Comment on Anthony Downs's "The Advisory Commission on Regulatory Barriers to Affordable Housing: Its Behavior and Accomplishments"

Chester Hartman
Poverty and Race Research Action Council

An insider's observations on the work of a study commission is nearly always instructive, particularly when it comes from someone with the wide experience and perceptivity of an Anthony Downs. My own commentary on what Downs has to say regarding the work of the Advisory Commission on Regulatory Barriers to Affordable Housing necessarily will deal with the commission's report itself as well as with Downs's account of that work.

What needs to be emphasized at the outset—and Downs acknowledges this—is that this report is a political document, not a true study. Both the commission's makeup and its charge determined the outcome.

The 22 members of the commission in no sense represented a wide range of views. Included in the membership were representatives of highly conservative—in some instances reactionary—organizations and political positions ("right-wing conservatives like [U.S. Department of Housing and Urban Development secretary Jack Kemp]" (p.1095), as Downs describes them): Paul Weyrich, president of the Free Congress Research and Education Foundation and founding president of the Heritage Foundation; Stuart Butler of the Heritage Foundation; Larry Arm of the Claremont Institute for the Study of Statesmanship and Political Philosophy; Robert Woodson of the National Center for Neighborhood Enterprise and formerly of the American Enterprise Institute (AEI); James Miller III, chairman of Citizens for a Sound Economy Foundation, also formerly with AEI and Ronald Reagan's director of the Office of Management and Budget; and Thomas Cook of the Bay Area Council, the voice of corporate San Francisco and its environs. The construction industry was also well represented by lenders and heads of large building companies, several of whom are high officials of the National Association of Home Builders. Commission chairman Thomas Keane was, in Downs's words, a "loyalist chairman... [with a] desire not to make recommendations that would upset the Bush administration" (p.1096). Vice-chairman Thomas "Lud" Ashley, former chair of the House Subcommittee on Housing and Community Development, although a Democrat, was "George Bush's old college roommate and one of the President's closest friends,'" and is now president of the Association of Bank Holding Companies. Of the six state and local officials (no federal officials were appointed to the commission), most had close ties to the Republican National Committee or to Republican elected officials.

Only two members of the 22-person body could conceivably be regarded as community-based and directly representing the interests of lower-income neighborhoods and consumers. One of those two, Kimi Gray, heads the controversial Kenilworth/Parkside Resident Management Corporation, the Washington, DC, housing project touted by the Reagan and Bush administrations as the model for tenant ownership of public housing*; she never attended a commission meeting. Gale Cincotta of the National Training and Information Center in Chicago, the only member with an independent base in low-income communities, found the experience of serving on the commission "frustrating"; and although she offered no formal dissenting opinions within the report itself, she later wrote critically of both its limited focus and many of its principal recommendations.[2] Demographically, only six of the members were women (one of whom resigned within a few months of her appointment), and five were members of minority groups (several of whom showed up only once or twice or not at all).

This detailing of the *dramatis personae* is important because no commission is any better/worse/different than its commissioners. A commission peopled by a diverse, open-minded group of individuals is far more likely to produce a useful, interesting report, one that merits being labeled a study. For example, in the late 1960s, the so-called Kaiser Committee and Douglas Commission (on which Downs sat) had a far more diverse, interesting membership, and the reports they issued reflected that. On the Kaiser Committee were important labor movement representatives (Walter Reuther of the United Auto Workers, AFL-CIO president George Meany, and Joseph Keenan of the International Brotherhood of Electrical Workers); Whitney Young, Jr., of the National Urban League; Massachusetts Institute of Technology professor Walter Rosenblith; and Pittsburgh mayor Joseph Barr, who was also president of the

* Jack Kemp refers to Kimi Gray as "my hero" (DeParle 1990). The DC tenant-management/ownership project she heads has been criticized on the grounds of excessive costs, reflecting the many hidden and overt subsidies that have been put into it in order to make it "work," but which limit its potential for replicability (see US General Accounting Office 1989 and Noah 1991).

