

SQUATTERS' RIGHTS AND ADVERSE POSSESSION: A SEARCH FOR EQUITABLE APPLICATION OF PROPERTY LAWS

Human history has been an endless struggle for control of the earth's surface; and conquest, or the acquisition of property by force, has been one of its more ruthless expedients. With the surge of population from the rural lands to the cities, a new type of conquest has been manifesting itself in the cities of the developing world. Its form is squatting, and it is evidencing itself in the forcible preemption of land by the landless and homeless people in search of a haven.¹

I. INTRODUCTION

According to the United States Census Bureau, the total world population on January 1, 1998, will be 5,886,645,394 people.² Using average annual growth rate percentages, the Census Bureau estimates that the world population will be approximately 9,368,223,050 by the year 2050.³ With this geometric rise in world population, invariably there will be an increase in scarcity and competition for vital resources, including food, fossil fuels, raw materials, shelter, and land. With increasing disparities in wealth and resources between the world's rich and poor, many of the world's citizens will continue to be forced into homelessness. Already, the United Nations (U.N.) estimates that "one hundred million [persons] have no home at all" while "more than one billion persons throughout the world do not reside in adequate housing."⁴ An accurate number of currently homeless

1. C. ABRAMS, *MAN'S STRUGGLE FOR SHELTER IN AN URBANIZING WORLD* 12 (1964), reprinted in CURTIS J. BERGER, *LAND OWNERSHIP AND USE* 513 (3d ed. 1983).

2. U.S. BUREAU OF CENSUS (visited Nov. 17, 1997) <<http://www.census.gov/cgi-bin/ipc/popclockw>>.

3. *Id.* The United Nations' *World Population Prospects 1990* confirms this forecast; it predicts the world population to approach 8.5 billion persons by the year 2025. STANLEY JOHNSON, *WORLD POPULATION—TURNING THE TIDE* 235 (1994).

4. Justice R. Sachar, *Working Paper on Promoting the Realization of the Right to Adequate Housing*, at 4-11, U.N. Doc. E/CN.4/sub.2/1992/15 (visited Oct. 8, 1997) <<http://www.undp.org/un/habitat/presskit/dpi1778e.htm>> [hereinafter *Realization*]. The Global Report on Human Settlements released in March 1996 estimates that "500 million urban dwellers are homeless or live in inadequate housing." *Id.* The World Health Organization estimates that the number of homeless children ranges from 10 million to 100 million, with the possibility that 20 million live in industrialized nations, 40 million in Latin American nations, 30 million in Asia, and 10 million in Africa. Robin Wright, *Gimme Shelter: The Plight of the Homeless in Lands of Plenty in Advanced Nations, the 'New Poverty' Sends More and More People into the Street*, L.A. TIMES, Oct. 4, 1994, available in 1994 WL 2351607.

persons in the United States is difficult to establish; however, numbers range from 350,000 to 3,000,000 persons.⁵ In raising the world's consciousness of the condition of the homeless or poorly housed, the U.N. has established the right to housing as an international human right.⁶ As of 1994, 129 nations had signed or ratified the International Covenant on Economic, Social, and Cultural Rights, under which states must "retain ultimate responsibility for shortfalls in housing or deteriorating housing conditions."⁷ Despite broad declarations by the U.N. and attempted remedies by individual nations, deplorable economic conditions and housing shortages continue to plague the homeless and the under-housed in both developed and least-developed countries (LDCs).

Frequently, the homeless find themselves needing both food and shelter. Thus, squatting on unoccupied lands, buildings, forests, or even garbage dumps becomes an attractive remedy that squatters frequently practice.⁸ *Black's Law Dictionary* defines a squatter as:

[o]ne who settles on another's land, without legal title or authority. A person entering upon lands, not claiming in good faith the right to do so by virtue of any title of his own or by virtue of some agreement with another whom he believes to hold the title. Under former laws, one who settled on public land in

5. The National Coalition for the Homeless found that it is not easy to accurately count the number of homeless persons in the United States because: "1) people who lack permanent addresses are not easily counted; 2) definitions of homelessness vary from study to study; and 3) different methodologies for counting homeless people yield significantly different results." The National Coalition for the Homeless (visited Oct. 8, 1997) <<http://nch.ari.net/numbers.html>>. Furthermore, one source claims that "[t]he number who are homeless for at least one night during the year is probably over three million." Charles Froloff, *54 Ways You Can Help the Homeless* (visited Oct. 8, 1997) <<http://www.earthsystems.org/ways>>.

6. The necessity for adequate housing is described in various international documents that include: "the Universal Declaration of Human Rights (article 25), the International Covenant on Economic, Social and Cultural Rights (article 11), the International Convention on the Elimination of all Forms of Racial Discrimination (article 5), the Convention on the Elimination of All Forms of Discrimination against Women (article 14) . . . [and] the Convention on the Rights of the Child (article 27)." United Nations Department of Public Information, *Is There a Right to Housing?* (visited Oct. 8, 1997) <<http://www.undp.org/un/habitat/presskit/dpi1778e.htm>>.

7. MATTHEW C. R. CRAVEN, *THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: A PERSPECTIVE ON ITS DEVELOPMENT* 333 (1995). The U.N. Committee on Economic, Social and Cultural Rights did not oblige Member States to end homelessness immediately, but simply to take steps to decrease its prevalence. *Realization*, *supra* note 4.

8. For a general discussion of rights of the homeless in the United States, see David Rosendorf, Note, *Homelessness and the Uses of Theory: An Analysis of Economic and Personality Theories of Property in the Context of Voting Rights and Squatting Rights*, 45 U. MIAMI L. REV. 701 (1990) [hereinafter Rosendorf].

order to acquire title to the land.⁹

Traditionally, both governments and citizens have viewed squatters as criminals who take advantage of neglectful municipalities and land owners. The U.N.'s Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities issued a report illuminating "Twelve Misconceptions and Misinterpretations of the Right to Housing" and attempting to dispel the notion that "squatters are criminals."¹⁰ The Report found that generally an "impression is created that pavement dwellers are anti-social elements, and that a majority of them are criminally inclined, unemployed and not interested in working."¹¹ However, many squatters contribute to local economies; for example, the Asia Coalition on Housing Rights found squatters who worked an average of "9.9 hours per day," compared to higher income groups who only worked "7.3 hours per day."¹² Plainly, society should not always view squatters as benevolent revolutionaries fighting for equity and justice; however, there are times when squatters and squatters' movements must be recognized for their noble and courageous efforts in developing efficient uses of property and alleviating one of society's ills.

In several nations, including the United States, Germany, and Great Britain, a squatter may gain legal possession of land through adverse

9. BLACK'S LAW DICTIONARY 1403 (6th ed. 1990). There are many different types of squatters:

The *owner squatter* owns his shack, though not the land; The *squatter tenant* is in the poorest class, does not own or build a shack, but pays rent to another squatter The *squatter holdover* is a former tenant who has ceased paying rent and whom the landlord fears to evict. The *squatter landlord* is usually a squatter of long standing who has rooms or huts to rent, often at exorbitant profit. The *speculator squatter* is usually a professional to whom squatting is a sound business venture The *store squatter* or occupational squatter establishes his small lockup store on land he does not own, and he may do a thriving business without paying rent or taxes The *semi-squatter* has surreptitiously built his hut on private land and subsequently come to terms with the owner The *floating squatter* lives in an old hulk or junk which is floated or sailed into the city's harbor The *squatter 'cooperator'* is part of the group that shares the common foothold and protects it against intruders, public and private.

ABRAMS, *supra* note 1, at 515.

10. *Realization*, *supra* note 4. See also *The Realization of Economic, Social and Cultural Rights: The Right to Adequate Housing* (2d Progress Report by Mr. Rajindar Sachar, Special Rapporteur), U.N. Commission on Human Rights (Sub-Commission on Prevention of Discrimination and Protection of Minorities), 46th Sess., Provisional Agenda Item 8, U.N. Doc. E/CN.4.Sub.2/1994/20 (visited Oct. 8, 1997) <<http://www.undp.org/un/habitat/rights/s2-94-20.html>> [hereinafter *The Right to Adequate Housing*].

11. *The Right to Adequate Housing*, *supra* note 10.

12. United Nations Department of Public Information, *supra* note 6.

possession. Adverse possession is “[a] method of acquisition of title to real property by possession for a statutory period under certain conditions.”¹³ Adverse possession generally has five elements that a claimant must establish: the possession must be (1) open, (2) continuous for the statutory period, (3) for the entirety of the area, (4) adverse to the true owner’s interests, and (5) notorious.¹⁴ In some jurisdictions, if a squatter or an adverse possessor can establish these elements within the statutory period, then she may take legal and rightful title to the property. The policy supporting adverse possession is that the rule forces landowners to maintain and monitor their land. Moreover, this policy discourages owners from “sleeping” on their property rights for an indefinite period. While squatting problems and adverse possession may often involve private land owners, governments are often large land holders whose interests should be examined.¹⁵ Adverse possession promotes efficient and economic use of land, thereby serving important economic and social ends. However, there are problems associated with adverse possession, including, but not limited to, monitoring problems, safety concerns, and environmental degradation.¹⁶

Unlike squatters in many Western countries, squatters and the homeless in LDCs often face unclear property rights and inefficient property allocation systems. While both squatters in LDCs and squatters in more-developed nations face severe housing shortages, the squatters in LDCs, with fewer

13. BLACK’S LAW DICTIONARY, *supra* note 9, at 53. The theory of property use by prescription is also useful in certain property disputes. Prescription in real property law is “[t]he name given to a mode of acquiring title to incorporeal hereditaments by immemorial or long-continued enjoyment.” *Id.* at 1183. The difference between prescription and adverse possession is that “[p]rescription is the term usually applied to incorporeal hereditaments, while ‘adverse possession’ is applied to lands.” *Id.* Incorporeal hereditaments are “[a]nything, the subject of property, which is inheritable and not tangible or visible.” *Id.* at 726.

