A Critique of the Legal and Philosophical Case for Rent Control*

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ABSTRACT. Rent control is an economic abomination. It diverts investments away from residential rent units, it leads to their deterioration, it is responsible for urban decay such as in the South Bronx, it does not help poor tenants, it is a horrendous means of income redistribution. Yet this economic regulation is beloved of intellectuals (hot beds of pro rent control sentiment are Berkeley, Ann Arbor and Cambridge) particularly in the legal and philosophical communities. The present article is dedicated to an exploration and rejection of the arguments on behalf of rent control which emanate from this source.

KEY WORDS: economic efficiency, equity, housing, rent control

The economic case against rent control is overwhelming.[1] It is the cause of apartment shortages, housing deterioration, lessened investment, decreases in tenant and hence, labor mobility, and it artificially and inefficiently promotes condominiums, housing cooperatives and public housing the later of which also brings about great difficulties of its own.

The argument for rent control is often put forth on grounds of equity. Tenants as a group have less wealth than landlords, and this housing policy is a way of increasing the income of the latter and decreasing that of the former. This is not to say that rent control *transfers* wealth from landlord to tenant. It cannot be doubted that controls dissipate the wealth of the owners of residential rental units. But it is the rare tenant who actually gains thereby.[2] Certainly this does not apply to the renter who is frozen out of the controlled sector, and must avail himself of what is available in the newer uncontrolled area.[3] Nor does it hold true for the tenant, such as in the South Bronx, who sees the services supplied by his unit deteriorate to the low level of this rent, and even below. No, gains go only to the relatively rare tenant in a good neighborhood, located in a high rise with many vacancy decontrols (so that the landlord has both the wherewithal and the incentive to maintain the building in good repair). Rent control thus not so much transfers money from poor tenants[4] to rich landlords as it impoverishes both.[5]

Even supposing, if only for the sake of argument, that rent control actually transferred money from rich landlords to poor tenants,[6] it still does not follow that it would be equitable. To infer that it would is to confuse equity with egalitarianism, certainly very different matters. That is, it is not necessarily equitable to reduce the gap between rich and poor, although this would certainly be a move in the direction of egalitarianism. If income equality is to be equitable, it must be shown that the rich do not deserve their (excess) wealth, and that the poor do. This would be the case if, for example, the wealthy had in effect stolen their riches from the impoverished, or somehow "exploited" them out of these monies. While this claim is indeed maintained by the Marxists, it has very little to do with rent control, and no one has at least so far even posited, let alone proved, a special type of housing or rental exploitation. In the absence of

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such a phenomenon, it may well be asked why landlords alone should be forced to make good the impecuniousness of tenants.[7] After all, grocers and restaurateurs are not the only ones compelled to pay for food for welfare recipients, nor haberdashers to clothe them; rather, these funds come out of general tax revenues.

For these reasons there are very few academics who attempt to defend rent control,[8] and only the exceptional economist who has done so, at least in print.[9] The administration of the City of New York is required by law to conduct a semi-annual housing survey in order to continue its rent control legislation. In order to attain this end they have mainly relied upon sociologists, bureaucrats and social workers.[10] This opposition to the measure ranges widely over members of the economics profession, and is representative of all shades of opinion on politics and ethics. Even economists with otherwise impeccable socialist credentials are on record as critics. For example, states Lindbeck[11] (1972):

> In many cases, rent control appears to be the most efficient technique presently known to destroy a city – except for bombing.

And according to Myrdal[12] (1965, p. 12)

> Rent control has in certain western countries constituted, maybe, the worst example of poor planning by governments lacking courage and vision.

Nevertheless, support for rent control is to be found in the law review and philosophical literature (Radin, 1986, 1987; Rose-Ackerman, 1985; Kuflik, 1986) and these commentators, too, deserve to be taken to task for their views. It is to this undertaking that we now turn.

To their credit, the legal philosophers who favor rent control have not for the most part relied upon economic theory in support of their position. Instead, they have reasoned in a very different manner, one no less objectionable, however.

Let us being our analysis by considering the views of Radin (1987, p. 1857) who states:

> . . . residential rent control, minimum wage requirements, and other forms of price regulation, as well as residential habitability requirements, safety regulation and other forms of product quality regulation all become contests over the issue of commodification.

She is indeed correct in this claim. If we embrace a moderate version of the Marxist critique of private property rights, rent control can be seen as an attenuation of landlord ownership. A more extreme version of noncommodificationism, of course, would spell the death knell of private ownership of rental property entirely, and would obviate the "need" for rent control in the first place.

But her argument rests upon the implication that there is a case against commodificationism or private property rights, and this is something to be proven, not merely asserted. In any case, even from her own socialistic perspective, the argument for noncommodificationism is strongest when it comes to the human being (voluntary slave contracts should be nonenforceable; strict specific performance contracts must be set aside) and weakest when it comes to physical property (no individuals can own much of anything outright). After all, the success of the west in the Cold War, and the failure of the U.S.S.R. can be traced to their very different treatments of assets such as rental housing.

Another of her arguments is that (Radin, 1987, p. 1878)

> . . . the economic analysis of residential rent control take into account not only the monetary costs to landlords and would-be tenants, but also the decline in well-being of tenants who are forced to lose their homes, break up their communities, and endure the frustration, disruption and other "costs" of moving. But in practice the analysis proceeds differently. Reasoning in market rhetoric, with its characterization of everything that people value as monetizable and fungible, tends to make it easy to ignore these other "costs." Money costs and easily monetizable matters are at the center of the map, and personal and community disruption are at the edges. Because it tends to ignore "costs" that are not readily monetizable, commodification-talk tends to err on the side of alienation.

