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Review of “Housing Subsidies in the United States and England,” By Daniel R. Mandelker

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tive version of the [equal protection clause] which was adopted over thirty-five years later."¹¹ It is arguable that this linking of the 1832 message and the 1868 amendment is simplistic. Jackson clearly was referring to the dangers posed to a representative governmental system by huge concentrations of private wealth seeking governmental favors; the language of the fourteenth amendment, on the other hand, was directed at protecting the rights of the freedmen. Also, Schwartz views the decision of *Luther v. Borden*¹² by the Taney Court as an application of the judicial doctrine of self-restraint, which involves a recognition that courts cannot resolve political questions. Actually, the decision was less a deference to other political institutions than a manifestation of the federal judiciary's hostility to the legitimate political grievances of the Dorr movement.¹³

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HOUSING SUBSIDIES IN THE UNITED STATES AND ENGLAND. By Daniel R. Mandelker.¹ Indianapolis: The Bobbs-Merrill Company, 1973. Pp. xii, 246. \$9.50.

Approaches to housing subsidy in both the United States and England have been undergoing fundamental reappraisal. In this country, housing production subsidies, the traditional core element of federal intervention in the housing market, are under heavy attack. A spokesman for the Administration recently charged that production

the potent more powerful, the humble members of society—the farmers, mechanics, and laborers—who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their government. . . . If it would confine itself to equal protection, and, as Heaven does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing.

Quoted in id. at 8.

11. SCHWARTZ 8.

12. 48 U.S. (7 How.) 1 (1849).

13. See Schuchman, *The Political Background of the Political-Question Doctrine: The Judges and the Dorr War*, 16 AM. J. LEG. HIST. 111 (1972).

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subsidy "does not serve the intended beneficiaries, the poor, . . . does not greatly improve their housing and living environment, . . . [and] has proved inequitable, wasteful and ineffective in meeting housing needs."² At this writing, the Administration has imposed a moratorium on housing production subsidies and is pressing for congressional concurrence in a new housing-community development program package, consisting of revenue sharing and expansion of the leased public housing program. For the future, the Administration holds out prospects of some combination of income maintenance and housing allowances.

England, similarly, is in the throes of a fundamental restructuring of its housing support programs, pursuant to legislation enacted in 1972³ which provides for a national rent control-rent rebate system, applicable throughout both the public and private rental housing sectors. The historical pattern and emphasis of English government intervention programs have been quite different from those in the United States, as will be seen, but in each case, the growth of housing subsidy programs, increasing public concern over cost and equity factors, and the emergence of unforeseen social effects have forced major reconsiderations and reformulations.

Housing Subsidies in the United States and England is a comparative examination of housing subsidy programs in the two countries and an analysis of interactions between housing supports and welfare and other transfer payment systems. The analysis reveals the complex mix of technical and value judgments inevitably built into the design of housing subsidy systems and the broad social and economic consequences of the policy choices embodied, consciously or otherwise, in the subsidy formulae and administrative mechanisms employed.

The public housing program in the United States and England's council housing come in for closest scrutiny. Each of these programs provides government owned and operated rental housing. Each relies primarily on central government subsidy, but under both programs responsibility for administration devolves primarily on local governmental agencies which exercise broad discretion in management matters. But the similarities end there. Whereas public housing constitutes only a small portion of all rental housing in the United States (896,000

2. Letter from Kenneth R. Cole, then Director of the Domestic Council (now Presidential Counselor for Urban Affairs), to Senator John Sparkman, Jan. 15, 1973.

3. Housing Finance Act, 1972, c. 47.

units available for occupancy, as of 1970),⁴ in England council housing comprises two-thirds of all rental housing, including practically all rental housing constructed since 1919. Whereas the American program is for the poor,⁵ council housing in England has no income eligibility restriction and, in general, tends to be occupied by skilled manual laborers, who are somewhat better off than tenants in private housing. Public housing is a deep subsidy program, two-thirds of housing costs being absorbed by the subsidy, while the council housing subsidy meets only one-fourth of housing costs.⁶ Rent control elements are included in both systems, but in each case rent controls represent recent innovations, in consequence of quite different reform movements.

The different orientations of the American and English systems derive from historical factors given effect in their respective program designs—deep subsidy for a relatively small group in the United States versus shallow subsidy for a larger and more diverse group in England. In each case, Professor Mandelker finds, the program design choices sowed the seeds of the difficulties which ultimately forced reconsiderations. Thus, in American public housing, the recent demolition of the Pruitt-Igoe high-rise project in St. Louis dramatized both the severe problems of economic and racial impaction caused by concentrating poor families in low-income projects and the financial distress of local housing authorities unable, because of the poverty of their tenants, to raise rents sufficiently to cover spiralling operating and maintenance costs. Starting from the opposite pole, England by 1972 had arrived at a situation where, as Professor Mandelker states, “the burdens and benefits of the housing subsidy program had grown disproportionate”⁷ and inequities had arisen both among council housing programs and vis-a-vis private sector tenants who, although generally less well-off than council housing tenants, received no government subsidy.

In an effort to redress the financial plight of American local housing authorities, Congress in 1969 and 1970 adopted the “Brooke Amendments,”⁸ providing federal maintenance and operating subsidies and

4. DEP'T OF HOUSING AND URBAN DEVELOPMENT, STATISTICAL YEARBOOK 146 (1971).

5. Local housing authorities establish maximum income limits for eligibility based on the statutory phrase “families of low income.” 42 U.S.C. § 1401 (1970).