U.S. Conference of Mayors. On the Douglas Commission were its distinguished chair, Senator Paul Douglas of Illinois, a former economics professor; architects Chloethiel Woodard Smith and Ezra Ehrenkrantz; *House and Home* editor Richard O'Neill; Richard Ravitch, president of the N.Y.C. Citizens Housing and Planning Council; University of Wisconsin planning professor Coleman Woodbury; Florida Atlantic University political scientist John DeGrove; and AFL-CIO vice-president John Lyons. By contrast, the most recent related predecessor body, the 1981-1982 President's Commission on Housing, was appointed more along the lines of the 1990-1991 commission that is the subject of Downs's and my articles.*

As for the commission's charge, Downs acknowledges, approvingly, the narrow focus of the report: that it not get into issues of affordability beyond regulatory barriers. (He notes that Chairman Keane, as a sop to those few commission members who wanted that broader look, included chapter 5, which merely mentioned but did not analyze or offer recommendations on such issues as income distribution, the housing finance system, and the tax system.) But he also observes that, because the assigned narrow subject ranks low in public consciousness and interest, a narrow-minded commission was more acceptable and appropriate. Those like myself who regard this narrowness of perspective as perhaps the key defect of the commission's report thus come up against a circular argument: Housing affordability—certainly not something that ranks low in public consciousness or interest—did not come up in a more profound, encompassing way because the commissioners who were appointed, for the most part, either did not see it as an important issue or did not want to deal with it; and they did not have to have this broader view because the public was not nearly as interested in the narrower approach to affordability.

The result was both an overemphasis on regulatory issues as a factor influencing housing affordability—at least for lower-income consumers—and an overreliance on soft information and anecdotal sources, furnished and processed by persons with a readiness to believe in and an interest in seeing overregulation as the culprit.

* Of that commission's 30 members, 19 were from the banking, real estate, and construction business world and seven were lawyers. No one represented the construction trades or housing/consumer rights organizations (with the possible exception of ex-Senator Edward Brooke, whose identity as Chair of the National Low Income Housing Coalition was not even mentioned in his 175-word official commission biosketch). Twenty-nine of the 30 members were Republicans (Hartman, 1983).

Unnecessary, cost-enhancing, exclusionary land-use regulations clearly exist and do have some impact on housing costs, primarily in higher-priced suburban locales. But the commission was dominated by suburban types. As Downs perceptively describes it, those involved in the central-city side of the housing affordability issue were unable to dominate or substantially influence the commission: There were too few of them and their attendance was poor, often because of inherent competition for their time.

But for the lower-income population, the very issues glossed over in chapter 5 are the salient ones. Apart from proposals to meet the needs of this population via vastly lower housing standards (Downs seems to me entirely too cavalier regarding the importance of both cultural norms and public health issues, and somewhat exaggeratory in accepting "the Hong Kong solution"—as in the illegal conversion of garages to living quarters—as a way to meet the housing needs of the poor in our cities), solutions to the growing housing affordability problem in the United States will not emerge until we deal both with the central fact of the gap between incomes and housing costs and with the most basic elements that create housing costs. The commission's definition of housing affordability—spending more than 30 percent of one's income for housing—wildly understates the very issue. As Michael Stone,[3] Cushing Dolbeare and others have shown, tens of millions of Americans are unable to spend that much for housing and still have enough left over for other necessities at the minimum levels posited by federal government standards. In fact, in 1987, 14 million households had incomes so low that they could not afford to spend a single cent for housing if they were to provide themselves with the minimum standard of nutrition, medical care, clothing, and other basics set by the Bureau of Labor Statistics. Without major additional income or housing subsidies, no amount of regulatory loosening will enable such people to meet the national housing goal of "a decent home and suitable living environment". Yet, as Downs observes, there was a basic constraint imposed by a majority of commission members that it not advocate any greater federal spending (p.1096).

