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# A National Landlord-Tenant Relations Act: A Legislative Proposal for the 1970's

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## A NATIONAL LANDLORD-TENANT RELATIONS ACT: A LEGISLATIVE PROPOSAL FOR THE 1970's

The sole and proud origin of property is force. It is born and preserved by force. In that it is august and yields only to a greater force.

—ANATOLE FRANCE  
*Penguin Island*

Private economic power is held in check by the countervailing power of those who are subject to it . . . Without the phenomenon itself being fully recognized, the provision of state assistance to the development of countervailing power has become a major function of government—perhaps the major domestic function of government.

—JOHN KENNETH GALBRAITH  
*American Capitalism:  
The Concept of Countervailing  
Power*

### I. Introduction

Perhaps it is our penchant for compartmentalization which prompts man to look back at a decade of his existence and form some judgments on his successes and his failures. Similarly, the dawn of a new decade affords a commentator the opportunity to peer ahead and suggest a scheme of priorities for the consideration of the nation's policy makers.

The 1960's will be remembered for an impressive list of economic achievements in the United States and an historic and bold series of adventures in interplanetary exploration. However, back on earth this period will be recalled by many as the decade of an awakening interest in the human tragedy of widespread discrimination and destitution, phenomena persisting in spite of concerted efforts on the part of the government to alleviate these social ills. That poverty should be common in the wealthiest nation in the world is a paradox. That this nation has the economic resources to effectively cope with these problems is obvious. What is needed is a national consensus that destitution and discrimination will be forthrightly attacked in a comprehensive manner by all segments of our society.

While education and employment are significant aspects of poverty law in this country, the focus of this paper is on housing in general and the recent development of tenant unions in par-

ticular. Specifically, the author proposes as a phase of a nationally developed program of housing for the 1970's the enactment of a federal National Landlord-Tenant Relations Act. Several thorough and thoughtful articles have recently been written<sup>1</sup> in which the vehicle of tenant unionization has been discussed and analyzed. Part II will briefly set forth the historical background of the tenant union concept. Part III will examine the case for tenant unions and consider the effects which they may have on the housing problem. In Part IV the author will discuss the possible legislative approaches that might be adopted by Congress. The author will conclude, in Part V, by summarizing the virtues of tenant unions and of the proposed National Landlord-Tenant Relations Act.

## II. Historical Background

In 1967, while testifying before the U. S. Senate Committee on Finance, the late Senator Robert F. Kennedy said, "We can take little pride in low-income housing programs when our statistics show that forty-three percent of all housing in the inner city is substandard, unhealthy, and dilapidated."<sup>2</sup> In actuality the public housing program enacted by the federal government in 1937<sup>3</sup> was designed to alleviate the unemployed middle class suffering from the effects of the Great Depression.<sup>4</sup> These temporarily impoverished members of the middle class for whom public housing was enacted did not belong to the class of the "problem poor" by whom we are confronted today. In post-World War II America a lack of political power on the part of the "problem poor" has resulted in there occurring little conceptual modification of the program to adequately serve the needs of our poor.<sup>5</sup> The tangible results of this lack of direction in our public

<sup>1</sup> Note, *Tenant Union: Collective Bargaining and the Low-Income Tenant*, 77 Yale L. J. 1368 (1968); *Housing for the Poor: Rights and Remedies* (Project on Social Welfare Law, Supplement No. 1, 1 N.Y.U. Law School 1967); Coulson, *The Tenant Union—New Institution or Abrasive Failure*, 14 Prac. Law. 23 (1968); and Bazarko, *Tenant Unions: Legal Rights of Members*, 18 Clev.-Mar. L. Rev. 358 (1969). See also generally Schoshinski, *Remedies of the Indigent Tenant: Proposal for Change*, 54 Geo. L. J. 519 (1965).

<sup>2</sup> *Hearings on S. 2100 Before the Senate Comm. on Finance on Tax Incentives to Encourage Housing in Urban Poverty Areas*, 90th Cong., 1st Sess., at 70 (1967).

<sup>3</sup> 50 Stat. 891 (1937) as amended, 42 U.S.C. § 1410(a) (1964), as amended, 42 U.S.C. § 1410(a) (Supp. 1, 1965).

<sup>4</sup> L. Friedman, *The Law of the Poor*, 321 (1966).

<sup>5</sup> *Id.* at 322, 344.

housing program are the statistics set forth by Senator Kennedy.