6. D. MANDELKER, HOUSING SUBSIDIES IN THE UNITED STATES AND ENGLAND 6 (1973) [hereinafter cited as HOUSING SUBSIDIES].

7. *Id.* at 128.

8. S. 2864, 91st Cong., 1st Sess. (1969); S. 4086, 91st Cong., 2d Sess. (1970).

establishing the first rent control system applicable to public housing: a rent-to-income ratio ceiling of twenty-five percent.⁹ Professor Mandelker devotes a full chapter to an analysis of the subsidy and rent control formulae and a review of the politics of the Brooke Amendments' struggles in Congress and within the Administration, where the effectiveness of the amendments was undercut by unsympathetic implementation.¹⁰ His review offers an interesting case study of power and politics at work in the development and administration of housing legislation.

In this context, Professor Mandelker closely examines the "fair rent-rebate" system of the 1972 English legislation, applicable to both council housing and private rental housing.¹¹ He finds the 1972 enactment notable, first, as a decision to continue and increase substantial housing subsidy programs, and second, of greater interest to American planners, as a formidable reconstituting of the programs aimed at achieving general rent parity and subsidy parity within the public sector and vis-a-vis private sector housing. In each sector, "fair rent" is determined for each dwelling on the basis of all relevant circumstances, expressly including the "age, character and locality of the dwelling-house and . . . its state of repair."¹² Rate of return considerations and supply-demand factors are excluded from consideration. Tenants, whether in council or private housing, are charged "fair rent," but are subsidized by rent rebates¹³ representing the difference between "fair rent" and "minimum rent," based on need-related formulae.

The English experience, particularly as regards the problem of rent increases resulting from housing allowance payments, will bear close examination in the United States as current exploration of housing allowance and income maintenance approaches proceeds. The effect of inflation on rents for low- and moderate-income housing has been severe. As former FHA Commissioner Philip N. Brownstein warned in testifying before the Joint Economic Committee in December 1972:

I would question the advisability of housing allowances in areas where

9. See 42 U.S.C. § 1402(1) (1970).

10. HOUSING SUBSIDIES 81-112.

11. *Id.* at 139-72.

12. Rent Act 1968, c. 23, § 46(1).

13. In private housing these are called "private tenant rent allowances" which, Professor Mandelker explains, are nearly identical to the rent rebates provided for council housing tenants. See HOUSING SUBSIDIES 143-47.

the existing housing stock cannot adequately meet current demands of low- and moderate-income consumers. To provide housing subsidies in such communities would simply increase inflationary pressures on prices and rents of existing units. . . . It is indeed defeating to provide housing allowances so landlords can charge higher rentals for the same units.¹⁴

Policy-makers in this country have been understandably reluctant to face up to the problem of rent increases inherent in housing allowance systems that are not tied to rent controls. But, while the administrative burdens of a national rent control system would be prodigious, its actual cost might be a small fraction of the alternative cost of subsidizing rent increases that are not justified by improved housing services. Assuming further development of the housing allowance approach, a continuation of present inflation might well force serious consideration of rent regulation alternatives, in which event the developing English experience with nationwide rent control coupled to subsidy should offer pertinent comparative data.

In his final chapter, "Conclusions and Prospects," Professor Mandelker sees each of the American and English systems seeking a balance between governmental and private-sector housing activity most appropriate to its traditions and circumstances.¹⁵ He foresees more, not less, governmental involvement in the United States, but dismisses rather summarily the possibility of replacement of the private rental market by some alternative form of ownership, "at least in the immediate future,"¹⁶ favoring instead more incremental approaches, such as expanded use of the leased public housing program. Given the dimensions of the problems of housing and neighborhood deterioration that American cities now confront and the general success of the council housing approach, a quite different judgment might have been made—and little argument is adduced in support of the conclusion reached. Public acquisition and ownership of large numbers of undermaintained, badly managed, and uneconomic buildings may be, in fact, the best available alternative, and may be less expensive than housing allowance proposals now receiving serious consideration. Whether the United States would do well to expand its public housing

14. *Hearings on Housing Subsidies and Housing Policies Before the Subcomm. on Priorities and Economy in Government of the Joint Economic Comm.*, 92d Cong., 2d Sess. 254 (1972).

15. HOUSING SUBSIDIES 207-26.

16. *Id.* at 222.

program on the model of council housing remains, for me at least, an important unresolved question.

While the book is useful for comparative purposes, its preoccupation with public housing in the American context results in a somewhat distorted perspective on the overall American housing subsidy system. The FHA market-rate and below-market-rate insurance programs, urban renewal, rent supplements, subsidies for nonprofit housing developers, and federal income tax deductions for home owners receive little attention, although they have involved more subsidy than public housing and have had greater impact on the shape and character of housing and communities in this country. The rise of the tenant union movement, particularly in public housing, judicial developments in the field of tenants' rights, citizen participation experiences through the OEO community action program, the model cities program, and other social developments also receive little attention. An emphasis instead on cost and administrative factors may underlie Professor Mandelker's preference for incrementalism, whereas others argue for radical reform.

Professor Mandelker states that the objective of his book is "to contribute to the growing debate over the future of housing subsidies."¹⁷ Given the relevance of the comparative analysis and the comprehensiveness and solidity of the presentation, that objective was certainly achieved. Scholars, legislators, lawyers, and government officials concerned with housing subsidy programs will find in this book much pertinent research and penetrating analysis. The foregoing criticisms, with which others may disagree, are not in any sense intended to detract from a recognition of the solid merit of Professor Mandelker's work. It is a serious and useful contribution to policy development in the housing subsidy area.

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17. *Id.* at ix.

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