Radin (1987, p. 1878, ft. 107) cites Hirsch (1984, p. 604) as a typical example of reasoning poisoned by market rhetoric; that is, one that ignores subjective costs. Whether this occurs in this one case is for others to say. But the claim that economics in general ignores or deprecates that which is not easily or directly monetizeable is false. Introductory economics textbooks typically drum into students the concepts of psychic income, consumer and producer surplus, subjectivity of testes, nonmonetary values, etc., all of which constitute counter evidence to Radin's point about market rhetoric.[13]

But this is all theoretical. Let us get down to practicalities. Take the case of the tenant who can no longer afford to pay the rent, either because he lost his job, or he was demoted and his salary reduced, or there was a greater demand to live in that neighborhood on the part of other people, and the landlord could now require a higher fee as a result. The market, then, would "force" this person out of his apartment, and into more modest accommodation. The newcomer would presumably value the dwelling more highly, at least as shown by the fact that he was willing to pay more for occupancy. The landlord, led by Adam Smith's "invisible hand," earns a greater return by placing the housing unit in the hands of the hands of the more efficient user.

Radin in effect objects to this line of reasoning on the ground that we are ignoring the non-monetizable costs to the tenant who was evicted. Not at all, replies the economist. For the presumption is that the nonquantifiable amenities of the evictee (rent asunder from neighbors, community, etc.) will be offset by the nonquantifiable benefits conferred on the new tenant (closeness to work, prestige of living in an increasingly upscale neighborhood, etc.). If Radin wants to object to this analysis, she must show that this implicit weighting of imponderables is faulty. This, needless to say, she does not even begin to do; instead she contents herself with the unsubstantiated charge that economists ignore all subjective values.

But her criticism of economics transcends far more than merely housing analysis. It applies to virtually all markets. For example, at present living standards, the poor, unless they wish to confine their total expenditures to automobiles, are pretty much frozen out of the Rolls Royce market. This, undoubtedly, forces them to "endure the frustration, disruption and other 'costs' " associated with having to drive Hondas and Fords. But this is highly problematic. There is no particular problem with the luxury car market. We cannot of course specify the subjective benefits which accrue to those who purchase Rolls Royces any more than we can the owners of lower end products. But, contrary to Radin's implicit criticism, we have no reason to suppose that these considerations vitiate the market. The burden of proof to the contrary would appear to rest with Radin, but she is as far from meeting this burden as she appears to even recognize it.

States Radin (1987, p. 1920):

> Regulation of residential tenancies can be seen as connected to identity and contextuality: attempting to make possible and protect the constituting of one's personhood in one's home, and one's continuity or residence there, because the home is a justifiable kind of personal property. Regulation can be seen as attempting to ensure that tenants are not forced to move from their homes for ideological, discriminatory, or arbitrary reasons, or by a sudden rise in market prices, and to ensure that rental housing is decent to live in and a decent place for family life.

This sounds all well and good, until we reflect upon the fact that A's home, the place where is lives, is actually *owned* by B, the landlord.[14] Suppose B wants to live in the apartment himself. According to Radin, he would have no such right, since to do this would be to violate the "human flourishing" (Radin, 1987, p. 1849) of A. But what about *B's* "human flourishing?" And suppose that B wants to evict A not for owner occupancy, but in order to maximize the returns on his investment in rental housing, like every other capitalist. At first glance this seems cold, heartless and cruel. We can just hear Radin, in our mind's eye, resorting to the Marxist aphorism "People before profits." But where does this author and her ilk think that the investment for the housing which is now supporting the "human flourishing" of A came from? She forgets all about B, in her virtually total focus[15] on A.

But there are even more basic problems with Radin's (1987, p. 1849) concept of "human flourishing." Perhaps there is no more subjective, ideologically charged concept than this in all of political economy. No independent criteria are offered in its defense. One gathers the spirit of a poker game where the rules are continually changed in midstream. Further, why is freedom[16] not part of "human flourishing?"[17] The way Radin uses the term, it is a recipe for supporting the desires of those she favors (e.g., some tenants protected by rent control) and riding roughshod over the rights of all other people (landlords, and the tenants hurt by rent control.) After pillorying economists for not incorporating subjectivity into their analysis, it comes with particular ill grace for Radin to overlook this concept in her own.

As well, there is the economic point that if B is so totally constrained in his ability to benefit from the ownership of the dwelling, why would he want to own it in the first place? And if he does not, that is, if people are unwilling to become landlords, then, by definition, no one can be a tenant either. The obvious rejoinder from the Radins of the world is "Fine, who wants landlords anyway; let's all become single family owners." The trouble with this economically unsophisticated response is that it costs a significant amount of money to build or purchase a housing unit, which is beyond the reach of many people. Instead of benefiting tenants, then, rent control and other restrictions on property owners mentioned by Radin push the poor one step closer to living on the street.

Imagine the plight of a young person just starting out on his own, looking for a place to live. If he must build a home with funds now available to him, he will be in a very unenviable situation. Fortunately, capitalism allows *renting*. This means that other people can build accommodation, and this young man can avail himself of it for a relatively low price (compared to the costs of building it for himself). In much the same way as the entrepreneur invests in plant and equipment workers would be unable to undertake on their own account, the landlord provides shelter which would otherwise be unobtainable. Radin's "human flourishing," intent upon driving a wedge between the capitalist employer and the capitalist real estate investor, on the one hand, and the people they serve on the other (tenants, employees) thus renders the situation of the latter a very precarious one indeed.