President Johnson's National Advisory Commission on Civil Disorders aptly summarized our governmental experience in the housing program as follows:

Today, after more than three decades of fragmented and grossly under-funded Federal Housing programs, decent housing remains a chronic problem for the disadvantaged urban household. Fifty-six percent of the country's non-white families live in central cities today, and of these, nearly two-thirds live in neighborhoods marked by sub-standard housing and general urban blight. For these citizens, condemned by segregation and poverty to live in the decaying slums of our central cities, the goal of a decent home and suitable environment is as far distant as ever.<sup>6</sup>

The common law on landlord-tenant relations has long been incapable of dealing satisfactorily with the problems of private housing in an urban industrial society. Traditional notions of property rights have sharply restricted the tort liability of lessors as long as the tenants were in possession.<sup>7</sup> In only the most extraordinary situations did courts grant relief to tenants under the doctrine of constructive eviction.<sup>8</sup>

A number of State legislatures, recognizing the inadequacy of the common law, responded by enacting in the late nineteenth and early twentieth centuries various tenement house statutes. These eventually evolved into the elaborate housing codes of today.<sup>9</sup> The "repair and deduct" statutes enacted by some of the states allow a tenant to contract for needed building repairs and then deduct the cost from the rent due. California and Montana limit this deduction to one month's rent, which is too restrictive when extensive repairs are necessary.<sup>10</sup> A Pennsylvania statute suspends the tenant's duty to pay rent when a dwelling is "unfit for human habitation."<sup>11</sup> The rent withheld is deposited in an escrow account until the housing violations are corrected. After

<sup>6</sup> Report of the National Advisory Commission on Civil Disorders 257 (1968).

<sup>7</sup> Note, *Tenant Unions: Collective Bargaining and the Low Income Tenant*, 77 Yale L. J. 1368 (1968) and Note, *Indigent Tenant and the Doctrine of Constructive Eviction*, 1968 Wash. U. L. Q. 461 (1968).

<sup>8</sup> *Fowler v. Bott*, 6 Mass. 63 (1809).

<sup>9</sup> Note, *Tenant Unions: Collective Bargaining and the Low Income Tenant*, 77 Yale L. J. 1368, 1371 (1968).

<sup>10</sup> Cal. Civ. Code Ann. §§ 1941, 1942 (West 1954) and Mont. Rev. Codes Ann. §§ 42-201, 42-202 (1947).

<sup>11</sup> Pa. Stat. Ann. Tit. 35, § 1700-1 (Purdon 1967).

six months the escrow fund may be used for repairs or returned to the tenant. Maryland has recently enacted legislation similar to that of Pennsylvania.<sup>12</sup> It is clear that these rent-withholding statutes can be useful to tenant unions, as well as to individual tenants.

The first state statute to explicitly recognize and legalize collective tenant action is Article 7A of the New York Real Property Law,<sup>13</sup> which allows one-third of the tenants in a slum dwelling to petition for an order directing the landlord to repair defects "dangerous to life, health, or safety." A significant drawback of this statute is the fact that it requires time-consuming, expensive litigation.

Other articles have been written analyzing the collective-action and rent-withholding statutes and their impact on the housing problem,<sup>14</sup> and it is not the purpose of this paper to restate these findings. However one frequently-voiced objection to the rent-suspension enactments should be noted: by denying the landlord the proceeds of the rentals you are not only eliminating him profit but also are depriving him of funds which *could* ordinarily be used for repairs. Ideally, a landlord should be able to make the necessary repairs while still realizing a reasonable profit. Under these circumstances he has an incentive to continue operating the dwelling. This policy consideration, in the author's view, has not been given proper weight in some of the state programs.<sup>15</sup>

### III. The Merits of Tenant Unions

There are certain very real points of similarity between the slum tenant of today and the blue collar worker of the nineteenth century. Both groups have been forced by their economic and social conditions into a position of substantial dependence on those who possess great political and economic power. Both groups have suffered deficiencies of education and self confidence, making them reluctant to stand up to those in power for their rights and needs. History recalls the early bitter struggles between aroused workers and resistant management groups who

<sup>12</sup> Md. Ann. Code Art. 4, § 459 (1968).

<sup>13</sup> N.Y. Real Prop. Law, § 778 (McKinney Supp. 1967).

<sup>14</sup> *Supra* note 1.