14. *See generally* Annotation, *Adverse Possession of Landlord as Affected by Tenant’s Recognition of Title of Third Person*, 38 A.L.R.2d 826 (1995). Adverse possession “promote[s] the universality requirement [of property].” Howard Gensler, *Property As An Optimal Economic Foundation*, 35 WASHBURN L.J. 50, 55 (1995). Generally, “universality means that all valuable, scarce resources must be owned by someone.” *Id.* at 51.

15. Property rights have always been different when held by the government. Section 37 of the Code Hammurabi states, with respect to the real property of a member of the government: “[i]f a man purchase the field or garden or house of an officer, constable or tax-gatherer, his deed-tablet shall be broken (canceled) and he shall forfeit his money and he shall return the field, garden or house to its owner.” THE CODE OF HAMMURABI, KING OF BABYLON 23 (Robert Francis Harper trans., Univ. of Chicago Press 1904). In England, the legal maxim “nullum tempus occurit regis (no times runs against the king) barred the running of the statute of limitations against the state.” JESSE DUKEMINIER & JAMES E. KRIER, PROPERTY 112 (1981). In the United States, several states do allow adverse possession to run against the state. *See generally* THOMPSON ON REAL PROPERTY § 87 (David A. Thomas ed., 1994) [hereinafter THOMPSON].

16. *See infra* Parts IV.E.2 and IV.F.1.

resources and less-developed legal systems at their disposal, face an even steeper climb than their Western counterparts. This note will survey squatting, squatters' rights, and adverse possession from an international perspective. Section II examines early property law and the development of adverse possession. More specifically, the section examines Roman law, English common law, European civil-law, early American property law, and the impact of colonialism on LDCs. Section III examines the theoretical developments that have helped define adverse possession and the property rights of squatters. Section IV begins by examining squatting within the common law traditions of the United States and Great Britain. Section IV then explores squatting and adverse possession on the European continent within the context of the civil-law tradition. The section ends with a discussion of squatting and adverse possession within the United States and within several LDCs. Finally, the note concludes by demonstrating how squatters are affected by the current framework of property policies and laws. In considering possible alternatives to the current laws, the author concludes that such alternatives would serve legitimate property interests and benefit societies at large by promoting general goals of equity and efficiency.

II. HISTORY OF SQUATTING, SQUATTERS' RIGHTS, AND ADVERSE POSSESSION

A. *Early History*

Squatting has a long history, and it is probably as old as history itself.¹⁷ Adverse possession and the misuse of land through waste was discussed as long ago as 2250 B.C. in the Code of Hammurabi.¹⁸ At one time, the laws offered little in the way of property guarantees, but today some property systems contain increased certainty of possession, transfer, and even title recording.¹⁹ In investigating modern property rights, the past is certainly

17. DUKEMINIER & KRIER, *supra* note 15, at 100.

18. Section 44 regarding the waste of land states: "If a man rent an unreclaimed field for three years to develop it, and neglect it and do not develop the field, in the fourth year he shall break up the field with hoes, he shall hoe and harrow it and he shall return it to the owner of the field and shall measure out ten GUR of grain per ten GAN." THE CODE OF HAMMURABI, *supra* note 15, at 27. Section 60 rewards long economic development: "If a man give a field to a gardener to plant as an orchard and the gardener plant the orchard and care for the orchard four years, in the fifth year the owner of the orchard and the gardener shall share equally: the owner of the orchard shall mark off his portion and take it." *Id.* at 33. Maximizing the gardener's plot of land, section 61 states: "If the gardener do not plant the whole field, but leave a space waste, they shall assign the waste space to his portion." *Id.*

19. Some scholars debate the value of land titling. See generally Steven E. Hendrix, *Myths of Property Rights*, 12 ARIZ. J. INT'L & COMP. L. 183 (1995). Hendrix finds that, depending on complex conditions, land titling may either improve or slow economic development in LDCs. *Id.*

relevant.

Squatting has been influenced by the Roman property law tradition, especially as it evolved in the civil-law countries in continental Europe.²⁰ Emilie De Laveleye in *Primitive Property* describes the long history of property rights from the Greco-Roman tradition. "From the earliest times in their history, the Greeks and Romans recognized private property as applied to the soil"²¹ Modern scholars have identified the Roman property system as "[a] well-articulated organization of private property."²² This sophisticated and dynamic property system is a microcosm of the Roman Empire itself. Under the Roman Law Codes, "an owner was said to have virtually unlimited rights to preside over property without state interference."²³ In the agrarian economy of ancient Rome, the goal of most property owners was not to "increase their holdings."²⁴ In fact, Roman policy and tradition allowed a man only "as much public land as he could cultivate himself."²⁵ These policies favored the interests of the whole Empire over the interests of any individual land owner. Consequently, this property system did not allow a large landholder to waste potentially economically-viable land.²⁶

As for the utilitarian Roman system of property, "[i]n the earliest times the arable land was cultivated in common, probably by the several clans; each of these tilled its own land, and thereafter distributed the produce among the several households belonging to it."²⁷ This property system, which was designed to create wealth for the Roman state as a whole, even applied to the holders of vast land under a system known as *precarium*.²⁸ Under *precarium*, a wealthy man with a surplus of land could allow another person to cultivate land and that person would maintain property rights "against third parties but not against the owner himself."²⁹ *Precarium* was yet another Roman policy aimed at curbing or ending the waste of land and

20. For a general discussion of property rights in the civil-law tradition, see *infra* Part IV.B-D. For further discussion of Roman law and its connection with "a vector of the morals of the 'materialistic world order,'" see generally James Whitman, *The Moral Menace of Roman Law and the Making of Commerce: Some Dutch Evidence*, 105 YALE L.J. 1841, 1842 (1996).

21. EMILIE DE LAVELEYE, *PRIMITIVE PROPERTY* 6 (G. R. L. Marriott trans., 1878).

22. ANDREW LINTOTT, *JUDICIAL REFORM AND LAND REFORM IN THE ROMAN REPUBLIC* 34 (1992).

23. JOHN CHRISTMAN, *THE MYTH OF PROPERTY* 17 (1994). These absolute rights are similar to the rights that would later re-assert themselves in Europe and eventually in the United States. *Id.*

24. *Id.*

25. LINTOTT, *supra* note 22, at 36.

26. See *infra* Part III for a discussion of utilitarianism and land use theory.

27. DE LAVELEYE, *supra* note 21, at 138.

28. LINTOTT, *supra* note 22, at 35.

29. *Id.*

resources. This system of property attempted to maximize the utility of land.³⁰ After the fall of Rome, real property rights in Europe drastically changed. However, the legacy of Rome would greatly influence the development of "modern Continental law" in the Napoleonic codes of France and in Germany's Civil Code.³¹

The tribes of northern Europe had a system of property that was "built on family estates, one where ownership was fragmented and circumscribed, [and] replaced the notion of the unencumbered individual owner."³² In a system of estates, no one but the sovereign had absolute property rights. This system of property was based upon seisin, wherein "one who was 'seized' held all of the legal rights that the law recognized as capable of being concentrated in an individual."³³ After great political and social upheaval, northern Europeans would reestablish strong individual property rights in the common law tradition.

B. *Great Britain and the Common Law Tradition*

The common law tradition in England went through a substantial transformation from a system that promoted heredity and limited access to land to a system that emphasized the protection of individual property rights and free alienation. In feudal times, the monarchy maintained property rights through primogeniture, ultimogeniture, and other hereditary systems that kept land from being freely alienated. "Land was the essential pivot of feudal society . . . and thus had special importance."³⁴ The French established this system of tenure in England after the Norman conquest of that country in 1066,³⁵ and it was "a system of government through the agency of landholders."³⁶ The early remedy for loss of possession was to "oust the 'disseisor' by force . . . [and] if one did not do so promptly one

30. See *infra* Part III for a discussion of utility and economic rights.

31. JACOB H. BEEKHUIS, *Civil Law*, in VI INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW, ch. 2 (Structural Variations in Property Law), at 4 (1981). For a detailed survey of European legal history, see MANLIO BELLOMO, *THE COMMON LEGAL PAST OF EUROPE 1000-1800* (1995).

