

Do Efforts to Mitigate Gentrification Work? Evidence from Washington, DC

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Introduction

We don't usually think of austerity² as something that happens in booming cities. This is true even for cities like Washington, D.C., that have recent experience with formal austerity. Although Washington, D.C., was placed in federal receivership in 1995 and stayed there for six years, it is now more likely to appear on internet lists like "America's Coolest Cities" (Carlyle 2014), "The Most Walkable Urban Metro Areas" (Leinberger and Lynch 2014), and the "Most Expensive US cities for Renters" (Avakian 2016). As the latter list suggests, however, recovery often creates a new type of austerity³ for poor and working class people. Instead of formal austerity (imposed in D.C.'s case by Congress), today's austerity is more informal, often the result of cities' decisions to foster development at all costs. In D.C. this austerity among riches is most

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² The dictionary defines austerity as "a situation in which there is not much money and it is spent only on things that are necessary." In the context of governance, austerity usually refers to a package of policies and laws that govern how budget deficits will be trimmed and services will be prioritized. Austerity can be imposed by outsiders or willingly adopted by insiders. In DC austerity was externally imposed by Congress. Indeed, Congress (with the president's approval) decided to put the city into receivership despite opposition from its mayor, city council, and a majority of its citizens.

³ Austerity can also be a side effect of policies unrelated to budget cutting. When DC was released from congressional authority in 2001, for example, the city's government adopted a number of policies designed to attract new residents into the city in an effort to grow the city's tax base. Most of these programs involved long-term investments. However, the city's efforts to attract new residents coincided with the housing bubble and an influx of cash from the federal government's post-9/11 terrorism-related spending. The result was not just an increased tax base, but intense gentrification. Although the city's leaders did not plan for gentrification, at least in the early years, they can be faulted for ignoring the consequences of it in later years.

notable in the housing market. Although the average income for the city's poorest residents fell between 2007 and 2014, the city's housing costs continue to rise (Tuth 2016). In 2016, the median home price in the District was over half a million dollars (\$534,900), while the median rent was \$2,220 for a 1-bedroom apartment and \$3,140 for a 2-bedroom (Woo 2016).

A key question that bedevils gentrification scholars is how to stop or at least mitigate gentrification so that it does not lead to the displacement of in situ residents. Most scholars have advocated for measures that help people step outside of, or work against, the market principles that sustain gentrification. These measures include limited equity co-operatives, organized squatting, and community land trusts, among others (Huron 2012; DeFilippis 2004; Martinez 2009; Springer 2016). In this paper I look at a market-oriented solution to displacement, a one of a kind statute in Washington D.C., called the Tenant Opportunity to Purchase Act (TOPA). TOPA stipulates that if a landlord signs a contract to sell a residential apartment building, tenants have the right to refuse the sale and to purchase the building instead for the contracted sale price. The goal of the statute is to mitigate displacement by giving tenants economic leverage during periods of gentrification (Eisen 1993).

Although right-to-buy programs are usually defined as neoliberal and thus viewed with suspicion by critical scholars, I argue here that TOPA is better seen as an assemblage of Keynesian, social justice and neoliberal imperatives. As such, activists and advocates in the city have been able to use a market-oriented solution to non-market ends. As I explain in the conclusion, though TOPA is unique to D.C., it provides lessons for how critical scholars might approach urban policies that are ideologically imperfect but helpful to vulnerable populations nonetheless. Indeed, in a strategic sense supporting policies that are "less than perfect" but "good enough" signals the importance of achieving smaller 'wins'. Thwarting or limiting the worst of neoliberal urbanism may not amount

to final victory, but it does deliver tangible benefits to its victims nonetheless.

Why D.C. Enacted TOPA

TOPA was crafted in 1980 in response to a wave of gentrification just outside the city's downtown core. As property values increased, landlords began selling their apartment buildings to developers interested in converting them into condominiums. Condos were a relatively new form of housing at the time – the Federal Housing Administration only began insuring mortgages for individual units inside of multifamily buildings in 1961 – but, they quickly became an ideal investment vehicle in cities, where land available for horizontal development is relatively scarce (Stray-Gundersen 1981; Lassner 2009, 2012).

