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Autonomy, Mobility, and Affirmatively Furthering Fair Housing in Gentrifying Neighborhoods

Rachel D. Godsil

Gentrification polarizes. The term usually connotes a process where “outsiders” move into an area whose once-attractive properties have now deteriorated due to disinvestment. The outsiders moving in are often, though not always, white. This migration can lead to arguably positive outcomes. Increased demand results in an increase in property values—which, from a pure market perspective, seems like a net positive. Indeed, those who currently own property acquire greater equity, and the tax base of the city containing the gentrified neighborhoods expands. Moreover, gentrification of affluent outsiders would seem also to further society’s collective interest in residential integration. Residential integration has enormous potential to address inequalities of other sorts, such

as education, access to job networks, and an increase in amenities resulting from the political capital of the outsiders. This too seems like a significant net positive.

Opposition to Gentrification

Why then is there significant opposition to gentrification by in-place residents? One concern is the possibility that the property price increase will result in displacement—building owners will drastically increase rents or the increase in taxes may become too great for current property owners to bear. There is some dispute as to the degree of direct displacement of individuals due to gentrification (i.e., evictions, failure to pay property taxes), but it is clearly the case that the economic and racial demographics of gentrifying neighborhoods often change dramatically.

In-place residents fear that the newcomers will change the culture and practices of the neighborhood. And they have reason for this fear—anyone who has spent time in Crown Heights, Brooklyn recently will be familiar with the phenomenon. According to one caricature, “Housing prices balloon; boutiques and bistros blossom; and before you know it, some bearded dudes in vests have bought the local bodega and opened a saloon fes-

tooned with taxidermied animals.”¹ While the image is ridiculous, the perceived loss to the in-place residents is not. Indeed, the pain of loss of community and the harm of lost autonomy have been well-recognized in the eminent domain literature.

My concern is the gentrification of city neighborhoods that were abandoned during the government-sponsored suburban migration of the 1950s through the 1980s. While the neighborhoods that gentrify tend to be in certain otherwise prosperous cities—New York, San Francisco, Chicago—many of these cities have large numbers of people who have not benefited from the “new economy” and remain working-class or poor with too few options for jobs that pay a living wage.

These neighborhoods that are now so popular with affluent young professionals and families were the same neighborhoods abandoned by both

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groups beginning in the post-World War II period. The neighborhoods generally became racially isolated and economically depressed during this same period. The residents who remained did not choose to have the middle class abandon their neighborhoods, nor did they have the option for themselves to leave. Now, after decades where those who remained invested labor, time and emotion in their neighborhoods, outsiders are moving in, and the residents who remained (or their descendants) are denied both the autonomy to prevent these changes and the means to exit to more desired environs.

How convenient to now claim that community members who were unable to purchase their property lack any recognizable “interest” in the communities in which they have worked and lived. The idea of recognizing the interests of renters and in-place small business owners might seem to be familiarly anti-gentrification. But kneejerk anti-gentrification assumes that the goal of realizing community preferences requires compositional stasis. Compositional stasis, needless to say, is neither possible nor normatively appealing. Residential change in neighborhoods is inevitable whether a neighborhood gentrifies or not. The problem is that gentrification currently causes non-consensual exit—and, as such, threatens the *autonomy* of the displaced in a way that is unlike a

choice to move. But, by recognizing a broad scope of community preferences, the autonomy of in-place residents can be revived.

In-Place Residents

Many in-place residents—particularly renters—currently lack the ability to choose to remain when gentrification occurs. The forced exit of sizable numbers of community members is harmful both to them and to those who remain. The ideal response is a vehicle that allows in-place residents to remain but also allows

Gentrification polarizes.

them to *choose* whether to leave, rather than being involuntarily displaced. Such a vehicle would seem to blunt the criticism that gentrification is an illegitimate invasion by outsiders, and it would transform gentrification into a mechanism by which truly fair housing can be furthered.