32. CHRISTMAN, *supra* note 23, at 10.

33. THOMPSON, *supra* note 15, at 70. See also OLAN LOWERY, *ADVERSE POSSESSION*, ch. 87 (1994).

34. PHILIP JAMES, *INTRODUCTION TO ENGLISH LAW* 420 (12th ed. 1989). For an interesting comparison to Scotland, see *THE CIVIL LAW TRADITION IN SCOTLAND* (Robin Evans-Jones ed., 1995). In particular, chapter eight by David Johnston compares Scottish and Roman law.

35. William Ackerman, *Outlaws of the Past: A Western Perspective on Prescription and Adverse Possession*, 31 *LAND & WATER L. REV.* 79, 81 (1996).

36. JAMES, *supra* note 34, at 422. As payment for their lands, these landholders supported the King in his foreign military quests or in defending against the hostile Scotsmen from the North. *Id.*

lost the right.”³⁷ The system of feudalism eventually “decay[ed] within two hundred years of its introduction by the Normans.”³⁸ In the fourteenth century, “the rural middle class began to develop,” and “an economy based upon wages and not upon rendering services” caused the death of feudalism and the birth of strong individual property rights in real property.³⁹

The metamorphosis from state- to individual-control of property in England is reflected in John Locke’s writings on the theory of property. Locke saw a specific and limited role for the state in regulating property for the individual:

the necessity of preserving men in the possession of what honest industry has already acquired, and also of preserving their liberty and strength, whereby they may acquire what they farther want, obliges men to enter into society with one another, that by mutual assistance and joint force they may secure unto each other their properties⁴⁰

Locke also asserted that the state should simply provide for “the peace, riches, and the public commodities of the whole people.”⁴¹ Blackstone’s *Commentaries*, written in the eighteenth century, further illustrate the changes in property law that occurred after the feudal periods. Blackstone described the ownership of property as “the sole and despotic domination which one man claims and exercises over the external things of the world in total exclusion of the right of any other individual.”⁴² Once the state relinquished absolute control of property, property rights and individual rights were to be forever linked.

Along with strong individual property rights, both adverse possession and the free alienation of property emerged as legal principles in England. Adverse possession was first identified in England as a legal doctrine in 1275 in the Statute of Westminster I, chapter 39, which fixed 1189 as the earliest date from which a plaintiff in a property action could establish seisin of his ancestry. Seisin was critical to the establishment of a property claim in Great Britain,⁴³ and the establishment of this fixed date for seisin greatly

37. THOMPSON, *supra* note 15, at 71.

38. JAMES, *supra* note 34, at 423.

39. DUKEMINIER & KRIER, *supra* note 15, at 359.

40. PASCHAL LARKIN, PROPERTY IN THE EIGHTEENTH CENTURY 64 (1969) (quoting JOHN LOCKE, LETTERS CONCERNING TOLERATION 177).

41. *Id.* at 65.

42. CHRISTMAN, *supra* note 23, at 18.

43. CHARLES HARR & LONNIE LIEBMAN, PROPERTY AND LAW 81 (2d ed. 1985). One author identifies the date as 1184 instead of 1189, explaining that the date “may have varied at the king’s pleasure.” THOMPSON, *supra* note 15, at 72 n.20. *Black’s Law Dictionary*

disadvantaged those who were trying to establish adverse possession claims since it became more difficult to establish clear claims as the years passed. This unfair policy changed in 1623 with the Statute of Limitations,⁴⁴ which created a twenty-year limitation.⁴⁵

The statute of 1623 was the adverse possession statute that many American colonial jurisdictions used as a prototype for their own laws.⁴⁶ The express goals of this statute were the "avoiding of Suits" and the "quieting of Man's Estates."⁴⁷ This statute reflected an early desire in England to prevent the waste of land resources and to force owners to monitor their lands properly. Further, by avoiding legal actions and quieting title, this statute provided a framework for decreasing the often high transaction costs associated with land disputes, and allowed for greater economic development based on the new certainty of title. The Statute of Limitations "was amended by 3 & 4 Wm. IV, c.27 (1833), which included a provision giving title to the possessor after the running of the period."⁴⁸ This statute and other provisions changed the statute of limitations for an adverse possession claim to twelve years. Statutes of limitations were critical for the proper development of property rights as they "[were] considered [to be] necessary and expedient for the general welfare."⁴⁹ The Statute of Limitations and adverse possession policies gave English citizens clear and defined mechanisms to expedite their property claims.

Great Britain may not have enjoyed its vast economic prosperity in the nineteenth century had the policy makers developed a property system that led to uncertainty and inefficiency. Further, these strong property rights have carried forward to modern times, giving squatters and land owners alike useful tools to further their varied interests. Great Britain has established a strong tradition of property and adverse possession rights for the United States and other common law countries to follow. This tradition promotes the values of uniformity, efficiency, and at least attempted impartiality within the property system.

defines seisin as "[p]ossession of real property under claim of freehold estate. The completion of the feudal investiture, by which the tenant was admitted into the feud, and performed the rights of homage and fealty." BLACK'S LAW DICTIONARY, *supra* note 9, at 1358.

44. 21 Jac. 1, c. 16, §§ 1, 2. For a history of adverse possession in the United States, see *infra* Part II.D. For the current state of adverse possession law in the United States, see *infra* Part IV.E.

45. BERGER, *supra* note 1, at 499.

46. DUKEMINIER & KRIER, *supra* note 15, at 100.

47. BERGER, *supra* note 1, at 499.

48. HARR & LIEBMAN, *supra* note 43, at 81.

49. THOMPSON, *supra* note 15, at 81.

C. *Continental Europe and the Civil-Law Tradition*

Roman law also had a strong impact on the creation of the civil-law tradition in continental Europe. Unlike the common law tradition, the civil-law tradition emphasized sources of law such as "statutes, regulations, and customs."⁵⁰ Within this tradition,

codified civil law was the heart of private law, and the dominant concepts of the codes were individual private property This individualistic emphasis was an expression . . . of the rationalism and secular law of the age. The emphasis on rights of property and contract in the codes guaranteed individual rights against intrusion by the state.⁵¹

Although different in form, the civil-law traditions essentially had the same purpose of many of the common law traditions, which was to secure and protect citizens' property interests. Despite the similarities, however, there were some important differences between civil- and common law property concepts. In civil-law countries, the principle of unity that "makes the owner unable to split his right arbitrarily into powers of various kinds [is] one of the essential differences between the Civil Law systems and the Anglo-American law."⁵²

D. *United States: Following Great Britain's Lead*

Tracing the origins of adverse possession in the United States is a difficult task because of "legislative and judicial confusion in the field of adverse possession of land The reason for the difficulty, but not its answer, lies in the mists of history."⁵³ Not surprisingly, early American property law followed English law closely, as "[m]ost American Jurisdictions first adopted the English model of a twenty-year limitation."⁵⁴ These American adverse possession statutes had

negative and procedural importance, namely, the barring of an action, or of conduct, designed to recover land, when the bringer of the action has delayed too long. Their chief importance, however, in the law of property, [rested] on their proprietary and affirmative consequences, in constituting one means for the

50. JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION* 25 (1969).

51. *Id.* at 100.

52. BEEKHUIS, *supra* note 31, at 10.

53. THOMPSON, *supra* note 15, at 69.

54. BERGER, *supra* note 1, at 500. For a discussion of modern United States adverse

acquisition of ownership.⁵⁵

The first adverse possession statute, in the form of a statute of limitations, appeared in North Carolina in 1715.⁵⁶ One early and critical decision involving adverse possession was the case of *Johnson v. M'Intosh*.⁵⁷ In *M'Intosh*, the plaintiff claimed title to a parcel of land that was titled to him from the Piankeshaw Indians; the defendant's title came from a grant from the United States government. Recognizing the principle of discovery and conquest, Chief Justice Marshall found that:

[t]he United States, then, have unequivocally acceded to that great and broad rule by which its civilized inhabitants now hold this country. They hold, and assert in themselves, the title by which it was acquired. They maintain, as all others have maintained, that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or conquest An absolute title to lands cannot exist, at the same time, in different persons, or in different governments. An absolute, must be an exclusive title, or at least a title which excludes all others not compatible with it. All our institutions recognise [sic] the absolute title of the crown, subject only to the Indian right of occupancy This is incompatible with an absolute and complete title in the Indians.⁵⁸

Despite what the above excerpt may suggest, Justice Marshall perhaps may have been uncomfortable with the decision he ultimately reached. The case presented the Court with a predicament: had the Court decided in favor of the Indians, thousands of property titles across the United States would have been clouded, causing severe chaos and a hindrance to commerce. Thus, this case of Indian title and adverse possession wrought an injustice based on policies that supported landholders and clarity of title. However, the history of American property development and westward expansion illustrates the tension between Indians, squatters, ranchers, homesteaders, farmers, railroad interests, miners, and many others who all sought land and resources. Today, as land has become more scarce in the United States, the law of adverse possession has moved toward shorter statutes of limitations. Despite some poor legal decisions and policies, the shortening of these statutes of limitations has helped adverse possessors and increased the duties

55. 7 R. POWELL, REAL PROPERTY ¶ 1012 (P. Rohan ed., 1977), reprinted in DUKEMINIER & KRIER, *supra* note 15, at 83.