Not surprisingly, the boom in conversions resulted in high and concentrated levels of displacement. The city's paper of record, *The Washington Post*, covered the conversions extensively, paying special attention to displaced renters (Robinson 1980; Weiser 1980). Housing advocates also chimed in, asking the city to step in to protect elderly tenants and other vulnerable residents, many of whom had lived in their apartments for decades. In response, the city council issued a temporary condo conversion moratorium in 1979 (Richburg 1980). A local business group sued the city, however, arguing that the measure was unconstitutional because the city had used its emergency powers to introduce the bill.⁴ The court ruled in the plaintiff's favor, so the city council went back to the legislative drawing board (Whitaker and Camp 1979).

⁴ In 1973 Congress passed the District of Columbia Home Rule Act, which gave the city the power to elect its own mayor and city council. The Act came with restrictions, however. Congress can veto legislation passed by the city council and approved by the Mayor. Although the Home Rule Act allows the city council to pass legislation without congressional approval for legislation meant to handle emergency situations, a business group challenged the city's interpretation of conversion displacement as an emergency.

In June of 1980 the council voted on a new legislative solution to conversion-related displacement – the Rental Housing and Conversion Sale Act (RHCSA).⁵ Once the mayor signed the bill, it was submitted for review to the U.S. House of Representatives Committee on the District of Colombia.⁶ Although the Committee’s chairman, Charlie Wilson (D-TX), was opposed to the bill (ostensibly on free market grounds⁷), he was unable to rally sufficient support to veto it. As a result, RHCSA became law in September of the same year.

RHCSA includes two parts – the Conversion of Rental Housing to Condominium or Cooperative (CRHCC) and the Tenants Opportunity to Purchase Act (TOPA). The first part – CRHCC – states that a property owner may only convert a rental accommodation to condominium with the permission of a majority of its leaseholders (50% plus 1 of total units). The owner must hold a formal election and report the results to the city agency in charge of administering the program. The second part of the bill – TOPA – gives tenants’ associations the right to refuse a contracted sale of their apartment building and to purchase the building instead for the contracted sale price. The tenants may then decide if they want to convert to a co-op or condominium or keep their building rental.

How It Operates

Readers may wonder how tenants can afford to buy an entire apartment building on their own. Indeed, many of the city’s tenants have

⁵ Rental Housing Conversion and Sale Act of 1980, Tenant Opportunity to Purchas Act, D.C. code §42-3404.02.

⁶ As I note in footnote 3, Congress has the power to veto legislation passed by the D.C. city council and signed by its mayor. Today the U.S. House of Representatives’ Oversight and Government Reform Committee is charged with reviewing District legislation.

⁷ Because TOPA was a one of a kind bill, there was little evidence from other cities that critics could use to justify their opposition to the bill. As a result, the bill’s opponents resorted to a ‘guilt by association’ tactic, equating the bill with the city’s rent control statute, which was unpopular in real estate development circles. For more detail on the congressional review of the TOPA statute, see my review (Gallaher 20016) or the transcript of the hearing cited in the bibliography.

low or moderate incomes. And even in relatively well-off buildings, tenants' associations rarely have existing bank accounts or credit reports that would allow them to qualify for private loans. The TOPA statute accounts for tenants' uneven footing in the market by allowing tenants' associations the right to either sell or assign their TOPA rights to a third party that can help tenants with financing. By practice, third parties are usually developers. In mixed income buildings tenants often work with for-profit developers, while tenants in low income buildings are more likely to work with non-profit developers. The city also offers financial assistance for low income tenants going through the TOPA process, including bridge loans to help tenants' associations cover acquisition costs while long-term financing and grants are arranged to help individual tenants pay closing costs on their units.