For the advocate of free enterprise, all of these interferences with markets – whether in the workplace or at home or anywhere else – are unjust and inefficient. They are a rogue's gallery of much that is wrong with modern society. All the more reason then, to nip this tendency in the bud by not acceding to *any* diminution of total alienability of rental housing, up to, and including, the entire elimination of rent control. This, after all, is a matter of principle, not merely expediency.

Rose-Ackerman (1985, p. 941) offers another argument in favor of the punitive aspects of rent control against landlords: "Compensation is also not justified if the owners accepted the risk of the restriction at the time of purchase. This expectation will have been reflected in the original purchase price, and it would be redundant to compensate the owners further."

The idea, here, one would suppose, is to obviate the argument from "takings" (Epstein, 1985). That is, rent control can easily be interpreted as a "taking" from the landlord, for which the government must offer compensation. To be sure, this is not a seizure of physical property, as in the nationalizations utilized by the Soviets and other communists. On the other hand, in prohibiting the property owner from charging a market rent, the government is clearly engaging in a taking of sorts: it artificially reduces the value of the landlord's property.[18] The problem, from the point of view of rent control advocates such as Rose-Ackerman, is that if the government must compensate property owners for its taking from them, one, they will be less inclined to promote legislation of this sort, and, two, it will reduce the penalty imposed upon landlords, a result to be avoided if at all possible.

Her argument, then, turns on the fact that all owners of residential rental units always face the risk that rent control will one day be imposed upon them. When this occurs, well, the landlords deserve it: that is, they deserve the full brunt of it, with no compensation for any supposed takings. To hammer the nail into the coffin, she avers, the landlords purchased their property at a lower price which capitalizes the risk of just this sort of law being enacted. To compensate them for what the market has already paid them (through this lower price) would in effect to be adding insult to injury.

There are grave problems, however, with this view, no matter how reasonable it sounds at first. To see them, consider the following case. Suppose the government has a policy of compensating victims of crime. I buy a home in Harlem, a high crime area. I am mugged. I apply for compensation. According to Rose-Ackerman, I should be turned down since the purchase price of my house reflects the high risk of crime. Even on the left liberal philosophical grounds underpinning the arguments of Rose-Ackerman this is appalling, since the poor would be excluded from this program. More generally, the police should not come to the aid of any resident of Harlem for the same reason. After all, this person bought his home at a price which reflected the greater risk of being robbed; "let him hire his own private guards," would seem to be the implication of this perspective. The fact that he already pays taxes for police protection should be ignored, it would appear.

Rose-Ackerman (1985, pp. 958–959) offers yet another case for rent control, based on "conditional coercion,":

> At present, the prisoner's dilemma may well provide an important justification for subsidized housing programs with coercive conditions. Poorly maintained housing affects the value of neighboring property with the net result that no one may find it worthwhile to incur maintenance expenses. If all could be induced to upgrade their property, all would benefit. Subsidies could be provided to landlords and homeowners on the condition that they fix up their property. However, if property owners can sell their upgraded assets to the highest bidder, a subsidy program of this kind is not conditionally coercive. Conditional coercion arises when the government wishes not merely to improve neighborhood quality but also to make it possible for the former residents to remain in the newly upgraded housing. Thus, landlords may be forbidden to evict tenants and tenants may be eligible for subsidy only if they live in apartments that fulfill housing code standards. Similarly, urban homesteading programs, which are quite self consciously modeled after the homesteading programs for nineteenth century farmers, encourage low and moderate income people to fix up old housing and impose resale restrictions to ensure that the rehabilitated building continues to provide housing for families with low and moderate incomes.

At the outset this might not appear to be an argument for rent control, for this program is nowhere mentioned in the quote above. However, rent control must of necessity be part and parcel of this urban homesteading plan, for if it is not in effect the extant residents of the newly renovated property will not be able to afford the higher rents which could now be charged for the improved accommodations. If the government is to "make it possible" for these tenants to continue to occupy their premises, rent control of some sort must be imposed.

Having settled that issue, let us now consider some criticisms of the Rose-Ackerman argument. She is resorting to the "market failure" argument based on externalities or "neighborhood effects":[19] if one landlord improves his property, he can only recoup some part of his investment as long as the others maintain the status quo, since upscale high paying tenants will still avoid him, for while his apartments are now of high quality, the neighborhood itself is still a nondistinguished one. From this Rose-Ackerman draws the conclusion that government subsides are warranted; but she goes too fast, as there are several market responses to just this type of situation. For example, a bunch of landlords can act in concert, whether explicitly, through a property owners' association, or implicitly, in response to the same market forces that accounted for the fact that one of them was led to an upgrading procedure. On the other hand, if the transactions costs are too steep for such explicit cooperation, then one real estate firm may purchase the holdings of a large group of landlords. This company may do so at low prices which reflect the relative state of nondevelopment. Then, it may engage in repair of the entire group of high rises, capturing for itself all of the neighborhood or externality effects which in the fallacious view of Rose-Ackerman, justify government intervention into the marketplace. But suppose that this market internalization of the externalities were for some reason nonoperational. Does it follow, even then, that our author's urban socialist nostrums are valid? It does not. For she neglects the fact that if there are "market failures" then so too are there "government failures." Whenever municipal government becomes involved in housing subsidies of this sort, the presumption is that the effort will be shanghaied by booty seekers of all stripes and varieties. Instead of the money being confined to landlords whose holdings can be characterized by Rose-Ackerman's neighborhood effects problems, it will spill over onto the poor, minority group members, cronies of the politicians involved in the dividing up of the monies, etc. Thus, even on strict neoclassical economic grounds, we may not deduce from a market failure that government interference is justified. This only follows if it can be somehow shown that the government failure "cure" is not worse than the market failure "disease." But our author does not address this problem; indeed, she seems unaware that it constitutes a flaw in her analysis.