56. Ackerman, *supra* note 35, at 83 (citing *Patton's Lessee v. Easton*, 14 U.S. 474 (1816)).

57. 21 U.S. (8 Wheat.) 543 (1823).

58. *Id.* at 597-98.

of land owners to monitor their land.

E. *Colonialism and the Impact on Property Rights*

The nineteenth century saw the rise of European power and hegemony due to the industrial revolution and the resulting increase in technology and wealth in Europe. Due to increased technology, European nations found distant areas of the world to be more accessible and desirable as these states sought to increase their wealth and power. Consequently, Europeans established colonies on every continent and every unclaimed area in a quest for wealth and resources. Colonization of the underdeveloped world had a direct impact upon many nations. "Pressure on and confiscation of land was a fundamental feature of colonialism, especially in East and Central Africa."⁵⁹ Even after they departed, the colonial powers left their former territories with "a general atmosphere of suspicion of individual land rights"⁶⁰ due to their emphasis on land acquisition. This lasting influence, although not present in every former colony, manifested itself in flawed property systems that lacked certainty and uniformity of property rights. Furthermore, the instability of property systems resulted in slower economic

59. Martin Chanock, *Paradigms, Policies and Property: A Review of the Customary Law of Land Tenure*, in *LAW IN COLONIAL AFRICA* 61 (Kristin Mann & Richard Roberts eds., 1991). An interesting historical event in the movement away from colonialism was the "Mau Mau Emergency" in Kenya. See generally DAVID W. THROUP, *ECONOMIC & SOCIAL ORIGINS OF MAU MAU 1945-53* (1990). In 1949, a local farmer described the influx of squatters into Kenya at the time:

squatter labour is pouring into the forest reserve, where the conditions are probably so attractive as to make this a squatters' paradise, and a haven of refuge. Land; land; land; nice fresh virgin land, is their cry; little or no work from their *bibis* [wives]; sheep filling their bellies with good green luscious grass; firewood quite handy; *pombe* [beer] brewing galore- who will visit us in the forest at night . . . Utopia has been discovered . . ."

Id. at 91 (quoting KNA Lab 9/320, The Resident Labourers' Ordinance: Aberdare District Council 1944-51, Major L.B.L. Hughes to DC Naivasha, Mar. 16, 1949). The Mau Mau movement was

an alliance between three groups . . . : the urban unemployed and destitute, the dispossessed squatters from the White Highlands and the tenants and members of the junior clans in the Kikuyu reserves. The revolt was a dominating factor in convincing the conservative [English] imperial government that the cost of repression in the African colonies was not worth the troops and resources."

Id. at back cover. Similar colonial revolts plagued other European powers whose resources were sapped by World War II: France in Vietnam, Belgium in Congo, and Great Britain in Kenya. See generally, FRANK FUREDI, *THE MAU MAU WAR IN PERSPECTIVE* (1989). Furedi notes that the English attempted to present the squatters' movement "as a criminal organization. The colonial government went to great lengths to portray Mau Mau as an irrational force of evil, dominated by bestial impulses and influenced by world communism." *Id.* at 3-4. The Mau Mau movement "expressed the irreconcilable nature of social tensions. Its destruction was the pre-condition for the evolution of a more acceptable reforming nationalist movement and the consummation of the process of decolonization." *Id.* at 7.

development and a general loss of individual rights that often had tragic results.

III. PROPERTY FROM A THEORETICAL PERSPECTIVE

A theoretical understanding of property is helpful in making proper determinations regarding property laws and policies. Utilitarianism is applicable and influential to property law and to the law of adverse possession. Jeremy Bentham, whom some academics have called the "father of modern utilitarianism,"⁶¹ pointed to a connection between "full property rights, security, and happiness."⁶² Bentham emphasized this link when he stated "[p]roperty and law are born together and die together."⁶³ Because of the importance of property law, there is the "need for a consistent and sufficiently public institution of property rights . . . Structures could vary greatly from liberal ownership as long as the structure is public and consistent."⁶⁴ Bentham did not advocate a system of forced equality, but simply a system of guaranteed property rights similar to what the Romans had provided for their citizens.

In order to achieve the goal of efficiency, a property system must strive to lower transaction costs. Transaction costs are those expenses or costs that impact parties negotiating a dispute. Transaction costs from litigation, evictions, and property damage can place a heavy burden on individuals and society as a whole. In economic terms, these burdens are often reflected in "externalities," i.e., costs borne by persons who are not parties to the immediate transaction. Externalities are "market imperfections . . . like pollution."⁶⁵

Harold Demsetz in *Toward a Theory of Property Rights* stated that "[p]roperty rights are an instrument of society and derive their significance from the fact that they help a man form those expectations which he can reasonably hold in his dealings with others. These expectations find expression in laws, customs, and mores of a society."⁶⁶ The significance of property rights is illustrated by the fact that countries that afford few individual rights generally have property systems that cloud claims and

61. CHRISTMAN, *supra* note 23, at 101.

62. *Id.*

63. Chanock, *supra* note 59, at 62.

64. CHRISTMAN, *supra* note 23, at 102. Similarly, one author contends that "[i]n order for an economy to reach its full potential, that is, to achieve an optimal level of production, there are three basic features which its system of property rights must have: universality, exclusivity, and transferability." Gensler, *supra* note 14, at 51.

65. Gensler, *supra* note 14, at 51.

66. H. Demsetz, *Toward a Theory of Property Rights*, in *THE ECONOMICS OF PROPERTY RIGHTS* 31 (Eirik G. Furubotn & Svetozar Pejovich eds., 1974). See generally Terry L. Anderson & P. J. Hill, *The Evolution of Property Rights: A Study of the American West*, 18 *J.L. & ECON.* 163 (1975) (additional economic information on property rights).

potential claims to property.⁶⁷ With respect to this general goal of efficiency, property rights should provide “incentives to achieve a greater internalization of externalities.”⁶⁸ Such internalization allows society to deal effectively with problems by lowering overall transaction costs. In accordance with the philosophical underpinning of utilitarianism, adverse possession must be equitably applied to promote efficiency and fairness. Regarding the current situation concerning property rights, squatters, and land use, the Economic Commission for Europe reported the following:

[h]igh levels of squatter housing indicate that the formal land market does not provide affordable residential land for housing, forcing households to occupy land illegally. High levels of this indicator also suggest that eviction may not be a realistic option, but rather calls for policies and programmes which lead to strengthening tenure security in squatter settlements, thus facilitating higher levels of housing investment.⁶⁹

Following the philosophical foundations of utilitarianism, governments should strive for more efficient use of land as both populations and scarcity of housing increase. To achieve the goal of more efficient and ultimately more beneficial use of land, squatting, homesteading, and more liberal application of adverse possession laws—even if such actions are contrary to the interests of governments, municipalities, or private land holders—should be encouraged.

IV. MODERN SQUATTING AND ADVERSE POSSESSION

A. *Great Britain and the Common Law Tradition*

Despite squatting's long history, squatting became a significant problem in Great Britain in the late 1960s and 1970s.⁷⁰ Because of high

67. See *infra* Part IV.F (property rights in LDCs).

68. Demsetz, *supra* note 66, at 32.

69. *The Right to Adequate Housing*, *supra* note 10, ¶ 35. Despite this announcement, there are a number of objections to squatting:

- 1) it violates property rights; 2) it subjects the participants to the risk of arrest;
- 3) it involves significant labor and expense to rehabilitate the housing, which invariably is in poor physical condition; 4) squatters gain shelter for themselves at the expense of the hundreds of thousands on waiting lists for public housing; and 5) squatting is likely to antagonize neighborhood residents who object to the presence of squatters.

Eric Hirsch & Peter Wood, *Squatting in New York City: Justification and Strategy*, 16 N.Y.U. REV. L. & SOC. CHANGE 605, 605 (1987).

70. DUKEMINIER & KRIER, *supra* note 15, at 100. After World War II, there was a massive squatting movement in London after the government promised “homes fit for heroes,” but housing was lacking. Greg Neale, *50 Years on[] a Squat Fit for Heroes*, SUNDAY

property taxes and urban renewal projects, there were many vacant buildings in Great Britain at that time.⁷¹ In 1968, a wave of squatting hit Great Britain as a result of these conditions.⁷² The squatters in Britain were not simply homeless persons looking for shelter. Instead, the squatting movement in Great Britain took on a strong political flavor as squatters urged changes in existing property policies. This lower class "revolution" received great public sympathy, which is common in many squatting movements.⁷³ Nonetheless, in the 1970s, this sympathy waned when some squatters shifted from urban squatting to residential squatting.⁷⁴ In this new wave of squatting, a home owner might leave on an extended vacation only to come back and find his home occupied by squatters. Under the Criminal Law Act 1977, "the person who comes back from holiday may use or threaten to use violence to oust squatters found in his home; but the squatters will commit the offence [sic] [of threatening violence without lawful authority] if they retaliate."⁷⁵

As evidence of the strength of the current squatting movement in Great Britain, agencies currently exist that show potential residential squatters a list of vacant houses or buildings.⁷⁶ The agencies have photos for the prospective squatters to examine, and they give the squatters instructions to "not cause damage when entering properties and . . . [to] not change the locks" because if so, "the landlord can do nothing except apply for an

TELEGRAPH (London), Apr. 28, 1996, available in 1996 WL 3945816.