Because tenants can choose who, if anyone, to assign their right of first refusal to, they can also negotiate with multiple developers before choosing a partner. During this phase tenants' primary concern is usually to keep their housing costs affordable and/or stable. In buildings where tenants want to convert to a condominium or co-op, this means negotiating for so called 'insider prices' for tenants who want to purchase their units. Insider prices are usually below market, although the degree to which they are below market can vary (Gallaher 2016). Tenants' associations that plan to keep their buildings' rental also want to keep their housing costs stable. Although the city's rent control statute should theoretically prevent against steep rent hikes⁸, the statute does provide five categories⁹ under which landlords may petition to raise rents above

⁸ Every May Washington DC uses a "rent control CPI" (consumer price index) to establish the maximum annual rental increase per year. Between 2010 and 2016 the rent control CPI has ranged from 0% (2016) to 3.6% (2012). For historical comparisons since 2012 please see the following factsheet from the city's Office of The Tenant Advocate: http://ota.dc.gov/sites/default/files/dc/sites/ota/release_content/attachments/2016%20History_of_SS%20COLA%20vs%20RHC_CPI_OTA.pdf

⁹ DC allows landlords to petition to raise rents beyond the state caps for 5 reasons: hardship, capital improvements, services and facilities, substantial rehabilitation, and voluntary agreement. For more detail see the following factsheet from the city's Office of

permitted amounts. Tenants associations can, therefore, demand that potential partners agree to forgo petition requests before striking a deal.

Tenants in both scenarios also negotiate for improvements to their buildings, many of which have been subject to disinvestment. Tenants can ask for structural improvements, such as new windows (to block traffic noise and retain heat), central heating and cooling (to replace outdated radiators and window AC units), and repairs to roofs, foundations and joists. Tenants can also ask for amenities such as fresh paint, new landscaping, updated furniture for common areas, and rooftop decks. Developers also negotiate for things. Non-profit developers, for example, do not need to make a profit, but they do need to break even for a partnership to work. So, they may negotiate to do repairs over a longer time frame, or to forgo amenities. Non-profits who want to help tenants become homeowners can also require that tenants take steps to ready themselves for homeownership before agreeing to partner with a tenants' association.

For-profit developers, by contrast, have a more singular goal – making a profit. As such, they usually request the right to offer tenants so called buyouts – a payment given to a tenant in exchange for agreeing to waive her right to stay put. In buildings converting to condominium or co-operatives, developers can sell bought out units at market rates.¹⁰ In buildings staying rental, bought out units should be shielded from steep increases because of the city's rent control statute. However, if developers believe rent control caps will not produce sufficient profit, they can negotiate for the right to submit one of the petition requests discussed above. In recent years developers have negotiated for the right to submit “voluntary agreement” petitions. Unlike other petition categories that require developers to show the need for substantial (and

the Tenant Advocate:

<http://ota.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/RentControlFactSheet2013.pdf>

¹⁰ Although developers usually want to sell as many units as possible at market rates, DC's booming housing market means they can still make handy profits when agreeing to discounted units for tenants staying put.

costly) repairs, VAs allow landlords to raise rents above the cap if 70% or more of their tenants agree to the increase. Under normal circumstances, tenants will reject VAs, but the calculus often changes in buildings where tenants are trying to use their TOPA rights. Indeed, tenants who need third party financing will consider VAs if the potential partner promises to only raise rents to market rates in units that are bought out. As one local journalist (DePillis 2012) explained, in situ tenants often agree to VAs because they “raise rents on future tenants, who aren’t around yet to protest.”

Does TOPA Work?