Another difficulty. Why look at matters only from the point of view of the landlord who wants to go upscale. Radin (1987, p. 1878) discourses eloquently about the "personal and community disruption" attendant with yuppification. Here, then, Radin and Rose-Ackerman, both advocates of rent control, are at odds; both cannot be correct. The former blames upgrading for violating the rights of poor tenants. The latter complains that there is not *enough* of it; that no landlord will want to upgrade his housing (while leaving in low paying old tenants) unless everyone else does; therefore, subsidies are justified. If we take Radin at face value, then, far from government *subsidizing* the upscaling of rental housing, the state should *discourage* it, whether by taxing, regulating or outright prohibiting such economic activities. The difficulty with regarding from externalities is that "one man's meat is another man's poison." Looking at increasing the quality of residential rental accommodation from one perspective, Rose-Ackerman calls for more of it; from another point of view, Radin's analysis implies we should have less. Both are housing socialists; both use the concept of externalities in a manner consistent with neo-classical economics. That they end up 180 degrees apart is due to the inner contradictions of this mode of reasoning.

Radin (1986, p. 350) must be the only advocate of rent control who clearly sees the economic case against this institution. She even goes so far as to say of the claim "rent ceilings will increase the supply of affordable rental housing" that this "causes economists to gnash their teeth." But this is the veriest tip of the iceberg for her. This author seems intimately acquainted with the economic critique of rent control. For example, she (1986, pp. 350–351) fully appreciates that at the controlled rent, demand will be greater than supply, which is the classical depiction of a housing shortage, that investors will flee from residential rental units, that tenant mobility will plummet, that a black market will ensue, that "landlord prejudices" will be implemented, that "slipshod maintenance" will become the order of the day. Notwithstanding all of the foregoing, Radin still distinguishes herself by rejecting these arguments[20] on the ground that (1986, p. 351) they "assume that housing may be treated normatively like any other market commodity" and that there is no warrant for this conclusion.

Instead of economic efficiency, she (1986, pp. 352–353) posits as a normative criterion that a law "makes it possible for existing tenants to stay where they are, with roughly the same proportion of their income going to rent as they have become used to. . . ." Abjuring any moral principle, she resorts to situational ethics: ". . . the analysis I suggest is an all-things-considered weighing of each situation in light of moral factors relevant to the particular situation" (1986, p. 353).

The problems, here, are legion. If each case has to be considered on its own merits, that is the end of normative analysis, as there can be no *principle* in operation. On the other hand, if the single principle, the summum bonum of her analysis, is that extant tenants be able to stay right where they are, at a rent proportional to their incomes, this is, to say the least, rather idiosyncratic. Why should this moral rule be the one that all of western civilization has been gravitating toward for these many years? A minor difficulty with this can be seen by supposing that a tenant had been earning, say, $40,000 per year, and paying $10,000 in rent, e.g., 25% of income. Now, the tenant loses his job, and takes home exactly zero, and, if the same ratio is to prevail, lives rent free at landlord's expense. This is justice? The major difficulty, of course, is that the moral law by which sitting tenants in general should be able to exploit property owners is obscure, to say the least. Why should they? We are vouchsafed no answer.

Another moral argument against the landlords is that they constitute (Radin, 1986, p. 353) "a cartel (oligopoly or shared monopoly)." Now, if this is so because ((Radin, 1986, p. 352 ft. 2) "they controlled the issue of building permits to potentially competitive landlords," then there is an easy, direct and totally moral solution: get rid of building permits, as yet another infringement upon private property rights. Why not go to this putative source of monopoly, instead of allowing it to continue in operation, and only attack it at its branches, e.g., with rent control?

On the other hand, speculates Radin (1986, p. 352, ft. 2) perhaps this is due to "other reasons," presumably, garden-variety industrial concentration ratios being too high.[21] This would be news to most economists, given that this is one of the least concentrated industries known to man.[22] But, if, somehow, there were indeed the case, then Radin's (1986, p. 353) path toward advocating rent control is clear: "The justice of trust busting is not disputed very much these days by anyone, whether she (sic) is of utilitarian or other ethical persuasion." In this Radin is very much mistaken; there are indeed numerous scholars on record in opposition to antitrust, both on economic and moral grounds.[23] But even if there were not, it is still hard to see why mere "dominance" in an industry, that is, success in convincing customers to deal with one's firm, should set oneself up for a backhanded slap in the fact by the coercive apparatus of the state.[24]

Yet another economic argument for rent control by this supposed economically sophisticated scholar is as follows (Radin, 1986, pp. 351–352):

> Even if landlords cannot collude, if they are reaping high "rents" in the economic sense, making them lower prices to the competitive level should result in no restriction of supply or other misallocation of resources.[25]

This is unlikely in the extreme. For if landlords are reaping high economic rents, it is surely a phenomenon indicative of disequilibrium. Eventually, these "excess profits" in residential rental housing will yield to the entry of new entrepreneurs. But, ceteris paribus, surely an addition jolt to this market by rent control will indeed "restrict supply" and "misallocate resources." Imagine that "excess profits"[26] exist in 10 different industries, rental units among them. But rent controls are only imposed in this one market. Does anyone doubt that resources will tend to (inefficiently) flow from that one to the other nine? If Radin were really serious about pumping up investment to residential renters, instead of advocating rent control, she would favor controls in every other market *except* for this one. Then and only then would resources be (mis)allocated to tenants, seemingly her favorite group, and away from customers of all these other industries.