71. Neale, *supra* note 70. In 1992, there were 764,000 empty properties in Great Britain. Rachel Kelly, *Squatters Put Down Roots in Campaign to Reclaim Derelict Flats*, TIMES (London), Aug. 7, 1992, available in 1992 WL 10896061. In 1995, "[a]ccording to the Department of the Environment, there [were] an estimated 864,000 empty homes in Britain. The Advisory Service for Squatters estimate[d] that 17,000 of [those homes] contain[ed] squatters." Ian Hunter, *Streetwise Moves to Outsmart Squatters*, GUARDIAN (London), Mar. 26, 1995, available in 1995 WL 7590927.

72. DUKEMINIER & KRIER, *supra* note 15, at 100.

73. *Id.* at 101. As evidence of this sympathy for squatting in England, the villagers of Pulham St. Mary at one time supported four squatters who occupied a 27-room mansion and called them "delightful young people." Jo Knowsley, *Squatters Defy Court Order to Vacate Mansion*, SUNDAY TELEGRAPH (London), Mar. 24, 1996, available in 1996 WL 3937509. However, this relationship deteriorated over a two year period as the squatters continued to host "a series of rave parties [that] . . . kept [the villagers] awake until dawn." *Id.*

74. DUKEMINIER & KRIER, *supra* note 15, at 100, 101. This squatting is not unlike what is currently happening in California. See *infra* Part IV.E.2.

75. JAMES, *supra* note 34, at 474.

76. These agencies are non-profit organizations, unlike a similar squatting agency in California that charges its customers monthly rent. See *infra* Part IV.E.2. This agency is called the Advisory Service for Squatters (ASS) and its goals are to provide legal and practical advice to squatters, those interested in squatting, and local squatting groups. It also produces the "Squatters' Handbook"—a guide to many of the problems that may arise in connection with squatting. Resource Information Service, *Homelessness in the U.K.* (visited Oct. 10, 1997) <<http://www.ris.org.uk>>.

eviction order."⁷⁷

In Great Britain, these "commercial squatters" often reflect poorly upon squatters as a whole. In Katherine Bowen's letter to the editor, *The Worst Kind of Squatter*, she describes the ordeal of having commercial squatters moving into viable "letting retail premises."⁷⁸ Commercial squatting has been described as "a highly organised business, with groups now set up to provide information on vacant properties, arrange false leases and keys and even introduce commercial squatters to suppliers of stock, which is often of dubious origin."⁷⁹ However, with respect to the commercial and residential squatter, it is sound public policy for governments to differentiate between the squatter who inhabits because of necessity and the squatter who simply is out for profit: public policy should allow residential squatters greater latitude for basic humanitarian reasons.

In 1995, there were an estimated 60,000 squatters in Great Britain.⁸⁰ Many of these squatters were among the estimated 700,000 homeless people in Great Britain.⁸¹ Today, these squatters may only be removed after a civil hearing in the British courts at considerable expense to the homeowner. Each year about 10,000 property owners seek expulsion of squatters through the civil courts.⁸² Unfortunately, this wave of squatting has also prompted British government officials to enact criminal legislation specifically aimed at the squatters. One anti-squatting provision is found in the Criminal Justice and Public Order Act of 1994. The offense of "aggravated trespass" was specifically aimed at squatters.⁸³ Under the new laws, a property owner who

77. Michael Fleet & Trevor Fishlock, *I'm Your New Estate Agent*, DAILY TELEGRAPH (London), Feb. 27, 1996, available in 1996 WL 3931101.

78. Katherine Bowen, Letter to the Editor, *The Worst Kind of Squatter*, DAILY TELEGRAPH (London), June 13, 1993, available in 1993 WL 10948348.

79. Lynne Wallis, *Taking Stock as Empty Shops Fall to Commercial Squatters*, DAILY TELEGRAPH (London), June 28, 1993, available in 1993 WL 10951926.

80. Steven Ward, *Squatters Face Six Months' Jail*, INDEPENDENT (London), Aug. 24, 1995, available in 1995 WL 9804810.

81. Wright, *supra* note 4. There are specific procedural steps that an unintentionally homeless person must go through to receive housing. *R. v. London Borough of Ealing Ex parte Denny*, CO/390/93 (Q.B. 1993). First the person must "appl[y] to the local authority for permanent accommodation." *Id.* Next, "[e]ach successful applicant for housing is offered by his local authority a property which is vacant, available for occupation and suitable in terms of size, location, facilities, etc." *Id.* If the person rejects this housing offer, the authority may offer another property. *Id.* Often a person will accept a squatted property and "arrangements and likely time scale for ejecting the squatters and securing vacant possession is discussed with the homeless person" *Id.* Then the homeless person is given tenancy in the property, is protected, and given "assistance of the police under § 7 of the Criminal Law Act 1977." *Id.* This system certainly has some merit. If abandoned viable property is kept in registries, this could be an effective and low cost remedy to some of the world's homelessness.

82. Ward, *supra* note 80.

83. *Off Beat: The Police; Great Britain's Criminal Justice Act Gives More Power to Police Officers in Cases of Trespassing and Squatting, But Police Are Reluctant to Make Arrests Because They Are Not Compensated for the Work*, ECONOMIST (UK), Nov. 26, 1994,

has a potential squatter problem will "receive a hearing three days after applying to a county court."⁸⁴ If the squatters fail to appear, then the squatters "have 24 hours to leave and face up to six months' jail and fines of up to pounds 5,000 if they stay."⁸⁵

In protest of this new law, 250 British squatters advocates conducted a "mock trial" in the garden of Michael Howard, the British Home Secretary, and the police took no action.⁸⁶ The lack of action by the police, due to limited resources, was in part caused by the various new responsibilities the Criminal Act places on police. Critics of this legislation claim that these laws "have the effect of criminalising a large number of people, including homeless persons squatting in empty properties; travelers living in caravans on land other than authorized official sites . . . and people participating in a wide range of demonstrations or public protests."⁸⁷ Nevertheless, in 1995, the rules were amended in order to allow a "fast track eviction of squatters."⁸⁸ Under the 1995 procedure, "landlords and homeowners can now go to court to obtain an 'Interim Possession Order' (IPO) against alleged squatters."⁸⁹ Essentially, an IPO gives a squatter twenty-four hours to vacate the premises or face criminal penalties. The trespass laws represent the policy tightrope the British government has walked between two distinctly-motivated interests: the interests of residential squatters with legitimate housing and habitat concerns, and the interests of the commercial or profit motivated squatters who move into temporarily-vacated businesses or the homes of people on vacation. While squatting in Great Britain may present legitimate problems, criminalizing squatting does not get to the root of the problem of homelessness.

Like many squatters around the world, British squatters have become an important part of the communities in which they live, often performing socially important and valuable functions. Squatters in Brighton, East Sussex, have taken over a row of "dilapidated Victorian cottages . . . and have turned them into a brightly-painted terrace."⁹⁰ These squatters include

available in 1994 WL 12754630 [hereinafter *Off Beat*].

84. Ward, *supra* note 80.

85. *Id.*

86. *Off Beat*, *supra* note 83.

87. Penal Affairs Consortium, *Squatters, Travelers, Ravers, Protesters and the Criminal Law* (visited Oct. 2, 1996) <<http://www.penlex.org.uk/pacsquat.html>>.

88. *Letting Facts: Squatters and the County Court (Amendment No. 2) Rules 1995*, (visited Oct. 2, 1996) <<http://www.letlink.co.uk/lfacts14.html>>.

89. *Id.*

90. Michael Fleet, 'Let the Trumpton Squatters Stay,' DAILY TELEGRAPH (London), July 8, 1996, available in 1996 WL 3963350. Despite the apparent success of these squatters, others have faced severe problems, such as difficulties in obtaining electricity. In *Woodcock v. South W. Elec. Bd.*, the court held that the defendants were not obligated to provide the plaintiffs with electricity. 2 All E.R. 545 (Q.B. 1975). In that case, student squatters sued under an 1899 law that requires that electricity be given to "the owner or occupier of any premises." *Id.* In *R. v. McCreadie*, another case involving electricity, the court upheld the conviction of two squatters, one of whom told the police that he was "renting the shop from

“students, a carpenter, a former embalmer and some women with children.”⁹¹ These squatters have so endeared themselves to the community that their neighbors have “sent a 1,500-name petition to their local council asking that they be allowed to stay.”⁹² Strangely enough, despite the apparent harmony, there are plans to demolish the cottages and build an office on that site. Thus, while squatting in England is often legal and justified, squatters using adverse possession have had mixed results.