Although TOPA has been in place for 40 years, we do not know the extent to which it has mitigated displacement. A primary reason is the city’s failure to track the program.¹¹ The city does not, for example, collect data on how many tenants’ associations invoke their TOPA rights. Nor does it track how many associations choose to convert versus remain rental. Without these numbers, it is difficult to measure how many tenants have used TOPA to stay put in temporal or spatial terms (e.g. during the real estate boom or in a particular neighborhood). D.C. think tanks have tried to fill in these data gaps by looking at tenants’ associations that receive city assistance to buy their buildings (Reed

¹¹ The city recently announced that it is building a database to track tenants’ associations going through the TOPA process. Why it has taken over 35 years to do so is a matter of debate. One explanation is that the failure to collect data on the process is consistent with how the city’s bureaucracy was run at the time. Fisher (2011) argues, for example, that city leaders used to treat the bureaucracy as an “employer of last resort,” so professional standards were in short supply. Another explanation is that the city saw TOPA as a private rather than public solution. That is, the city saw its contribution as providing a right to its citizens rather than a durable good or service that could be tracked. Politics provides a third explanation. Critics contend that the city agency in charge of TOPA oversight has long been beholden to developers. During the height of the real estate boom one city councilmember described the agency as “fully captured” by special interests (Grim 2006).

2013).¹² While tracking how well low income tenants use TOPA is important – after all, these are the very tenants the statute was designed to help – it gives us only a partial picture. Specifically, we need to know how well TOPA works in mixed income buildings, where tenants have economically varied interests that could make consensus difficult to reach.

A second problem is that there is no clear baseline for measuring the success of right-to-buy schemes. Although advocates often see purchase as an indicator of success, the experience of tenants who purchased their homes when Margaret Thatcher privatized Britain's public housing suggests home ownership can create as many problems as it solves (Forrest and Murie 1990; Beckett 2015). Indeed, Britain's council housing stock was in such poor shape that many buyers could not afford the cost of repairs and upkeep after purchase. There is also no established purchase rate above which a program is considered successful and below which it is seen to have failed. There is likewise no agreement on how to evaluate buyouts in the context of right-to-buy programs. Some advocates see buyouts as a necessary evil, as a way to encourage private investment in an aging housing stock, while others see buyouts as contributing to gentrification because they can lead to higher than normal rent increases (see DePillis 2012, for a summary of the debate).

Given the lack of both quantitative data on TOPA and established benchmarks for measuring it, I decided to make a qualitative assessment of TOPA in my new book, *The Politics of Staying Put: Condo Conversion and Tenant Right-to-Buy in Washington DC* (Gallaher 2016). I began by developing a representative sample of seven buildings that went through the TOPA process after 2000 (roughly, the start of the housing boom in the U.S.). These buildings were selected to represent the social and economic diversity of the city as well as differences in building size. I then contacted the tenants' associations in each building to find

¹² Because these tenants' associations receive city money, there is a paper trail that researchers can consult to piece together what they did with their TOPA rights (convert or stay rental) and whether they were successful (e.g. loan paid in full).

out how the TOPA process unfolded in each. With information gleaned from these interviews I was able to make four estimates for each building: the percentage of tenants who stayed put, the percentage of tenants who took buyouts, the percentage of units that were subject to price increases (the sum of bought out units plus units vacant at the time of conversion), and an estimate of the affordability of units that were subject to price increases post-TOPA. My goal was two-fold: to see how many tenants stayed put through TOPA and to track the affordability of bought out units going forward.

My findings indicate that TOPA's results are mixed. On average, tenants in 50.01% of sample units were able to stay put using TOPA. The people who stayed put were also able to stay put as both new homeowners and renters. That is, they were not forced to become owners in order to stay put. In fact, 3 of the 7 sample buildings used TOPA to stay rental and a fourth negotiated to convert only a small number of units to condominium. However, the housing costs in the units subject to price increases were uniformly unaffordable *after* TOPA. In buildings that converted to condo, the income threshold necessary to afford a condo was between 4.7 and 6.5 times the 2010 poverty threshold for a single person household (\$10,956). In buildings staying rental, the income threshold necessary to afford new rents was between 6.8 and 11.8 times greater than the same threshold.