<sup>15</sup> See note, *Tenants Remedies in the District of Columbia: New Hope for Reform*, 18 Catholic U. L. Rev. 80, 99 (1968).

attempted to thwart the organizational efforts of their workers. It is generally recognized that there is an inequality of bargaining power between a landlord and a tenant. Even in Pennsylvania, where the legislature attempted to achieve justice and mutuality in the lease relationship,<sup>16</sup> a majority of leases studied revealed that the statute had become a nullity, because the tenants were required to waive the statute's protection as a condition of leasing.<sup>17</sup> When faced with this type of unyielding inequality in the primary relationship, when the common law has been unable to redress this balance, and when state legislation has failed to remedy ghetto-wide problems, our society should surely consider trying a new approach. The author is of the opinion that the tenant union concept has the potential to help our nation mitigate, if not solve, its housing problems in the 1970's.

Davis and Schwartz define a tenant union as follows:

"'Tenant Union' is the name we shall give to an organization of tenants formed to bargain collectively with their landlord for an agreement defining the parties' mutual obligations. Like other forms of organization of the poor, it seeks to accomplish improvement in the condition of slum dwellers' lives while at the same time involving them in the process of social change . . . [It] . . . has as its primary function the negotiation and enforcement of a set of standards governing the conduct both of the landlord and of its members."<sup>17a</sup>

With this in mind, we might suggest several positive results that would attend the widespread introduction of the tenant union into the ghettos of the nation.

First, the tenant union format offers the landlord and tenant a continuing ongoing vehicle for communication and association, thereby providing the tenant with a legitimate outlet for his grievances and complaints and giving the landlord an opportunity to fully inform the tenants of their responsibilities.

Secondly, the tenant union will be able to act as a check on a landlord intent upon "milking" an inadequate structure.<sup>18</sup> Once a structure has deteriorated to the point that the rehabilitation costs are prohibitive, no landlord will accept any union

<sup>16</sup> Pa. Stat. Ann. Tit. 68, § 205.101 (1964).

<sup>17</sup> Note, *Pennsylvania Housing Legislation: Proposals for Reform*, 30 U. Pitt. L. Rev. 109 (1968).

<sup>17a</sup> Davis and Schwartz, *Tenant Unions*, 2 Harv. Civ. Rights L. Rev. 237, 238 (1967).

<sup>18</sup> Note, *supra* note 9, at 1387.

proposal to renovate the structure. However, the union can prevent the landlord from profiting from this type of structure by applying constant and relentless pressure.<sup>19</sup> The ultimate effect of this will be the shifting of tenants from substandard units to more suitable housing. In the case of salvageable structures, tenant unions will also be able to negotiate with the landlord for the making of repairs and the steady, gradual correction of building code violations.<sup>20</sup>

Thirdly, the tenant union is consistent with the policy set forth in § 203 (A) of the Economic Opportunity Act of 1964, wherein community action programs are specifically recommended in order to allow for "maximum feasible participation of residents of the areas and members of the groups served."<sup>21</sup> By organizing ghetto residents the tenant union combats apathy and inertia, which are major contributors to urban poverty.<sup>22</sup>

Fourthly, the existence of a grievance machinery in contracts negotiated by the tenant union gives the tenant a more constructive means of expressing his dissatisfaction with the landlord's performance than vandalizing the building or dumping garbage in the hallways. Other member-residents can also serve as a force of social pressure to induce their brethren to maintain minimal sanitary and health standards. Furthermore, tenant union organizations can and should undertake the responsibility of providing the supervision and incentive among the residents to help keep the buildings maintained in a state of repair.<sup>23</sup>

Fifthly, by encouraging families to identify with one locality and to dwell for extended periods in one place, tenant unions will, hopefully, contribute to the stability of family life among the low income group. At present slum families commonly live a somewhat nomadic existence, constantly moving from one substandard apartment to another. This pattern of living, coupled with other factors, makes for a disintegration of the family unit.

Sixthly, tenant unions can organize tenants to contribute their own labor to improve their living conditions. The union might well be able to negotiate partial in-kind rental payments

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<sup>19</sup> *Id.* at 1388.

<sup>20</sup> *Id.* at 1389.

<sup>21</sup> Economic Opportunity Act, 42 U.S.C.A. § 2782(a) (3) (1964). See also note, *Participation of the Poor*, 75 Yale L. J. 599 at 625 (1966).