In Great Britain, the statutory period for adverse possession is twelve years under section 15 of the Limitation Act 1980.⁹³ Interestingly, in *Mount Carmel Inv. Ltd. v. Peter Thurlow Ltd.*, the court held that tacking of claims could exist among squatters: “[i]f a squatter dispossessed another squatter and the first squatter abandoned his claim to possession, the second squatter could obtain title to the land by 12 years’ adverse possession by both squatters.”⁹⁴ Thus, some squatters have had success using the English adverse possession rules. As another example, in 1996, a pair of squatters “earned Pounds 103,000 from the sale of the Victorian house where they had lived rent-free for 19 years.”⁹⁵

It is nearly impossible to evaluate the overall success of the squatters’ movement in Great Britain. At minimum, the squatters in Great Britain have raised public awareness of the housing crisis and one potential remedy—squatting. With some unusual but visible exceptions, liberal squatting in Great Britain seems to have somewhat alleviated the problems associated with homelessness and the housing crisis. Despite the acts criminalizing squatting, Great Britain has a climate generally warmer to the plight of squatters.

B. *Continental Europe and the Civil-Law Tradition: Germany*

Like many wealthy western countries, Germany has had its share of squatting problems. Germany also has an established property system that includes rights of adverse possession. The prevalence of squatting in Germany may be attributed to the fact that in 1994 the number of homeless

the owner, that he did not know that the electricity was being used illegally and that payment was nothing to do with him.” 96 Crim. App. 143 (1992).

91. Fleet, *supra* note 90.

92. *Id.*

93. JAMES, *supra* note 34, at 480.

94. *Mount Carmel Inv. Ltd. v. Peter Thurlow Ltd.*, 3 All E.R. 129 (C.A. 1988). This tacking without privity is not allowed in most jurisdictions in the United States, where clear privity between transferors of adverse possession claims is required. “Tacking occurs whenever the successive occupiers are said to be in ‘privity of estate.’ Privity of estate is a term that recurs often . . . [P]rivity would be satisfied if the relationship between the first and second occupier were: grantor-grantee, landlord-tenant; testator-devisee; decedent-heir; mortgagor-mortgagee.” BERGER, *supra* note 1, at 506.

95. Ian Murray, *Couple Cash in on Sale of a Squat*, TIMES (London), July 9, 1996, available in 1996 WL 6505728.

individuals was estimated to be in excess of one million.⁹⁶ Some of Germany's homeless problems are due to the reunification of East and West Germany, evidenced by the billions of Deutsche Marks that the West has poured into the East.

The German government has a core of centralized power that is checked by the powers of the individual states. The German Civil Code and basic law provide much of the framework and structure for German governance. The most important laws involving property and adverse possession are found within the German Civil Code, The Third Book: Law of Property. The first section of the Law of Property, entitled "Possession," considers property possession and adverse possession. The second section of the Law of Property contains a provision delineated as Section 900, which states: "[a] person, who is registered in the Land Register as the owner of a piece of land without having obtained ownership, acquires the ownership, if the registration has subsisted for thirty years and he has during this period held the piece of land in his proprietary possession."⁹⁷ This thirty-year period in Germany represents a governmental policy that does not promote adverse possession claims. Typically, the shorter the statutory period, the greater the governmental interest in preventing owners from "sleeping" on their property rights, through lack of maintenance, lack of visitation, or a general disregard for their duties. Despite this lengthy statutory requirement for adverse possession (especially when compared to other countries), in one particular squatting situation German authorities found it necessary to compromise and depart from the written civil-law.

In Hamburg, Germany, a group of squatters who were occupying a block of buildings won a fourteen-year battle against the government. This prolonged battle began in October 1981 "when a group of about 100 punks and social revolutionaries occupied a block of empty houses overlooking the harbour and owned by the city."⁹⁸ This site was very important to Hamburg city officials because it "is near some of Germany's most exclusive hotels and brothels . . . [and] city officials feared the squatters would harm tourism."⁹⁹ As in Great Britain, the squatters received public support, as illustrated by a demonstration in 1986 when "10,000 supporters of the

96. Wright, *supra* note 4.

97. § 900 BGB III, *available in* THE GERMAN CIVIL CODE 168 (Simon L. Goren trans., 1994). This statute is not absolute and the limitation of claims on lands has caused some problems in Germany, as "Germany's reunification treaty allowed for the return of property seized by the Nazis up until 1945, and the Communist from 1948 onwards, but not for the restitution of land expropriated by the Soviet occupation of 1945-1948. Six years on, the former owners are still fighting furiously for recognition." George Monbiot, *A Man's Home is Someone Else's Castle*, GUARDIAN (London), July 18, 1996, *available in* 1996 WL 4034575.

98. Stephen Kinzer, *'Anarchist' Squatters Win the Right to a Mortgage[;] Hamburg Has Given Up Trying to Evict a Gang of Residents Who Were Seen as a Potential Threat to Tourism*, GUARDIAN (London), Jan. 6, 1996, *available in* 1996 WL 4003442.

99. *Id.*

squatters marched through central Hamburg.”¹⁰⁰ However, a year later the German police remained unsuccessful in their attempts to evict the squatters from the group of buildings. Finally, in 1996, the city officials radically changed their policy, and the city government accepted the squatters and decided to take “the decisive step toward permanently ending this difficult conflict.”¹⁰¹

This reconciliation is quite different from the approach taken by many governments, including jurisdictions within the United States, as local authorities appear quite willing to oppose residential squatters' claims in American cities.¹⁰² In this agreement between the German city and the squatters, the squatters will purchase the buildings for “less than a third of [their] market value.”¹⁰³ The squatters will shoulder the costs of repairing and renovating the buildings, and they will pay the city one-half of overdue rent and utility bills.¹⁰⁴ This type of compromise should serve as a model to other municipalities around the world as a way of ending potentially violent and expensive conflicts. This type of compromise produces a win-win result. Hamburg may not have received full market value for its property, but the city was able to avoid costly litigation and/or eviction costs and the associated expenses of housing the evicted squatters. Further, by transferring the property rights to the squatters, the government created a cost-effective remedy to a housing shortage.

C. *Continental Europe and the Civil-Law Tradition: Denmark*

Danish legal philosophy has been described as a system “of positivism as well as of realism in the common and commonplace sense.”¹⁰⁵ Under this system of “commonplace sense,” Denmark has had a long history of promoting efficient use of property. Since 1683, under King Christian V's Danish Code, “*twenty years of possession* is required for prescription.”¹⁰⁶ Under this code, “[i]t is up to the user—regardless whether his use is lawful or contrary to other rights—to prove that his prescriptive possession of the property took place during the necessary period of time.”¹⁰⁷ If the use of property is for a general purpose “ownership [of the property] is regularly

100. *Id.*

101. *Id.*

102. *See infra* Part IV.E.1 (conflict between the government and squatters in New York City).

103. Kinzer, *supra* note 98.

104. *Id.*

105. Preben Stuer Lauridsen, *Introductory Review of the Links between Law and Jurisprudence in Scandinavia*, in *DANISH LAW, A GENERAL SURVEY* 9, 10 (Hans Gammeltoft-Hansen et al. eds., 1982).

106. Jesper Berning, *Property Law*, in *DANISH LAW, A GENERAL SURVEY*, *supra* note 105, at 186 (emphasis in original). *See also supra* note 13 (general definitions of prescription).

107. *Id.*

obtained."¹⁰⁸ However, if the use is "directed for a specific purpose" then "an easement is obtained."¹⁰⁹ Although Denmark does not have a long history of squatting problems, this theory of "commonplace sense" and "positivism" has been reflected in the creation of a major squatters' settlement in Copenhagen.

The Free City of Christiania celebrated its twenty-fifth year in 1996. In October 1971, as a response to housing shortages, an abandoned army barracks in the Danish capital of Copenhagen was occupied by 800 squatters.¹¹⁰ Squatters call Christiania the "free city" because there they are "free of rents, free of taxes, and free of laws imposed by the society."¹¹¹ Part of the freedom also included the open sale of drugs and collectivized property.¹¹² Because of a governmental policy of "tolerance of diverse philosophies and lifestyles," the squatters were able to remain and the "Ministry of Defense even left on the water and electricity."¹¹³

Although the Christiania experience may seem extreme, it suggests an interesting housing solution for the United States, Europe, and the Soviet states. Due to the end of the Cold War, both East and West have many vacant military complexes. Some of these facilities could be turned over to squatters, homeless persons, and homesteaders for rapid change into low income housing. Transfers of military property could quickly change a remnant of the past into a salient solution to the homeless problem.

D. *Continental Europe and the Civil-Law Tradition: Netherlands*

The Netherlands has a long history of squatting and a strong tradition of adverse possession. Supporters of the squatting movement "numbered tens of thousands at its heights in the Sixties."¹¹⁴ The Dutch squatters' movement "lost much of its strength during the 1980s when many of its members were offered alternative housing over the years."¹¹⁵ Despite its weakened state, squatting is still a powerful force in the Netherlands. In fact, squatting has been called "lasting evidence of the continuing anarchic youth movement [in the Netherlands]."¹¹⁶

108. *Id.*

109. *Id.*

110. *Squatting It Out*, *ECONOMIST* (UK), Apr. 1, 1978, at 44, available in LEXIS, World Lib., ALLNWS File.