In the view of Radin (1986, pp. 354–355) "Alienability is a prime attribute of property in the market society." True enough. If you can't sell, rent, or give away your own property, in any way satisfactory to yourself and at least one other willing interactor, then and to that extent you do not really own what is ostensibly yours. However, she follows up with this statement (Radin, 1986, p. 358) ". . . residential housing is appropriately treated as incompletely commodified." This means it is justified to abrogate the property rights landlords would otherwise have in their holdings.

According to Radin (1986, p. 356) it is justified not only to steal[27] from the landlord (even apart from accusations of "monopoly," "collusion," "reaping high economic 'rents' "), but also to prefer the position of sitting tenants to numerous other groups and considerations such as:

> (1) the general loss to overall welfare or happiness or wealth; (2) the wealth loss to landlords;[28] (3)

> the curtailment of their choice in price setting and other aspects of control of their property; . . . (6) the wealth loss to would-be tenants (and their unmonetized frustration); (7) the differential treatment of landlords and tenants; (8) the differential treatment of current tenants and would be tenants. . . .

Why this monomaniacal emphasis on extant renters? Radin (1986, p. 359) explains:

> Most of us, I think, feel that a tenant's interest in continuing to live in an apartment that she has made home for some time seems somehow a stronger aim than a commercial landlord's interest in maintaining the same scope of freedom of choice regarding lease terms and in maintaining a high profit margin.

Well, all right. Given her hostility to the ownership of residential rental units, it should come as no surprise that she would stoop to advocating landlord (partial) expropriation. But why this back-of-the-hand treatment for would be tenants who are not allowed to outbid present occupiers for urban spaces they clearly value more highly? After all, even Radin (1986, p. 361) allows that the claims of such people

> seem especially strong . . . in the situation where large numbers of people work (or perhaps go to school) in the jurisdiction but are unable to find housing there. . . . No doubt there is a misallocation of resources when the would-be tenants are forced to rent in their next preferred community rather than the one they would have chosen at the "real"[29] market price if it were allowed to prevail.

These considerations notwithstanding, Radin (1986, p. 361) hardens her heart to these unfortunates:

> Yet these kinds of losses do not seem as important as the kind of loss that results when one is forced to move out of one's *home* when the rent, even if what the competitive market will bear,[30] ceases to be within one's budget.

There are so many difficulties with this position it is hard to know where exactly to begin. First, why should eviction from a rental apartment, of all things, be elevated to the summum malum? Surely, what with sickness, war, pestilence, disease, there are far worse things that can befall a person than to be turfed out of a dwelling.

Secondly, if we are to confiscate properties from their rightful owners every time a renter becomes inordinately attached to the good in question we will turn our society inside out; at the very least we will play havoc with rental markets, perhaps even ending them all outright. Radin, presumably, would not support rent control for hotel rooms on the ground that people occupy them for such short durations they could not possibly form such strong emotional attachments to them. All well and good.[31] But if landlords knew that what the Radins and Rose-Ackermans of the world had in mind for them, they never would have gone into the business of long term rentals. Given that emotional attachment to a long occupied dwelling could confer on renters rights akin to ownership, the landlords would have instead offered, hotel-like, short term lease, say, for 30 days maximum. Then, at the end of every month, all tenants would have had to swap apartments with each other, at great overall inconvenience, lest they become too attached to their dwellings and thereby attain "rights" to them.

Let us apply this to another industry, restaurants. The Jack Nicholson character in the movie "As Good As It Gets" became inordinately fond of the restaurant he frequented. According to the "logic" of Radin's analysis, this would thereby entitle him to partial ownership rights. One of the underlying premises of the movie is that this is exactly how the Jack Nicholson character viewed his situation; he was outraged and "rightfully" indignant when they were no longer accorded to him. The difficulty is that not only was this character attached to the restaurant, he was also (even more) attached to one particular waitress in that establishment, played by Helen Hunt. Needless to say, there is no compossibility[32] in this fictional situation. That is, rights clash, and both of them (Nicholson's "right" to the waitress services of Hunt, Hunt's right to quit her job, or avoid Nicholson if she wished) cannot be upheld.

Third, given the subjectivity of human values and emotions, what entitles Radin to set herself up as the arbiter of who values what more? Specifically, she adduces no evidence, but only her own personal prejudices, for the claim that being "forced to move out of one's *home*" is just about the worst thing that can befall a person; certainly worse than not being able to rent where one wishes, or having one's life savings being seized through rent control legislation. It is in this regard that Radin follows the path so ignominiously blazed by Coase and Posner.[33] They, too, present themselves as the arbiters of law based on utilitarian (e.g., wealth maximization) considerations. For them, as in the case of Radin, rights are not a matter of ownership based on past homesteading, gifts and trades.[34] Rather, they depend upon future events. True, there are some slight differences; for Radin the summum bonum is utility maximization of sitting tenants, of all people; for Coase and Posner, it is wealth maximization in general. But the similarities are far more important than the differences. Both are willing to ride roughshod over private property rights in order to support their own pet projects.