<sup>22</sup> See note, *Tenant Unions*, *supra* note 9, at 1370.

<sup>23</sup> *Id.* at 1375.

so as to renovate certain features of the building.<sup>24</sup> The flexibility of the collective negotiating concept allows imaginative variations on this theme which will permit the landlord to continue making reasonable profits while rehabilitating his buildings.

Davis and Schwartz<sup>25</sup> have concluded that in badly deteriorated tenements, a tenant organization can accomplish very little. The author does not completely agree with this conclusion. It is true that the greatest physical improvements can be accomplished where the building has not already deteriorated beyond economic rehabilitation. However, even when the building is *very* dilapidated, organized tenants can bring about *some* improvements, and any improvements which lessen the squalor and hopelessness of a ghetto resident must be considered significant. Consequently, it seems unwise to deny the most unfortunate of the needy the benefits of unionization on the grounds that the results will probably not be dramatic.

#### **IV. Recommended Features of the Proposed National Landlord-Tenant Relations Act**

The federal law herein proposed would declare our national policy to be basically as follows: In order to equalize the power and responsibilities of landlords and tenants, afford all citizens the opportunity to live in decency and dignity, and to assure the economic well-being and prosperity of the nation, tenants shall have the right to self-organization, to negotiate collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective negotiation or other mutual aid, and the right, if they choose, to refrain from any of the aforementioned activities.<sup>26</sup>

The purpose of the language above is to explicitly recognize a federal right of tenants to be free to assemble and organize into a tenant union. By clearly recognizing this right, the federal government places the stamp of legitimacy on tenant organizations and thereby precludes landlords from challenging their validity except through the orderly channels of judicial review.

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<sup>24</sup> Note, *Tenant Unions*, *supra* note 9, at 1375-76.

<sup>25</sup> Note, *Tenant Unions: An Experiment in Private Law Making*, in *Housing for the Poor: Rights and Remedies* 100, 115 (New York University School of Law, Project on Social Welfare Law, Supplement 1967).

<sup>26</sup> The language setting forth the main features of the proposed National Landlord-Tenant Relations Act is a modification of the Labor Management Relations Act, as amended 29 U.S.C. § 151 (1964).

To implement this legislation the following steps are proposed: 1. Three commissioners should be appointed by the President with the advice and consent of the Senate to comprise the National Landlord-Tenant Relations Commission and to oversee the general operation of the act. 2. The Commission should utilize and contract for investigative and election services from the National Labor Relations Board. The Commission should also designate agents to be stationed at N.L.R.B. field offices throughout the United States. 3. The Commission should promulgate such rules and regulations as are necessary for the proper administration of the act.

The primary function of the N.L.T.R.C. shall be to conduct secret ballot representation elections for the purpose of determining whether a majority of the tenants in the appropriate geographic unit wish to designate a tenant union organization as their exclusive negotiating agent concerning the terms and conditions of the landlord tenant relationship. The following procedure is recommended to implement the performance of this function: Upon the application of twenty percent of the residents of a proposed dwelling unit, the N.L.T.R.C. shall make a binding determination of the appropriate geographic negotiating unit, shall order and supervise the polling of the residents, and shall certify the results thereof.

If the N.L.T.R.C. promulgated a rule providing for a representation election procedure, this would make it unnecessary for a tenant union to engage in recognitional picketing or in a rent strike to compel the landlord to accept it as the sole and exclusive bargaining agent of his tenants. The only procedure needed to demonstrate the status of the tenant union would be the election machinery described above.

The interesting case of *Edwards v. Habib*<sup>26a</sup> involved the eviction of the defendant in retaliation for her reporting housing code violations to the District of Columbia Department of Licenses and Inspections. The holding of the Court of Appeals was that by enacting the housing code for the District of Columbia the District effected a change in the rights of landlord and tenants, so that proof of the landlord's retaliatory motive now constitutes a valid defense to an action of eviction. In this connection the Supreme Court has stated:

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<sup>26a</sup> 397 F. 2d 687 (D.C. Cir. 1968).

The right of a citizen informing a violation of law . . . to be protected against lawless violence, does not depend upon any of the Amendments to the Constitution, but arises out of the creation and establishment by the Constitution itself of a national government, paramount and supreme within its sphere of action.<sup>27</sup>

It is proposed that in light of the fact that retaliatory evictions have often been utilized to discourage organized tenant activity,<sup>28</sup> it shall be deemed an unfair landlord-tenant practice for any landlord to evict a tenant for exercising the rights enumerated above. More specifically, it is recommended that the N.L.T.R.A. expressly forbid evictions actuated by a desire to punish the tenant for participating in a tenant union.