111. *All Things Considered: Free City of Christiania Changing After 25 Years* (National Public Radio broadcast, Sept. 26, 1996), available in 1996 WL 12726671.

112. *Id.*

113. *Id.*

114. *Dutch City Fights to Evict 30 British Squatters*, *EVENING STANDARD* (UK), Jan. 24, 1995, at 16.

115. *Dutch Police Arrest 139 in Clean-up of Squatted Building*, *REUTER LIB. REP.* (Amsterdam), May 27, 1990.

116. Catherine Trevison, *Decadence, or Tolerance?*, *TENNESSEAN* (Nashville, Tenn.), June 23, 1996, available in 1996 WL 10355456.

The Dutch legal system is considered to "belong to the Romano-Germanic family."¹¹⁷ The rules for acquisitive prescription of property, i.e., adverse possession, are set out in article 3:99 of the Dutch Civil Code:

1. possession; whether there is possession is decided along the lines of generally prevailing views (art. 3:108); 2. possession must have been acquired in good faith. Once a possessor is in good faith, subsequent knowledge will not affect his good faith (3:118 par 2). 3. possession must have been uninterrupted. Loss of possession therefore means that a current prescription-period is terminated. . . . (art. 3:103). 4. lapse of time: a. a period of three years for non-registered movables . . . ; b. a period of ten years for all other goods. . . . [immovable goods, real property](art. 3:119).¹¹⁸

Despite the seemingly strict rules on prescription, Dutch squatters, particularly in Amsterdam, have had some successes. According to Dutch historian Han Van Der Horst: "[i]n spite of clear legislation to the contrary, tolerance had become second nature for the political leaders in the Netherlands."¹¹⁹ Edward Soja, professor of urban and regional planning at the University of California, described the squatter movement in Amsterdam as:

more than just an occupation of abandoned offices, factories, warehouses and some residences. It was a fight for the rights of the city itself, especially for the young and for the poor. Nowhere has this struggle been more successful than in Amsterdam. Nowhere has it been less successful than in Los Angeles.¹²⁰

Squatters in the Netherlands have been successful in part due to compromises by the Dutch government. After the Dutch coronation in 1980, squatters and police often battled. Like the experiences in Great Britain and Germany, these battles "brought a great wave of public sympathy, not for the state's over-reaction but for the young and lawless."¹²¹ After the great

117. W.M. Kleijn, *Property Law, in* INTRODUCTION TO DUTCH LAW FOR FOREIGN LAWYERS 63 (J. M. J. Chorus et al. eds., 2d rev. ed. 1993).

118. *Id.* at 83. Also interesting in the Dutch property system is that "[s]ince 1951 the Dutch Code recognizes community property in apartment buildings" *Id.* at 72. This system allows separate co-ownership of the building. *Id.*

119. Trevison, *supra* note 116.

120. Freedom Press, *A Visit to Amsterdam* (visited Oct. 2, 1996) <<http://www.lglobal.com/TAO/Freedom/ams.html>> .

121. *Id.*

squatter battles of 1980, the Dutch government passed "new legislation to tidy up the rules on empty property" that "requir[ed] local authorities to keep a list of empty houses and other buildings which could be converted into homes."¹²² The new criminal code also protected property from occupation and "squatters [could] be fined up to \$215."¹²³

Despite the tightening of laws in the Netherlands, squatters have still enjoyed success. Dutch culture and society emphasize tolerance and compromise, two qualities needed to address homelessness effectively. Nonetheless, as in Germany and other countries, there will always be some problems in the Netherlands related to squatting due to the tension between property rights and adverse possession. But governmental cooperation and public support of squatters in the Netherlands have seemingly reduced the specter of violence in the battle for shelter and land.

E. *United States*

English law influences much of the law of adverse possession in the United States. Despite this background, United States adverse possession law has taken on its own unique flavor. This is evidenced by the various statutes of limitations for adverse possession claims that range from five years in California, Idaho, and Montana, to forty years in Iowa.¹²⁴

1. *New York*

In the United States, no city has experienced more urban squatting activity than New York City. Within the United States, New York is a relatively old city with diverse regions and many abandoned buildings and factories. New York State's adverse possession law provides that those who openly and hostilely possess land for ten years can request title to that land.¹²⁵ An important case in New York State's adverse possession law is *Van Valkenburgh v. Lutz*.¹²⁶ In that case, William Lutz "cultivated" a triangular lot, erected a fence on the lot's borders, built a small shack on the lot, and generally acted as the owner of the lot for over thirty years, only to have his adverse possession claim fail because "[t]he proof concededly fail[ed] to show that . . . the garden utilized the whole of the premises claimed."¹²⁷ In *Levy v. Kurpil*,¹²⁸ which involved a dispute between

122. *Holland; Swat the squatters*, ECONOMIST (UK), Mar. 28, 1981, at 34.

123. *Id.* This criminal code is very similar to the anti-squatting acts passed in Great Britain. See generally *supra* text and accompanying notes 82-85.

124. See generally CAL. CIV. PROC. CODE §§ 317-321 (1996); IDAHO CODE ANN. § 5-203 (1881); MONT. CODE ANN. § 70-19-401 (1975); IOWA CODE ANN. § 614.31 (West 1969).

125. N.Y. [Real Property Actions and Proceeding Law]§§ 501-551 (McKinney 1997) (ten year statute of limitations).

126. 106 N.E.2d 28 (N.Y. 1952).

127. *Id.* at 29.

128. 168 A.D.2d 881 (N.Y. App. Div. 1990).

neighbors over the ownership of a triangular shaped area of land bordering the two properties, the court stated that “[a]dverse possession is established by showing possession which is hostile and under claim of right, actual, open and notorious, as well as exclusive and continuous for a prescribed 10 year period.”¹²⁹ Despite the seemingly clear rules on adverse possession in New York, squatters have had difficulty using them effectively.

In New York City, the “13th Street squatters” received significant attention because of protests, riots, and subsequent police action. On 13th Street, the squatters claimed title by asserting themselves as the “homesteaders” of abandoned buildings owned by New York City.¹³⁰ Many squatters invested money and “sweat equity” in the properties, “controlled them, secured them, and behaved in all ways as owners of the property.”¹³¹ In 1995, the radio program “All Things Considered” interviewed one of the 13th Street squatters who estimated that he spent about \$6,000 renovating his apartment.¹³² The city evicted the squatters to make way for a four million dollar low-income housing project.¹³³ The squatters protected their squat by

129. *Id.* at 883.

130. Homesteading is an excellent solution to the problem of homelessness, as it offers a win-win solution with municipalities saving money while at the same time reducing the amount of homeless. For an interesting illustration of squatting and the underground homeless in New York City, see MARGARET MORTON, *THE TUNNEL: THE UNDERGROUND HOMELESS OF NEW YORK CITY* (1995). This book describes some of the many homeless who have established a residence on abandoned railroad tracks. According to one squatter:

I don't ascribe any mystical thing to [living underground]. It's just free. Not about a monetary free thing—but I feel free here. I'm not constricted by people crowding me like over there where everybody's in a matchbox. You could hear through the wall. Where's your privacy? Over here there's privacy and spaciousness. I feel comfortable, and this is my home.

Id. at 72.

131. *Adverse Possession* (visited Nov. 30, 1997) <<http://www.escape.com/~spyder/squat/adverse.html>>.

132. *All Things Considered: East Village Squatters Win First Round Against City Segment* (National Public Radio broadcast, Nov. 9, 1995), available in 1995 WL 9892520. In regards to the contribution of the squatters, the petitioner's complaint in *East 13th St. Homesteaders' Coalition v. New York City Dep't of Hous. Preservation and Dev.* states that the “Petitioners here have dedicated themselves to the long-term rehabilitation of abandoned housing stock, and have labored for more than ten years to make comfortable, safe homes for homeless and low-income families from the neighborhood.” *Squatter Legal Petition* (East 13th St. Homesteaders' Coalition v. New York City Dept. of Hous. Preservation & Dev.), para. 23 (visited Oct. 10, 1997) <<http://www.escape.com/~spyder/squat/legal1.html>> [hereinafter Bukowski Petition].

133. Sarah Ferguson, *You Can't Go Home Again: Inside the City's Siege of the 13th Street Squats*, VILLAGE VOICE (New York), June 13, 1995, available in 1995 WL 10286507 [hereinafter Ferguson, *You Can't Go Home Again*]. Many of the 13th Street squatters were charged with criminal trespass, which is a violation of 140.10 of the New York State Penal Code. This provision states: “A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in a building or upon real property: (a) which is fenced or otherwise enclosed in a manner designed to exclude intruders. . . . Criminal trespass in the third degree is a class B misdemeanor.” N.Y. [Criminal Trespass in the Third Degree]

creating a "flimsy tangle of bicycle frames and barbed wire welded to the metal stairways."¹³⁴ New York City Mayor Rudolf Giuliani justified the eviction based on safety concerns. The squatters claimed adverse possession in excess of the statutory ten-year period because the 13th Street buildings had been vacant since 1984. The failure of the squatters to establish adverse possession claims in court partially rested on their inability to establish tacking for their claims. It was nearly impossible for the squatters to prove that they had continually lived in the building for the required ten-year period. Thus, the squatters lacked the type of documentation required to win their adverse possession suit.