Let us next consider Radin's explanation of why tenants cannot sell to landlords (or to anyone else) their rent control rights. That is, tenants could vacate upon being paid a fee, under vacancy decontrol, and the right to vitiate the control or not, would pass to whomever paid off the extant tenant. "This could come about if we made rent control waivable by the tenant." Radin (1986, pp. 359–360, ft. 12) attributes this to, in effect, fairness:

> The restraint on alienation on the seller's side (the landlord's limited freedom to set prices and terms of transfer) is matched by an inalienability on the buyer's side (the tenant's inability to waive or sell back rights for a subjectively perceived benefit.)

But there are problems here. There is no fair balancing of rights between landlord and tenant under rent control, as maintained by Radin. Rather, the real reason for the inalienability is that to allow tenants to sell their rent control rights back to landlords would make too explicit their initial theft from the landlord.

Next, Radin (1986, pp. 362–363) mobilizes in behalf of rent control her concept of "personhood." She states (1986, p. 363):

> Personal property describes specific categories in the external world in which holders can become justifiably self-invested, so that their individuality and selfhood become intertwined with a particular object.

Naturally, she has in mind tenants who become heavily involved with their dwelling spaces.[35]

One problem is that the tenant's apartment may be many things, but it is *not* "personal property." Very much to the contrary, the dwelling space is property, all right, but of the *landlord*, not the tenant.

Secondly, why should this phenomenon only apply to tenants?[36] Cannot landlords, too, become "justifiably self-invested" in their own property?[37] If individuals want to invest themselves, their personalities, the essence of their beings, into the property of other people, they are riding for a fall. They cannot on that basis be allowed to claim *ownership* of other's property. If they could, that is, if Radin's views were generalized into law, then there would be no end of "personalizing" of other people's property. I would borrow money from a bank and then get my "individuality and selfhood . . . intertwined" with this money as quickly as possible. Perhaps I would fondle this folding green stuff, much in the manner that Scrooge McDuck would play with the cash in his money bin, swim in it, throw it up over his head and let if waft down upon him. Then, when the bank demanded that I return what I owed to them, plus interest, forsooth, I would borrow a leaf from Radin's book and claim that as my personality, my "personhood," was now invested in these funds, it would be improper for the law to take them away from me (since I am therefore now the rightful owner because of all this fondling) and give them back to the bank, the previous but now illegitimate owner (since, sneer, the bank is a "purely commercial" enterprise – Radin, 1986, p. 362). Once this sort of thing became generalized, it would prove inimical to commercial relations of all sorts.

Radin (1986, p. 365) of course, is having none of this; she declaims: "The argument here might suggest that by virtue of their personhood they are owed homes. . . .” This amounts almost to self parody. We are *all* persons, in any case those of us who are members of the proper species. Why that should entitle us to property we have had no hand in creating, at the expense of those who have, is, at the very least, unclear. It would appear that Radin is taking the part of the lazy grasshopper who did nothing to create the loaf of bread, vis a vis the little red hen, who did, but why she should think that personhood (or, animal-hood, in this case) should be definitive, is obscure, since *both* of the claimants for the bread are members of the relevant genus.

Radin (1986, p. 366) claims “. . . it is not fair for landlords to be able to make tenants continually pay over their consumer surplus in order to keep the home in which they are self invested.” But this is surely economic illiteracy. The reason buyers and sellers, lender and borrowers, investors and entrepreneurs, renters and landlords, employers and employees all get together to interact is for mutual advantage. There *must* be some sort of surplus for each and every one of them, otherwise, pray tell, why would they agree to (continue to) engage in commercial interaction with one another? If a tenant had to pay over the entire consumer surplus he receives from an apartment, he would by definition no longer continue his occupancy there.

Perhaps Radin can more reasonably be interpreted to be saying (although she does not say this) that “it is unfair” if landlords capture *any* of the consumer surplus that tenants might otherwise have had for themselves. But this cannot be sustained as logically coherent either. For example, if the typical landlord charged a zero rent (or, better yet, one pegged at minus infinity) then the consumer’s surplus obtained by the tenant would be maximized. In this interpretation, *any* raise in rent from that very low level would reduce tenant surplus and would thus “be unfair.” It is exceedingly difficult to seriously consider such a claim.

Radin directly confronts the argument which stipulates that the poor should be sheltered, but by all (rich or middle class citizens) not just by one small group, landlords; in other words, that shelter ought to be put on the same footing as food and clothing, where restaurants, grocers and tailors are not singled out for particular appropriation, and the burden is borne by all who are able to bear it. If one had thought that our authoress would have been impressed by the “fairness” of this doctrine, one would have been sadly mistaken. Instead, she (1986, p. 367) asks:

> . . . why not tax everyone, and compensate the landlords for having to yield fungible wealth in favor of tenant’s personhood interests?

and answers:

> If the government has erroneously permitted wrongful fungible property, or wrongful commodification, and acts to correct its error, compensation is not appropriate, for reasons analogous to why it is inappropriate to compensate “expropriated” slave holders. . . .

But this is a disanalogy. The slaveholders were guilty of invasion; of coercing innocent people to forced labor; of legalized kidnapping. The landlords, in very sharp contrast, were “guilty” of nothing more than making otherwise homeless people the best offer of shelter available to them.[38]

No one has an obligation to be a landlord in the first place. Did but property owners realize what was in store for them were the Radins of the world ever placed in control of their property, it is very likely they would have invested their hard earned money in other venues. Let us put this in another way. If all landlords, tomorrow, dropped dead, and took with them their property to Hades, where Radin seems to feel they belong, the plight of tenants would very clearly be *worsened*. Tenants are where they are because the deal they got was the best one available. Were there a cheaper better apartment, they would have taken that one, instead of the one for which they signed a lease. In very sharp contrast, did all slave holders but disappear in a puff of smoke, and their plantations and slave ships and whips and fences and dogs and overseers and chains with them, there is no doubt that the welfare of slaves would have been vastly improved. If this distinction between voluntary trade and naked coercion is something that escapes notice of a commentator, there is very little in all of political economy that can be clarified.