The overwhelming centrality of financing costs to housing affordability is a further issue glossed over by the commission, even to the extent of its failure to acknowledge the long-term multiplier effects that reduced up-front costs have when translated into mortgage repayment occupancy costs.[4]

A further problem with the report, as noted above, is its lack of hard data and evidence. Builder after builder came before the commission at its hearings and trundled out their horror stories before wholly sympathetic commissioners. Notably absent were the hard data of studies showing a far more complex relationship between regulations and costs and the lesser impact when the horror cases are put into a broader framework. Such studies exist[5] but were subordinated to the anecdotal approach. Downs, opinionated to be sure but also careful, laces his account with such cautionary phrases as, “Again, I am guessing subjectively at what this percentage [cost reduction] really is, but I strongly believe ...” (p.1110), and “Yet I was convinced ... that ...” (p.1098). The press releases, report summaries, and other shorthand accounts of the commission’s conclusions trumpeted that excessive regulations add 25 percent to 30 percent to the cost of a new house, without indicating to how narrow a band of housing and in how few instances such a finding applied. Downs, too, comes off as endorsing such sweeping statements—and goes them one better by asserting that “the correct figure is at least 50 percent higher and might often be much higher” (p.1098) — even though he elsewhere and inconsistently writes, “It is impossible to estimate reliably by how much housing costs in the nation as a whole could be reduced through removal of all or most of such regulatory barriers” (p.1107).

And here we come to a further central defect of the report: its failure to assess regulations against the quite obvious benefits they also can and do bring. Some land-use regulations are specifically designed to benefit lower-income housing consumers, and they are effective in reaching that end even though they also interfere with free-market principles. Examples include condominium conversion controls, just-cause eviction statutes, rent controls, and inclusionary zoning laws (which the commission actually opposes!). Other regulatory “barriers” obviously serve important environmental, historic, health, and safety functions. Neither the report nor Downs’s article raises the political point about conflicting priorities: Even those land-use regulations that indisputably add to costs for the most part have a tangible social benefit. Virtually any land-use control worthy of the name imposes some costs on someone. The trade-off between those costs and benefits must be openly acknowledged and dealt with, rather than just wildly attacking these regulations as cost increasers. In the House hearings on the commission’s report, Professor Daniel Mandelker of Washington University Law School rightly labeled the document “a political attack on the land use controls and environmental protections that we have carefully constructed in this country over the years.”[6] And Professor John Gilderbloom, a University of Louisville sociologist, citing his earlier work at the University of Houston, noted about that famously unregulated Texas city that it has 10,000 to 15,000 homeless persons and 18,000 on its public housing waiting list; that one-fourth of its low-income population live in overcrowded conditions; and that "parts of Houston look like Central American shantytowns, without paved roads, sewers or water."[7]

Let me just add a few other defects, as I see them, in both the commission's report and Downs's treatment of it, before adding some final comments on the commission's recommendations.

- There is no firm evidence that cost reductions permitted by loosening regulations will, in fact, be passed back to the consumer. It is not irrelevant to point to passage of Proposition 13 in California in 1978, which gave huge tax reductions to owners of multifamily properties as well as to homeowners; the failure of landlords to reduce their rents to reflect their reduced property taxes was widely noted and actually provided a massive impetus to the state's rent control and tenant movements.[8]

- Nor is it correct to assert that all costs imposed by regulations are passed on to consumers. There is ample evidence that such costs are borne by landowners in the form of lower selling prices.