Cities—with the help of the federal government—have the option of creating such a vehicle—and indeed they have when using eminent domain powers against owners. I argue that cities like New York, borrowing from eminent domain remedies and federal government mobility programs operated by the Department of Housing and Urban Development (HUD), should be using rental vouchers or low-interest loans to restore the autonomy of in-place residents, providing them with viable, self-determining options to remain or exit the neighborhood. Indeed, the Fair Housing Act (Sec. 3608) legally obligates HUD and its grantees to “affirmatively further fair housing,” and HUD has funds available to fulfill this mandate. The current absence of true autonomy and choice for in-place residents of gentrifying neighborhoods threatens the legitimacy of any integration that may occur as a result of the influx of new residents.

Why Should Gentrification Trigger Government Action?

If gentrification occurs when an area experiences increased property values as a result of outsiders who identify undervalued property, it is important, as a preliminary matter, to note what caused the initial undervaluation. If the causes of decline and renewal are simply a result of individual preferences and consensual market exchanges, the argument in favor of a laissez-faire approach seems strong. It is exceedingly clear, however, that in the context of urban neighborhoods, declining property values are a direct consequence of decisions made by the federal government, bankers and real estate brokers. Historian Thomas Sugrue has shown that the boundaries between these three groups were blurred as bankers, real estate executives and developers moved back and forth from government service to private practice. The private hand of the market was consciously manipulated to cause a decline in property values and the quality of life in urban neighborhoods.

From the post-World War II period through the 1970s, the federal government engaged in programs enhancing the autonomy of white families to purchase homes and move to the suburbs, while simultaneously disinvesting in urban centers and contributing to the exclusion of Black and Latino families from those same suburbs. In particular, three federal programs combined to provide unprecedented opportunities and autonomy even for middle-class white families: the federal subsidization of highways, the Federal Housing Administration (FHA) and the Veterans Administration (VA) homeownership loan programs. Moreover, some of these same programs resulted in massive displacement of poor people and the destruction of established neighborhoods.

In every major city, highway construction destroyed working-class

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neighborhoods as homes were leveled to make way for expressways, on and off ramps, and overpasses. These neighborhoods were comprised of many ethnic groups; however, the white ethnics were able to benefit from the highway construction because it enabled easy commutes to and from the suburbs.

The federal government did not act alone. Decisions about where to place highways and other unwanted land uses—such as the concentration of large public housing projects—all were made at the local level.² The central role of government in creating the deteriorating conditions that now lend themselves to gentrification and reduced autonomy for in-place residents suggests that it is appropriate for the government to now play a role in addressing gentrification and enhancing such autonomy.

Legal Mechanisms to Address Gentrification

If the in-place residents of a small town or suburb feel strongly about the scale and design of homes, the tacky signage of a chain store, or even the intensive development of open space, there are a range of legal and regulatory options available. The primary mechanism, of course, is zoning. Standard zoning tools of maximum height requirements, setback rules and floor area ratios—supplemented by modifications such as “cubic content ratio”—are readily available to protect against certain changes, so long as the residents can garner sufficient political support. Some communities have also imposed aesthetic zoning requirements and design review as part of the permitting process. Other powerful existing tools are requirements for permits for subdivision with associated design conditions, historical districts, and emerging open-space requirements.

The “up-scaling” of reasonably stable urban neighborhoods shares many of the same characteristics of

standard new developments: It alters the current aesthetic and uses norms of a particular area. The existing land use legal toolkit, however, is rarely at play to protect community interests. The reasons are myriad. A simple, but important, difference is scale and political power. Most of the cities where gentrification has already occurred or where it is currently underway are fairly large, and even during the nadir of American cities, most retained a financial base of middle class residents, wealthy residents and job sources. New York, San Francisco, Philadelphia, Boston and Chicago all saw significant decline in the post-World War II period through the 1970s, but they never were abandoned to the degree of cities like Detroit, Newark, Hartford or Camden. Accordingly, when “gentrification” begins—when outsid-

Current residents should have a choice of whether to stay or move.

ers with more capital move into abandoned neighborhoods—the current residents have to counter the political might of the extant middle class of the city.