Radin (1986, pp. 372–373) next addresses herself to the issue of why second generation rent control legislation commonly exempts from control new dwelling spaces:

> The exemption for new buildings may be seen primarily as a method for offsetting the decrease in supply of rental housing that simple price theory predicts. There is no personhood interest to protect in housing that has never been occupied. (Serious problems arise if rent control goes on for a long time and a twenty year-old building is exempt because it succeeded rent control. Jurisdictions with long term rent control must adjust such problems from time to time.)

But this is self-contradictory. She argues for rent control on the basis of personhood, and yet admits that this concept cannot apply to new buildings. True, after 20 years, "personhood" attachment to dwellings can occur, but to incorporate into rent control these exempt buildings would be for the authority to go back on its own, presumably solemnly given, word.

Radin (1986, p. 373) also exults in the fact that luxury dwellings are commonly exempted from rent controls. She attempts to justify this state of affairs on the ground that "the interest of wealthy tenants is less likely to be personal." But this cuts against the grain of another of her concerns: that the interests of the poor be taken into account by public policy. This being the case, she ought to be advocating a system which lowers rents for Ford and Chevy housing vis a vis the costs of Rolls Royce units. The present system of exempting luxury dwellings from rent controls has the diametric opposite effect: it encourages the building of the latter types of structures, thus lowering rents in that sector, and away from the former, thus raising their rents and reducing vacancy rates. Imagine the very opposite: that is, rent controls for top of the line housing, but not for that occupied by poor people. Then, investors would be lead by their self interest to invest in lower class housing, thus *lowering* rents there, and *away* from the high end of the market, with a resultant *increase* in rents for the rich, something they would no more than deserve, at least in Radin's view.

Kuflik (1986, p. 75) raises yet another issue of relevance to rent control: minimum quality standards for rental housing. This a apropos of our subject since if the landlord is allowed to decrease the quality of his offering in proportion to the degree that controls reduce the rent he is allowed to charge, then the goal of the program – to afford tenants a bargain, better than that which would have been available to them in the free marketplace – will have been abrogated. E.g., it is a bargain to obtain a Rolls Royce at Ford prices (the rent control goal); it is no such thing to buy a cheaper automobile at lower prices. Thus rent control advocates are forced, willy nilly, into supporting laws which prohibit units below a certain quality from being rented. States Kuflik (1986, p. 83):

> Consider, in this connection, a right only recently afforded the status of legal inalienability – the tenant's right to the minimum habitability of his rented domicile . . . the state can simply refuse to uphold any agreement by which a tenant "alienates" the right to be provided with a minimally habitable domicile.

There is of course an immediate problem: if a tenant's occupancy of a "substandard" home is the best option available to him, then precluding him from renting it, e.g., not allowing the "tenant (to) 'alienate' the right to be provided with a minimally habitable domicile" will actually make him *worse* off, not at all the explicitly looked for result of the exercise. If the high jump bar is set above "Chevy housing," then anyone already ensconced in such accommodation will be put in an inferior position, given that this was the best bargain available in the market at the time.

Another difficulty is that this illustrates Mises' (1966) maxim that one market interference necessarily leads to others in an ever-widening cycle: first we introduce rent control, and then, in order to protect this program, we are forced to intervene with minimum quality standards.

A third is that this is a "positive right," that is, no right at all. It couldn't have worked in cave man days, at least by the habitability standards of the turn of the 21st century. This shows that the requirement is specific to time and place, and not at all generalizeable all throughout history as, say, would be the law against murder or slavery.

We have examined a plethora of arguments in support of rent control, and have found none of them very compelling. This should occasion no surprise, as the case against rent control is basic to economic analysis.[39] So much so that it is the rare introductory textbook that does not derisively mention this policy as illustrative of supply and demand, and the setting of maximum prices below equilibrium.

Notes

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1 For a critique, see Anderson (1964); Baird (1980); Block (1981, 1982, 1989, 1993, 1994); Brenner and Franklin (1977); Cragg (1974); Downs (1988); Friedman and Stigler (1981); Grant (1989); Horton, Shorter and Block (1998); Lindbeck (1972); McDonough and Block (1997); Mungovan (1995); Myrdal (1965); Salins (1980); Sohr and Block (1997); Tammarra, Corley and Block (1999); Tucker (1990); see also Dauterive et al. (1985).

2 States Radin (1986, p. 354) "If we can assume that landlords are relatively richer than tenants, and if we accept the diminishing marginal utility of money, the wealth will in fact yield more welfare in the hands of the tenants, a situation to be preferred by egalitarians. . . ." This is true only to the extent that rent control is actually a transfer from rich landlord to poor tenant. But there is "many a slip 'tween cup and lip" on this one: there are rich tenants and poor landlords; rent control is a very poor wealth transfer device, more of a dead weight loss creator; the benefits which spill over to third parties, such as politicians and rent control bureaucrats.

3 Initially, controls applied to all rental units. But under these conditions, no new apartments would be built. No one would be so foolish as to place their hard earned money in housing subject to controls when they were free to invest in single family housing, condos or cooperatives, hotels, shopping malls or factories, to say nothing of industries completely unrelated to housing. Thus, there was a retreat from early complete and total controls; exceptions were commonly made for new housing, and decontrols were allowed for vacant units.