- The commission attached virtually no importance to racial discrimination as a barrier to affordable housing, even if rents and prices should be substantially lowered.* In his House testimony on the commission's report, William Apgar of the Harvard Joint Center for Housing Studies noted, "Without continuing effort to reduce the discriminatory practices that underlie NIMBYism, minorities won't be able to benefit from lowered cost."[9]

Finally, there is the question of what to do about the regulatory barriers problem, even if the problem is far smaller, less important, and less generalized in its effects than the commission and Downs would have us believe. Balkanized local government structure, which permits those with large back yards to make sure that only those with equally large or larger back yards move into their community, clearly is a problem, and state and, to a lesser extent, federal overrides of such exclusionary powers are needed. Carrots likely are better than sticks in many cases, although it must be acknowledged that conditioning federal housing aid on willingness to allow low-income housing may easily backfire, given that such an approach

* See the papers prepared for the September 26, 1991 Urban Institute/Rockefeller Foundation conference, "Testing for Discrimination in America: Results and Policy Implication," which, *inter alia,* reported on the results of HUD's 1989 National Housing Audit.

merely supports and strengthens excluding communities in their obdurateness. The best form of federal aid, of course, would be precisely that which the commission, by consensus, apparently agreed to reject *a priori*: more housing subsidies for low-income households. Aid to those producing lower-income housing and advocating the interests of low-income and minority consumers would also be effective; such efforts would include technical assistance, seed money, capital grants and low-interest loans to nonprofit producers of affordable housing, and financial and other support of attorneys bringing Mt. Laurel-type suits all around the country.[10]

Unfortunately, the report's recommendations are no better than the political constraints, political rhetoric, and precedent material on which they are based—nor could they be. They do not, in Professor Mandelker's words, "provide a comprehensive model for reform in which priorities are clearly stated. Instead, [they are] a shopping list of recommendations that does not have clear priorities."[11] Downs is properly pessimistic about the report's impact. Without a clearer sense of the problem and the context in which it exists, a reform agenda lacks credibility and is, in the manner of so many study commissions, likely to be ignored.

Author

Chester Hartman is executive director of the Poverty and Race Research Action Council in Washington, DC. He holds a Ph.D. in city and regional planning from Harvard University and has taught there, as well as at Cornell, Yale, Columbia, and the Universities of North Carolina and California at Berkeley. Among his ten books are *The Transformation of San Francisco* (Rowman and Allanheld, 1984) and *Critical Perspectives on Housing* (Temple University Press, 1986), both of which are being issued in revised editions.

Endnotes

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2. Gale Cincotta, "Viewpoint," *Planning* (September 1991):46

3. Michael E. Stone, *One Third of a Nation: A New Look at Housing Affordability in America* (Washington, DC: Economic Policy Institute, 1990).

4. Chester Hartman and Michael Stone, "A Socialist Housing Alternative for the United States," in *Critical Perspectives on Housing,* ed. Rachel Bratt, Chester Hartman, and Ann Meyerson (Philadelphia, PA: Temple University Press, 1986), 484-513.

5. U.S. Congress, House Committee on Banking, Finance and Urban Affairs, *Regulatory Impediments to the Development and Placement of Affordable Housing: Hearings before the Subcommittee on Policy Research and Insurance,* August 2, 1990, Serial #101-153.

6. Daniel Mandelker, testimony before House Subcommittee on Policy Research and Insurance, joint with the Subcommittee on Housing and Community Development, *Hearings on Regulatory Barriers to Affordable Housing Report,* July 17, 1991. [References are to the stenographic minutes prepared by the Office of the Clerk, Office of Official Reporters, as final printed version was unavailable at the time this article was written.]

7. John Gilderbloom, testimony, *Hearings on Regulatory Barriers to Affordable Housing Report.*

8. Chester Hartman, "Landlord Money Defeats Rent Control in San Francisco," in *Rent Control: A Source Book,* ed. John Gilderbloom (Santa Barbara, CA: Foundation for National Progress, 1981), 197-201; Chester Hartman, "Running a Rent Control Initiative Campaign," in *Community Organizers,* 2d ed., ed. Joan Ecklein (New York, NY: John Wiley, 1984), 161-68.

9. William Apgar, testimony, *Hearings on Regulatory Barriers to Affordable Housing Report.*

10. John Payne (professor, Rutgers Law School), testimony, *Hearings on Regulatory Barriers to Affordable Housing Report.*

11. Mandelker.

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