Evaluating TOPA

As I note in the previous section, evaluating TOPA with empirical data is difficult because there are no agreed upon metrics on which to base the evaluation. This leaves us with theoretical categories such as neoliberal, Keynesian, and social justice. Although these categories are descriptive inasmuch as they indicate what sorts of solutions are typical to each, they are also ideological. They point to underlying assumptions about what the relationship between the state and its citizens should be. In the context of housing, for example, neoliberals believe that the market is best equipped to meet demand for

housing. They argue that state involvement in the market produces inefficiencies and socially undesirable outcomes. By contrast, Keynesians see a role for the state in ensuring (via subsidies and/or regulation) that private capital is invested in housing for the municipal workforce. Keynesians also support public investments in housing for vulnerable citizens (e.g. the disabled, the poor, etc.). For their part, social justice advocates believe in both a “just distribution” and one that is “justly arrived at” (Harvey 1973: 9). In the context of housing social justice requires that investments are distributed across municipal space and for all income groups within it.

In the critical gentrification literature, neoliberal programs are usually regarded as inferior to programs guided by either Keynesian or social justice imperatives (DeFilippis 2004; Slater 2006). In particular, critics contend that by turning housing into a commodity – something not just bought and sold, but speculated on – neoliberal policy has contributed to rising housing costs. Although rising costs have affected housing costs at all price points, low and moderate income families have had the most difficulty adapting to higher housing costs because their wages have been stagnant, or in some cases declined, since the Great Recession. Critics also argue that the emphasis on ownership in neoliberal ideology means that renting has come to be regarded in moral terms, as inferior to owning, and those who rent as suspect and unworthy of public assistance (Blomley 2005, 2008).

In many ways TOPA is classically neoliberal. It was offered after a decidedly social justice approach to the problem of conversion-related displacement – a moratorium – was rejected in court. TOPA also works solidly within neoliberal precepts. First and foremost, it gives tenants a chance to become *owners* – arguably one of neoliberalism’s most sacred designations. The role of developers in making tenant ownership possible also means that tenants must work within and often succumb to market demands, not the least of which is ensuring that developers make a sufficient profit. The amount of profit deemed necessary can, of course, vary by developer, but it is worth noting that the growing role of

international investors in D.C.'s real estate market has put upward pressure on what is considered an acceptable profit (DePillis 2012).

Given these problems, it would be easy to reject TOPA out of hand, as yet another neoliberal solution that purports to help tenants even as it hurts them. There are, however, reasons for resisting such an interpretation. My evidence suggests that TOPA is better regarded as an assemblage of neoliberal, Keynesian, and social justice imperatives. Two elements of the statute are especially illustrative. First, though TOPA gives tenants the right to buy, the right is not given to individual tenants but to the tenant collective (i.e. the tenants' association). The focus on the collective is antithetical to the emphasis on the individual in neoliberal ideology. Indeed, the basis for both social justice organizing, and the Keynesian distribution of resources has long been the collective, whether organized by identity, occupation, or need. In the context of TOPA, the focus on the collective is especially important in mixed income buildings where low income tenants and middle and upper income tenants may have different interests. If the city allowed individual tenants, or a small group of tenants to refuse a sale, for example, it would be possible for wealthy tenants, who are often better situated to take advantage of their rights, to work with a developer to refuse a sale and then convert to condo even if a majority of fellow tenants were unable to afford their units. The first part of RHCSA – CRHCC – also lends to the collective ethos by stipulating that even if tenants buy their building through the TOPA process, they cannot convert it to condominium or cooperative without at least 50% (+1) of units agreeing to conversion.

Second, by allowing tenants to assign their rights to a third party, TOPA gives tenants bargaining power they can use to determine the outcome of their building's TOPA process. While tenants can become owners, they are not forced to use ownership to stay put. This is no mean feat given the perils that can attend home ownership for low income people. In my sample, the preference for remaining rental was much stronger than I had anticipated, with 4 of 7 buildings choosing to remain fully or largely rental. TOPA's categorical fuzziness – its assembled

nature – has theoretical and political implications. Theoretically, the TOPA statute suggests that assisting low income people does not always have to occur on pure ideological terrain. Specifically, Keynesian and social justice imperatives can work through neoliberal structures, producing outcomes that are to varying degrees antithetical to neoliberalism.