4 Another complication is that *initially* it appears that most tenants gain from rent control. After all, their rents are lowered in the short run. It is only in the longer run that conditions deteriorate, as landlords find a smaller return from investments made in their property than elsewhere, and the effects of this incentive structure become apparent.

5 The main beneficiaries, apart from a minority of fortunate tenants, whose numbers lessen as time goes on and the inner contradictions of rent control become more and more apparent, are the rent control bureaucrats, the judges and other workers in landlord tenant courts which burgeon as a response to the hostility engendered by rent controls, and those who enjoy rent controls for left wing ideological reasons.

6 Many small landlords, at least in the outer boroughs of New York City, are black, Puerto Rican and members of other minority groups who worked hard, saved, and invested in rental property. In this they resemble the kulaks of Soviet collectivized agriculture, who were singled out for particular punishment for resisting socialism.

7 There is no means test involved in rent control. Very rich people may sometimes benefit from this policy. Wealthy tenants who pay far below market rents include actors Woody Allen and Mia Farrow and former mayor Ed Koch.

8 Marcuse (1979); Niebanck (1968); Rapkin (1966); Rentalsman (1980) are exceptions.

9 Kristof (1964).

10 For surveys of economists which show overwhelming albeit not total rejection of rent control as a public policy initiative, see Block and Walker (1988) and Frey et al. (1984).

11 Cited in Rydenfelt (1981, p. 213).

12 Cited in *Dagens Nyheter* (Swedish Newspaper), 25 August 1965, p. 12; cited in Rydenfelt (1981, p. 224).

13 The Austrian economists, in particular, have placed great emphasis on the subjectivity of costs. See in this regard Buchanan (1969); Buchanan and Thirlby (1981); Hoppe (1988); Kirzner (1986); Lachmann (1969, 1971, 1976, 1977, 1978, 1986a, b); Mises (1966); Rothbard (1962).

14 Barnett (1986, p. 187) correctly relies on the

doctrine of "compossibility," which means that there can be no conflict in valid rights.

[15] Hazlitt (1979) warns of looking at the "seen" at the expense of the "unseen" in economic analysis. It would appear that Radin has ignored the Hazlitt lesson.

[16] That is, in this case, the right to alienate that which you own.

[17] for the view that freedom is necessary for the nature of man, see Rothbard (1998[1982]).

[18] Of course, it is hard to maintain that people own the *value* of their property, in contradistinction to its physical aspects. This is because value is determined by markets, by all or at least marginal demanders and suppliers; since the property owner cannot control the decisions of the entire market, he is prevented from determining its value. On this see Hoppe (1990).

[19] For a general critique of this argument, see Block (1983, 1989, 1990, 1992, 1993); Hummel (1990).

[20] The overwhelming majority of those who support rent control are not at all aware of this economic case, as is Radin.

[21] It is difficult to imagine any third alternative. That is, monopoly is either due to government intervention in the first place, e.g., restrictions on entry (the Austrian economic view), or it is a function of concentration ratio deemed to be excessive (the neo-classical view).

[22] Perhaps, too, this is evidence that a little bit of superficial knowledge about economics can be a dangerous thing.

[23] On this see Armentano (1972, 1982, 1991), Armstrong (1982), Block (1977, 1982, 1994), DiLorenzo (1997), Boudreaux and DiLorenzo (1992), High (1984–1985), McChesney (1991), Rothbard (1970a), Shugart (1987), Smith (1983).

[24] IBM and ALCOA were at one time accused of being the only sellers of computers and aluminum, respectively. But they held a gun to no customer's head, nor did they steal the raw materials used for their products from anyone. It is therefore difficult to see which moral laws they violated, or why it would be ethical to use force to interfere with their (at the time very) successful businesses.

[25] Radin cites Mansfield (1975, p. 370) as her authority for this.

[26] Why do we have excess profits, and rents, too, perhaps, but never excess wages?

[27] Radin, of course, would never use such explicit, accurate and truthful language, but that is no reason for us to resist calling a spade a spade.

[28] E.g., theft, not to put too fine a point on it.

[29] I am at a complete loss to explain Radin's use of quotation marks at this juncture. Perhaps she thinks that the free market rental is not "real," while the arbitrary one established by law is "real."

[30] So much, then, for her accusations of "monopoly," "collusion," and "reaping high economic 'rent.'" These are all beside the point, the primordial and elemental importance of not being evicted from one's *home*. Is it too intrusive to speculate about Radin's past life, and the psychological blows she must have sustained upon witnessing the eviction of friends or family? Is that what her article is all about?

[31] Well, at least logically consistent, so far.

[32] See Barnett (1986).

[33] Posner (1983, 1986); Coase (1960).

[34] For critiques of Coase and Posner, see Block (1977, 1995, 1996b), Cordato (1989, 1992a, b), Krecke (1992), North (1990, 1992). Also see in this regard Nozick (1974), Rothbard (1982), Hoppe (1993).

[35] Dare we intimate that if tenants see their apartments in this way, something not quite right, something fetishistic, is going on?

[36] Assuming, that is, that this is an altogether wholesome activity.

[37] Radin (1986, p. 377) goes so far as to speculate about the possibility that "There may be landlords whose property is personal; and perhaps they should be treated differently." But this is treated as an anomaly; such sentiment plays no role in her analysis.

[38] Were this not the case, the tenant would not have rented the apartment of this particular landlord.

[39] Given the side order assumption that economic welfare is not to be reduced.

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