In addition, gentrification often does not result in changed use in the traditional sense. The brownstones or old Victorian mansions that were used for housing in the pre-gentrification period are being used for housing now. The difference is only who is living in the house. The bodegas, small hardware stores and social clubs are replaced by other retail uses—boutiques, upscale restaurants, and cafes. None of these require zoning changes. This means that in-place residents of gentrifying neighborhoods lack many of the current land use controls that others utilize to protect their autonomy, and new devices are needed to afford that protection.

In-place residents appear to have two separate but related bases to oppose gentrification: displacement and cultural change that reflects the interests of the incoming gentrifiers. Displace-

ment of both residents and businesses is a result of increased demand for housing and commercial space, which results in higher rental and purchase prices. Cultural change is caused in part by the newly arriving upscale retail stores, the loss of long-known retail proprietors, and the different habits and norms of the gentrifiers. Without access to existing land use tools, in-place residents must look elsewhere to address these concerns. But in order for these new devices to take shape, two threshold matters must be resolved. First, governments will need to decide what level of gentrification warrants intervention; and second, they will need metrics to determine which residents qualify for protection. To the extent that any intervention requires expenditures, governments, in these budgetary times, will also need to identify sources of funds.

The Gentrification Trigger

The first issue in structuring protection for in-place residents is how to determine when gentrification is occurring. The two phenomena most often mentioned are increased housing and retail prices, and a higher percentage of high-income whites becoming homeowners (although some omit the racial designation). Needless to say, for constitutional and other reasons, linking the trigger for gentrification to the percentage of people of a particular race is a nonstarter. The same concerns, however, do not apply if the trigger is a particular increase in prices. For ease of example, I presume that gentrification occurs when rental and home purchase prices have increased by 25% over a two-year period.

What might a city do to preserve the autonomy of renters? An option that relies upon existing tools and a “market” model would be to issue a voucher to cover the increased rental costs to all renters able to establish that they had lived or operated a business in the neighborhood for a set number of years. Arguably, those entitled to the voucher would include the grown

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children of people who had lived in the neighborhood for the set number of years, since they would have inherited the home, had their parents been homeowners rather than renters. The voucher would be available for a set number of years; five years is the number that often is given when eminent domain is at issue. An additional option would be to offer these same residents a very low-cost guaranteed loan with a minimal down-payment to allow for purchase of a home.

The rental voucher or low-cost loan would directly address the displacement concerns. Any long-term resident (or their children) would have the option of remaining in the neighborhood. And while perhaps paradoxical, I argue that such a voucher or loan option should also be transferable out of the neighborhood, which would offer true choice and autonomy for in-place residents. When long-term residents or business owners and their children have choice and autonomy, the anger over any change to the culture of the neighborhood would seem to be quelled.

Once current residents have a choice of whether to stay or move, there is the potential for residents to organize and to persuade other residents and business owners to stay. If many current residents and business owners were to remain, the retail offerings and street life would likely not change in any meaningful way. Or if they did, the change would occur on the residents' own terms. If too few people stayed, those who remained might feel a sense of loss but not, presumably, a sense that outsiders pushed out their neighbors.

If most voucher holders remain, one presumes the gentrification cycle would either slow down considerably or halt altogether. Gentrifiers tend to come in waves—artists and others seeking low rent and an “authentic” community, families seeking diverse neighborhoods, and then, as amenities follow, wealthier families whose capital drives the housing costs and retail demands even higher. If most in-place residents remain, however, a lack of

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supply would prevent the subsequent waves. Although this harms the economic interests of landlords, in gentrifying neighborhoods, rental properties were among those that were devalued by the disinvestment and abandonment and so landlords would have been able to buy very cheaply initially, which mitigates any equity concerns.