It is further proposed that it be deemed an unfair landlord-tenant practice for a landlord to refuse to negotiate collectively with the representatives of the tenant union approved by a majority of the tenants at a N.L.T.R.C.-sanctioned representation election.

It is recommended that Congress, to help the N.L.T.R.A. achieve its objectives, provide for the granting of a sum of money to the Small Business Administration for the purpose of making low interest loans to landlords who are at the time of application to the Small Business Administration, signators to collective negotiating agreements with tenant unions certified under the election provisions of this proposed legislation. These funds would be used exclusively for the redevelopment and rehabilitation of urban and rural substandard housing. Thus the legislation proposed represents a dual approach to the country's low income housing problem. It would provide ghetto dwellers with tools with which to improve their own housing environment and would offer landlords monetary incentives to upgrade their apartments and tenement houses. It is likely that the private sector of the economy would be willing to contribute some investment funds to this giant rehabilitation project. Obviously organized labor could play a significant role in the tenant union movement, helping to insure that the organizational phase is efficiently accomplished. By enthusiastically supporting this pro-

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<sup>27</sup> *In re Quarles*, 158 U.S. 532, 536 (1895).

<sup>28</sup> *Lincoln Square Apts., Section I, Inc. v. Davis*, CCH Pov. L. Rep. § 9201 (1968); *Andrew Hosey v. Club Van Cortlandt and John J. Hallohan*, CCH Pov. L. Rep. § 9586 (1969); and *Lake Meadows Resident Council v. New York Life Insurance Co.*, CCH Pov. L. Rep. § 9180 (1968). See generally Schoshinski, *supra* note 1, at 541-552.

gram, organized labor could validly claim to be in the vanguard of the battle for the social betterment of needy America.

Davis and Schwartz take the position that legislation of the kind proposed herein would be bureaucratic and formalistic and would perhaps retard the experimentation and innovation that tenant unions could otherwise bring to bear on this problem.<sup>29</sup> The author respectfully disagrees. The N.L.T.R.A. legislation and program outlined above can be simple, workable, and inexpensive to the government and the parties. Furthermore it contemplates no governmental control over the substantive terms to be negotiated by the landlord and tenant union. The parties would be free to strike their own bargain and would in fact be encouraged to utilize fully their ingenuity and resourcefulness.

### V. Conclusion

In a speech delivered to the Alabama Bar Association in July of 1968, Frank W. McCulloch, Chairman of the National Labor Relations Board, noted that the Board's use of the elements of freedom of choice, majority rule, and participation through negotiation and voluntary agreement "might be relevant and instructive as we search for long-term approaches to today's urgent unsolved problems." Traditional American values reject extremist and undemocratic solutions to the housing problem of the ghetto. However, a process involving shared participation and shared responsibility appears perfectly harmonious with our nation's value system. Another advantage of this arrangement is that it minimizes governmental participation and control, for disputes over the proper interpretation of a negotiated agreement can usually be resolved by impartial arbitration. A recent governmental publication indicates that the needy desire a voice in improving their environment and that they can aggressively and effectively function in a cooperative capacity when given the opportunity.<sup>30</sup> Community action through the N.L.T.R.A. proposal can be a workable democratic method of eliminating substandard housing.

Today America struggles in its search for solutions to its monumental housing problem. This Comment has attempted to apply the solutions and experiences learned in the last thirty

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<sup>29</sup> Note, *Tenant Unions: An Experiment in Private Law Making*, *supra* note 27, at 121-122.

<sup>30</sup> Howard, "Cleaning Up Washington's Forgotten Backyard," 2 *Communities in Action* 3 (May 1967).

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years in the industrial sector of our society to the housing crisis that we will face as a nation in the decade of the 1970's. The proposed National Landlord-Tenant Relations Act can provide an orderly, peaceful, and responsible procedure under which millions of ghetto dwellers can for the first time meaningfully and usefully participate in programs shaping their home environment. Hopefully, all elements of the community will learn to communicate, collaborate, and compromise while seeking rational solutions. This legislative proposal represents a start, a first step toward such a democratic dialogue.

D. RICHARD FROELKE