directed to give preference to those families most likely to be displaced, including those in danger of displacement from a conversion of their rental unit to condominium or cooperative ownership.

Further, HUD is authorized to sell multifamily housing projects acquired by default on a Chapter 13 mortgage to non-profit cooperatives on reasonable terms and to insure the mortgage. Prepaid expenses and costs necessary for becoming a cooperative can be included in the mortgage amount, and HUD can expend funds for necessary repairs and improvements before conveyance. This provision opens up an excellent opportunity for public housing tenants seeking self-sufficiency, but requires the cooperation of HUD.

Finally, sections of the U.S. N.H.A. make cooperatives eligible for the same aid available to rental housing. For example, under section 1715z-1, interest reduction payments can be made to mortgages for private, non-profit

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160 Initially and notably, the cooperative must be insured under 12 U.S.C. § 1715e or § 1715l(d)(3) (section 213 and section 221(d)(3) of the U.S. N.H.A. respectively).
162 Id.
163 Id.
165 Id.
cooperative housing projects or cooperative housing programs financed by certain state and local programs.\textsuperscript{166}

5. National Affordable Housing Act and American Homeownership and Economic Opportunity Act

The N.A.H.A. of 1990 demonstrated a "new receptiveness to the kinds of housing long supported by Canada and other Western democracies."\textsuperscript{167} It offered new promise for encouraging permanent affordability, such as requiring assisted owner-occupied housing, like cooperatives, to carry resale restrictions that ensure that the housing remains affordable to a reasonable range of low income homebuyers.\textsuperscript{168} The act, however, is also criticized for lacking clear policy, and Congress has been criticized as well for clouding the picture with an assortment of amendments.\textsuperscript{169} Nonetheless, some consider the other program established under N.A.H.A., Housing Opportunity for People Everywhere (HOPE), to be the American federal government’s point of reentry into the housing field.\textsuperscript{170}

As a matter of policy, the N.A.H.A. speaks favorably of the local successes achieved with community development corporations, limited equity cooperatives, and other tenant groups.\textsuperscript{171} The Act makes assistance available to first-time homebuyers, including cooperative members, and creates generous planning and implementation grants for cooperative programs.\textsuperscript{172} Seeking to aid affordable housing cooperatives, the later American Homeownership and Economic Opportunity Act of 2000 made cooperative units eligible for FHA-insured reverse mortgages.\textsuperscript{173} While this change initially excited the National Association of Housing Cooperatives,\textsuperscript{174} the FHA is still in the process of promulgating regulations to put the program into effect.\textsuperscript{175}

\textsuperscript{166} 12 U.S.C. § 1715z-1(b) (2003).
\textsuperscript{167} Davis, \textit{supra} note 31, at 17.
\textsuperscript{168} \textit{Id.}
\textsuperscript{169} \textit{Id.}
\textsuperscript{170} Vakili-Zad, \textit{supra} note 130, at 113.
\textsuperscript{172} \textit{Id.} §§ 422, 423, 442, 443.
\textsuperscript{174} \textit{FHA Clarifies Its Position, supra} note 124.
\textsuperscript{175} \textit{Id.}
C. Lessons to be Learned—Recommendations

Housing policies in the United Kingdom and Sweden have generally been more successful than those in North America. Both Canada and the United States can learn from European strategies. In addition, the Canadian system may hold lessons for the United States.

1. Explore Alternative Forms of Homeownership

Canada turned to third-sector housing in the 1970s after realizing that the private market was not going to provide sufficient affordable housing. The United States only began to really open its eyes to the possibilities in the 1990s and has still not accomplished much with the available legal options. Neither nation has in actuality relied on the social housing sector to nearly the extent of European nations.

Both nations have the authority to establish experimental housing programs, and in that power may lie a solution. By developing a small portion of funding to cooperative conversion demonstration programs, both the U.S. and Canada might answer the question of whether cooperative housing can make a meaningful difference in the supply of affordable housing and in stemming the tide of displacement.

Would encouraging cooperative development be enough, or do HUD and the CMHC need to consider other tools? Most likely one tool will never satisfactorily achieve the two goals of abating the housing shortage and preventing displacement; that is why “equitable development” advocates recommend a wide range of strategies: code enforcement, rent control, just-cause eviction controls, limited-equity cooperatives, etc. In addition, there are the other forms of alternative homeownership—condominiums, community land trusts, mutual housing associations—that remain to be fully explored in either nation.