Politically, this recognition means that the neoliberal elements of TOPA cannot be grounds for refusing its potential. I will admit that this was a hard admission for me to make. When I was writing my book, I struggled to see past the problems the neoliberal elements of TOPA caused, even though I knew many tenants were able to use TOPA to stay put.

In many ways I continue to struggle with TOPA's weaknesses. As I was writing this paper, for example, a new journal article, "Fuck Neoliberalism," came across my research feed. The essay, by Simon Springer (2016), made me laugh (such a rare and wonderful thing for an academic paper) *and* feel energized (yelling "fuck off" to someone or something that richly deserves it is *really* liberating). Springer's approach also seemed potentially relevant to evaluating TOPA. The "politics of refusal" beneath Springer's holler back – the idea, as he argues, that we can fuck neoliberalism "by doing things outside its reach" – suggested that maybe the TOPA statute is a poor solution for neoliberal victims, if not part of the problem. Indeed, Springer specifically calls out scholars like David Harvey for both insisting on a role for the state and "dismiss[ing] non-hierarchical organization and horizontal politics as greasing the rails for an assured neoliberal future" (2016: 287).

Once my euphoria wore off, though, the idea of rejecting or abandoning TOPA seemed unwise. Gentrification in Washington, D.C. has been rapid. Only twenty years ago the city was experiencing its fifth decade of population loss, confronting high crime and disinvestment, and struggling to make ends meet with a declining tax base – the latter leaving little to remedy the former (Gillette 2006). The city was also watching its hard earned autonomy get stripped away by an

unsympathetic Congress. This context helps explain why city leaders did little to stop gentrification when it arrived, and in some cases tacitly supported it. The city's changing fortunes are seen as a guarantor of autonomy, as a bulwark against another round of congressional meddling. In this regard, Springer's assessment of the state is fair. D.C. has become part of the problem. By encouraging gentrification, the city has hurt its most vulnerable residents. Unfortunately, efforts to step outside of neoliberalism in the city have not produced measurable gains. In fact, the only thing that has actually stopped (some) displacement is the city's TOPA statute. None of this is to suggest, of course, that TOPA is perfect or only needs minor tweaks. TOPA cannot, for example, build affordable housing or ensure that landlords don't find unethical ways to push tenants out of their apartments (e.g. by refusing to make repairs, threatening to shut off services, or using petty rules infractions to force evictions). However, because TOPA contains elements that work at cross-purposes to neoliberalism, it can be used to help tenants in non-neoliberal ways.

My research on TOPA points to two improvements that should be made to the statute. In my book, for example, I argue that the city should rewrite the rent control statute to prohibit the use of VAs in buildings going through the TOPA process. The ability of tenants to keep their buildings rental through TOPA is one of the statute's most important mechanisms. If VAs were prohibited, rents in these buildings would be kept at below market rates. At the very least, the city's two main statutes for helping low income tenants (TOPA and rent control) should not undermine one another. Second, I argue that the city should reserve rights to a portion of bought out units in every TOPA building. This would allow the city to use these units for low income residents, without the economic burdens involved in purchasing and maintaining entire buildings. Again, contra to Springer (2016), I see an important role for the state in providing low income housing. D.C.'s low income citizens are desperate for affordable housing, and the market has proven unwilling to meet the demand. In fact, it has not even been able to preserve the

affordable units that do exist. Between 2012 and 2014, for example, nearly half of the city's private affordable housing units vanished, subject to demolition, rent hikes, and the like (Rivers 2015). Small scale efforts to step outside the market, like organized squatting by homeless people, simply cannot compete in this context. None of the 'fixes' I have outlined here will solve all of TOPA's problems, but they can help. And, in the spirit of those who want to be done with neoliberalism and the austerity it imposes on society's most vulnerable, these fixes can and should happen alongside of the horizontal, outside the neoliberal box efforts that Springer (2016) calls for in his article.

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