Affirmatively Furthering Fair Gentrification

Why should the federal government play a role in facilitating these vouchers? To respond to its legal obligations under the Fair Housing Act of 1968. Congress required HUD and its grantees to do more than combat private housing discrimination. In recognition of HUD's own legacy of segregation, the Agency has a mandate to actively promote integration. The obligation to “affirmatively further fair housing” has been integrated by HUD in its 2010-2015 strategic plan, which includes the pledge that HUD will operate its programs “with an eye toward ensuring choice and opportunity for all

people pursuing the promise of a better life.” HUD has included these goals in the criteria by which it will judge applications for grants from cities and regional development offices.

Government played a significant role in creating the conditions that led to the harms to in-place residents; therefore, government at the city and federal levels ought to lead the effort to eliminate the aspects of gentrification that generate the most intense opposition. And, given HUD's mandate, cities experiencing gentrification have the option of seeking HUD funds to counter the current dynamic, which continues the cycle of denying autonomy to residents of urban neighborhoods.

Neighborhoods undergoing gentrification generally experience significant influxes of private wealth and political clout. This combination tends to generate increased commercial activity and governmental services and amenities. If in-place residents have the financial means to remain, they will ideally be able to benefit from the employment opportunities, educational opportunities, and other quality-of-life

improvements that are precisely the qualities HUD seeks to incentivize in its pursuit of “Mixed-Income Communities of Opportunity.” Accordingly, the federal government should be encouraged to expend funds to transform gentrification into a strategy for affirmative furthering fair housing, rather than allowing it to continue as yet another racialized dynamic that denies autonomy to the black and Latino families that remained in the neighborhoods that were hard hit by the policies of the last century. □

¹Adam Sternbergh, “What’s Wrong with Gentrification,” *N.Y. MAG.* (Dec. 11, 2011), <http://nymag.com/news/intelligencer/62675>.

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“[t]oday, many black children still attend schools in racially and economically isolated neighborhoods, while their families still reside in lonely islands of poverty: 39 percent of black children are from families with incomes below the poverty line, compared with 12 percent of white children.”

In addition to this, the recent mass closing of schools (particularly in places like Chicago), has disproportionately impacted students (and teachers) of color and could be construed to interfere with Article 26, giving parents the “right to choose the kind of education that shall be given to their children.” Some human rights organizations have even brought their concerns to the United Nations, asking them to monitor the nearly 50 school closings in Chicago. Although the right to an education has not always been viewed as a solution to social problems, one could, according to Armaline, Glasberg & Purkayastha, “easily argue that the manifest goals of public education are closely intertwined with the concept of [human rights].” The USHRN report recommends, among other things, that the United States fulfill its obligations under the International Covenant on Civil and Political Rights (ICCPR), which would include an aggressive federal role in ensuring equitable in-

vestment of resources in public schools. It also recommends that the United States ratify the Convention on the Rights of the Child (CRC) and the Committee on Economic, Social and Cultural Rights (CESCR) both of which articulate higher standards of accountability in ensuring the human right to education.

Criminal Justice

One population especially affected by the United States’ non-compliance with the United Nations Human Rights Council is prisoners. In particular, over the last two decades, prisons in the United States have increasingly relied on solitary confinement, even building entire facilities that primarily serve to hold individuals for years and sometimes even decades in extreme isolation. According to the ACLU, there are currently over 80,000 people held in solitary confinement in

America, oftentimes suffering from long-term depression and a slow and irreparable decline of a prisoner’s mind as a result. 2013 has seen unprecedented resistance to this form of punishment. On July 8, 2013, representatives of the inmates at Pelican Bay State Prison—an institution that, according to the UN High Commissioner for Human Rights, has held more than 400 prisoners in solitary confinement for over a decade, with an average time of 7.5 years spent in solitary confinement—demanded in a petition, upon other things, an end to long-term solitary confinement. Consequently, up to 30,000 California inmates participated in a 60-day hunger strike to protest the conditions of their imprisonment.

Outside of the prison system, resistance against solitary confinement has been simultaneously mounted from both civil liberties and human rights organization. In *Asker v. Brown* (Please turn to page 12)

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