176 Vakili-Zad, supra note 130, at 112.
177 The N.A.H.A. was passed in 1990 and scattered throughout Title 42.
178 Vakili-Zad, supra note 130, at 112.
179 C.N.H.A. § 75(1)(a), (g), (i), and (j); U.S. N.H.A. § 1701z-9 (specifically authorizes demonstration projects including, but not limited to, cooperative housing).
180 The National Resident Management Demonstration Program of 1975 established only a few tenant management corporations. Vakili-Zad, supra note 130, at 114.
2. Deregulate and Simplify

In the field of public housing, "[t]raditionally, government plays a more active role in Canada than in the United States," but it appears that regulation of private, affordable housing development is more complex in the United States. Compare, for example, the countries' respective definitions of low-income as described above. The Canadian definition is based on the discretion of the agency, while the U.S. legislation provides a formula and strict percentages. Abandoning this definition for one more responsive to individual situations and the shelter poor would be a significant step in U.S. housing policy. A possible provision could be:

A low-income family is a household with a total income determined by the Secretary to be insufficient to obtain adequate housing accommodation for its needs, either rental housing, traditional homeownership, condominium ownership, cooperative membership, or participation in another non-profit housing organization or association, at the current market rates in the area. Preference will be given to those families in the most danger of displacement and with the greatest need for housing based on income, household size and non-shelter costs of living in the area.

It is not clear whether government involvement is a favorable variable. While the United States can learn from the success of Canada's cooperative housing program, the federal Canadian government has backed away from cooperative housing, turning over the reigns to municipal authorities. At least one commentator has recommended limiting the United States federal government's involvement in housing projects to funding and guidance. The Canadian system of establishing the programs and staying with them through their infancy may be a necessary first step before reducing federal government involvement.

182 Vakili-Zad, supra note 130, at 111.
183 See supra notes 133 and 150 and accompanying text.
184 See supra note 139 and accompanying text.
185 Vakili-Zad, supra note 130, at 113.
3. Adjust Values and Priorities

Displacement is still a problem both in Canada and the United States. U.S. policy at least addresses the issue by directing HUD to give preference to those families in the greatest danger of being displaced in certain provisions;\(^{187}\) the C.H.N.A. does not include the words gentrification, displacement, or relocation. This is a policy decision at its core, but if the Canadian federal government sought to focus on displacement, the C.N.H.A. could be amended to include a strongly-worded, well-placed provision, similar in phrasing to that in the U.S. N.H.A.: "In making such assistance available, the [Corporation] shall give preference to low-income families who, without such assistance, would be [most] likely to be involuntarily displaced."\(^{188}\)

"[A] decent home and a suitable living environment for every American family" was a core goal of the 1949 Housing Act.\(^{189}\) Yet, over fifty years later that goal remains unattained and equally distant, if not farther away.\(^{190}\) The United States may eventually grow to feel ashamed of its position in the community of developed nations as such a poor caretaker of its own people.\(^{191}\) There are additional issues to be addressed in the alleviation of poverty:

Drawing boundaries around ‘housing problems’ and separating them from sets of personal, social, national and even international problems creates analytically unsustainable divisions. In one sense housing is about everything and everything is about housing. However, policy action which comes out of a box labelled housing cannot be expected to alleviate a multitude of evils. Attacking poverty, unemployment and social deprivation would, on the other hand, do much to improve housing circumstances. The systematic integration of housing initiatives with wider policies is something which governments have yet to properly address.\(^{192}\)


\(^{190}\) Paradise Unfound, supra note 100, at 75.

\(^{191}\) The situation in the United States regarding the lack of sufficient affordable housing has been demonstrated. See Part I. The segregation of races on the lines of shelter poverty has been dubbed an American apartheid. Paradise Unfound, supra note 100, at 95-96.

\(^{192}\) Oxley & Smith, supra note 5, at 192.
It will take that sort of radical, comprehensive change of mindset to truly turn around the housing crisis, but discrete changes in housing laws can, in the interim, have some positive effects.

IV. CONCLUSION

A. Does an Atlantic Gap Exist?

The literature comparing British and Swedish affordable housing programs to the current system in the United States indicates that the notion of an Atlantic gap—a greater involvement by Western European governments in their real-estate markets than Canadian or American—has basis in fact. Whether the value gap is a European phenomenon and the rent gap theory more typical to Canada and the United States remains a question open to a greater study of gentrification. However, this Note has shown that housing regulations do create a unique environment in the United States, even as compared to Canada. The lack of attention to alternative forms of homeownership in the United States and Canada creates an Atlantic gap.

B. Cooperatives in the Future

Recognition of cooperatives is spreading; in his May 1992 report, United Nations Secretary-General Bontros Bontros-Ghali wrote:

There is still an insufficient awareness of the very substantial economic and social weight of co-operatives throughout the world, and of the degree of their success in adjusting to varied and often hostile societal environments, thereby contributing to the achievement of the personal objectives of millions of individuals, their families and their communities as well as to national economic and social progress.

However, research and exhibition of alternative forms of homeownership will not be enough, even if those programs prove highly successful. Providing affordable housing for a nation is no small task, and it will require additional

193 See generally One Nation's Dream, supra note 2; Smith, supra note 17; Paradise Unfound, supra note 100 (demonstrating this difference statistically and anecdotally).
194 International Co-operative Information Centre, supra note 1.
legal devices, simplification of the system, and a greater commitment to decent housing for everyone.

Flexibility in the design and adaptation of tools to safeguard the housing stock is a necessary step as well. In the last half of the twentieth century, the relatively new concepts of community land trusts, limited-equity housing cooperatives and mutual housing associations emerged. Despite their potential problems, these forms of ownership have not been given a full opportunity to prove their ability to keep housing in the hands of its low-income residents. The criticisms are still new and may be defied by subtle variations on the alternatives themselves.

For new mechanisms to function—and for existing mechanisms to function better—the statutes and regulations behind affordable housing development must be simplified, or privatization will be a wasted effort. The British experience proves that mobile capital migrates to investment opportunities with less regulation. "Capital devoted to housing finance will decline as a consequence of regulation." Since World War I, Britain has steadily increased its control over rental prices and tenants' rights. As a result, the British rental market has steadily declined. "On the eve of [the first World War], . . . [n]o less than ninety percent of all households were renters", however, in the 1990s, that figure hovered below seven percent.

Regulation can also be a tool for affordable housing. If existing programs remain as they are while new demonstration programs are created in a simple manner, investment will naturally find its way to the sample programs. For this channeling to occur and for the demonstration programs to succeed, they must be adequately funded and supported by HUD and the CMHC. Despite deregulation, there must be clear guidelines and a national policy behind these programs for them to succeed.

An example of deregulation already in action is the Policy Statement by the Advisory Council on Historic Preservation (ACHP). This document is a

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195 Paradise Unfound, supra note 100, at 69.
196 See generally id. (addressing possible disadvantages of third-sector housing).
197 Smith, supra note 17, at 8.
198 Id. at 8.
199 Id. at 14-15.
200 See generally id. at 8-24 (discussing the increase in ownership).
201 Id. at 8-9.
202 Id. at 15.
203 Rogg, supra note 186, at 340.
204 ADVISORY COUNCIL ON HISTORIC PRES., POLICY STATEMENT: AFFORDABLE HOUSING AND
declaration that federally funded housing projects in historic structures need only adhere to the Secretary's Standards for Rehabilitation when feasible.\(^{206}\) The focus of review is mainly placed on the exterior in such projects.\(^{207}\) Preservation-based housing projects, projects that rehabilitate historic structures for use by current residents, are less obtrusive and less likely to displace existing residents.\(^{208}\)

One commentator argues that there are inherent problems with third-sector housing: that it carries on the racial and economic segregation begun under U.S. housing policy and that it preserves affordability by creating "a second class form of homeownership."\(^{209}\) Does limiting the return on a resident's investment limit her ability to improve on her own housing situation?\(^{210}\) One commentator argues as follows, though the argument is weak:

If advocates of third sector housing are going to win over tenants, they will have to show that it is not a second class alternative to traditional homeownership, that homeownership is not all it is made out to be—that there are some disadvantages to owning your own home—and that third sector housing has some special advantages of its own.\(^{211}\)

The same commentator who claims this argument would be a "major selling job,"\(^{212}\) also describes in a different article the increased popularity of cooperative ownership that threatens its very affordability.\(^{213}\) She claims "defenders of third sector housing do not refute that it creates a second class

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\(^{206}\) Schneider, supra note 56, at 269.

\(^{207}\) Id. Some view this relaxation with disapproval; "low-income neighborhoods can and should be required to meet the same level of review as any other historic district, . . . any lowering of the bar implies that these communities are less capable." Id. at 275.

\(^{208}\) Id. at 267.

\(^{209}\) Paradise Unfound, supra note 100, at 70.

\(^{210}\) Id. at 84.

\(^{211}\) Id. at 91 (quoting Woody Widrow, Institute for Community Economics, Toward a Third-Sector Housing Policy, COMMUNITY ECON., Fall 1993, at 12).

\(^{212}\) Paradise Unfound, supra note 100, at 91.

\(^{213}\) One Nation's Dream, supra note 2, at 98-99.
form of homeownership,” but she fails to substantiate the claim. It is true that third-sector housing creates a form of ownership different from traditional fee simple absolute; that is why it is called alternative.

Perhaps too many people consider third-sector housing second class, but the advantages are manifest: a sense of ownership through control of the living environment, security of tenure, improved conditions, a sense of community, avoidance of displacement through the right to lifetime residency, and protection from rent increases. The third-sector does not create economic equality, but it does offer stability, affordability, and opportunity.

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214 *Paradise Unfound, supra* note 100, at 92.
215 *Id.* at 92.