The struggles of the 13th Street squatters reflect only a limited number of the difficulties squatters encounter in seeking legal remedies. For instance, some jurisdictions do not recognize adverse possession claims asserted against governments or have special rules or limitations periods for those types of suits.¹³⁵ Moreover, in many cases, squatters lack standing to bring proper actions. In *Valentin v. Department of Housing Preservation & Development*, the trial court found that a squatter who instituted a housing action (for lack of a proper stove and refrigerator) against the City of New York lacked standing because it would be "incongruous and completely unfair to those pre-approved applicants who distinctly have a legal priority over those individuals who assume occupancy of an apartment without regard to their legal status."¹³⁶ Despite these adverse decisions, the New York squatters remained hopeful that they might succeed.

The February 8, 1996 decision in *Walls v. Giuliani*¹³⁷ was considered by many to be a victory for the squatters in New York City because the court considered the actual merits of the squatters' case. The case represented a critical decision for squatters because "[t]he ruling left the door open for similar legal challenges to be brought by squatters all over the city."¹³⁸ In that case, the court held that the squatters had stated a valid civil rights claim

§ 140.10 (McKinney 1997). The squatters were charged for trespassing in 1983 despite a three year statute of limitation and no formal notices of removal or trespass except for two eviction efforts. Bukowski Petition, *supra* note 132, paras. 42-50.

134. Ferguson, *You Can't Go Home Again*, *supra* note 133.

135. For example, in North Carolina the statute of limitations for normal adverse possession is twenty years. N.C. GEN. STAT. §§ 1-40 (1996). However, adverse possession against North Carolina has a thirty-year statute of limitations or a twenty-one year statute of limitation against the state with color of title. *Id.* §§ 1-35. Likewise, South Dakota's statute of limitations is normally twenty years (S.D. CODIFIED LAWS §§ 15-3-1, 2, 3, 7, 10 (Michie 1997)); however, the statute of limitations against the state doubles to forty years. *Id.* § 15-3-14. Finally, Wisconsin normally has a twenty-year statute of limitations (WIS. STAT. ANN. § 893.25 (West 1995-1996)), and the statute of limitations against state property is also twenty years. *Id.*

136. 609 N.Y.S.2d 554, 555 (N.Y. Civ. Ct. 1994).

137. 916 F. Supp. 214 (E.D.N.Y. 1996).

138. Sarah Ferguson, *Under Siege: Can the East Village Survive Another Purge?*, VILLAGE VOICE (New York), Aug. 27, 1996, available in 1996 WL 11169869.

under 42 U.S.C. § 1983 and denied the City's motion to dismiss.¹³⁹ Mayor Rudolf Giuliani called the district court's ruling "ideology run amok."¹⁴⁰ The 13th Street squatters' short-lived success came to an end on August 8, 1996, when the New York Supreme Court, Appellate Division, reversed the district court's decision in *Walls v. Giuliani*.¹⁴¹ Subsequently, to evict the squatters, the New York Police employed a 50,000 pound tank-like armored personnel carrier along with fifty policemen.¹⁴² Strangely, despite the city's spirited battles with the residential squatters, New York City allowed and even encouraged small businesses to squat in an abandoned court house.¹⁴³ In light of Giuliani's claim of "ideology run amok," this action of allowing commercial squatting can be seen as nothing short of an unconscionable double standard.

The battle over urban territory also raises critical questions about municipalities and the way they manage their property. The City of New York, under its Department of Housing Preservation and Development (HPD), currently admits to holding more than 2,000 buildings vacant—including some 17,000 individual dwelling units that have been vacant for decades—while bureaucrats argue over how to spend available funds.¹⁴⁴ Besides the mismanagement of properties, the HPD has also been accused of fraud. The petitioner's complaint in *East 13th Street Homesteaders' Coalition* stated that the HPD "knowingly mis-characterized, in bad faith, [property] as 'vacant' on the Respondent's application for an Urban Development Action Area Project area designation, pursuant to New York State law, in order to facilitate state and federal funding programs."¹⁴⁵ With several vacant land holdings and a critical need for housing, does the city have a duty to monitor its properties? Should the city have a better index of its vacant properties? The City of New York will be faced with the potentially expensive problem of having to frequently monitor its vacant properties, especially if squatters with better documentation are able to bring adverse possession claims to sympathetic courts and juries.

Groups like the Association of Community Organizations for Reform Now (ACORN), which introduce legal squatting through homesteading programs, represent a workable compromise between the interests of the city and the housing concerns of its citizens.¹⁴⁶ Beginning in 1985, ACORN was able to "tak[e] possession of twenty-five vacant, City-owned buildings" in

139. *Walls*, 916 F. Supp. at 224.

140. *All Things Considered: East Village Squatters Win First Round Against City Segment*, *supra* note 132.

141. *East 13th St. Homesteaders' Coalition v. New York City Dep't of Hous. Preservation and Dev.*, 230 A.D.2d 622 (N.Y. App. Div. 1996).

142. Ferguson, *You Can't Go Home Again*, *supra* note 133.

143. *White-Collar Squatters: Deeds Done Dirt Cheap*, VILLAGE VOICE (New York), Aug. 1, 1995, available in 1995 WL 10285089.

144. *Adverse Possession*, *supra* note 131.

145. Bukowski Petition, *supra* note 132, para. 5.

146. See generally Hirsch & Wood, *supra* note 69, at 605.

Brooklyn and force "HPD into meaningful negotiations."¹⁴⁷ In New York City, "ACORN has demonstrated how effective community organizing can pressure the City to release its low-income housing stock to poor City residents."¹⁴⁸ ACORN and "other squatting efforts are both increasingly common and justified"¹⁴⁹ as they provide utilitarian and workable solutions to some housing problems. American urban municipalities such as New York City, like their European counterparts, must work towards compromise in order to effectively address the crisis of homelessness. It only makes sense that governments and squatters or homesteaders should work together in community partnerships, rather than the adversarial relationships of the past that yielded riots, police actions, prolonged litigation, high transaction costs and little in terms of concrete results.

2. California

California is a large and wealthy state with a large and expanding population because of internal growth, domestic migration, and both legal and illegal immigration. The most prevalent squatting problems in California are typically not found within urban environments.¹⁵⁰ California law requires the typical elements for adverse possession: (1) possession must be held either under a claim of right or color of title; (2) possession must be actual, open, and notorious occupation of the property in such a manner as to constitute reasonable notice of that occupation to the record owner; (3) the occupation must be both exclusive and hostile to the title of the true owner; (4) possession must be continuous and uninterrupted for at least five years; and (5) the occupier must pay all taxes assessed against the property during such five-year period.¹⁵¹ Despite the clear requirements of California's

147. *Id.* at 613-14.

148. *Id.* at 617.

149. *Id.* at 606.

150. This is not to say that there are not serious urban squatting problems in California. With many military base closures in California there may be a new squatting wave. In San Francisco, "twelve squatters took over two Presidio apartments for a Christmas day sit-in to call attention to the need for housing for the homeless." *Presidio Squatters Charged*, SACRAMENTO BEE, Dec. 27, 1996, available in 1996 WL 14034524. These squatters were members of an organization known as "Homes not Jails" and this was the "third time in three years the group [had] occupied a vacant building to bring attention to what they believe is a lack of affordable housing for homeless people in San Francisco." Venise Wagner, *Protesting Squatters Yanked From Presidio[:]* Homeless Advocates Took Over Apartments Slated for Demolition, S.F. EXAMINER, Dec. 26, 1996, available in 1996 WL 3723242. This protest came after "housing advocates declared a housing emergency in San Francisco. In November, for example, the Tenderloin Housing Clinic turned away 300 people, compared with the usual 10 to 20, because its 1,100 residential hotel rooms were occupied." *Id.* It is possible that communities like Christiana in Denmark could develop from military complexes. See *supra* Part IV.C.

151. See generally CAL. [The Time of Commencing Actions for the Recovery of Real Property] CODE § 325 (West 1997).

adverse possession law, most of the squatting problems in California stem from abuses of an 1856 property law.

Middle-class neighborhoods in California have been invaded by squatters guided by squatters' agencies. These squatters' agencies¹⁵² have legal standing based upon the "1856 [law designed] to break up Spanish claims to land after California changed hands."¹⁵³ This law allows squatters to enter a dwelling "as long as a window or door is open or has been left unlocked[;] they can't break in."¹⁵⁴ Often squatting "agents" will look for foreclosed property and then inform their customers of the ripe pickings. The squatters agree to pay monthly rent to the agents. These housing agents give their customers "four to six months in a house . . . [and] a three-page disclosure on what [they] do."¹⁵⁵ In many ways, this type of squatting is similar to the squatting promoted by residential squatting agents in the United Kingdom.

One California company, Windsor Pacific, "scours public records for properties in foreclosure or finds homes that are vacant, looks for ways to enter the home, and makes its [adverse] claim. If no one objects to the claim, it rents the home to its customers and may even make an offer to purchase."¹⁵⁶ As of April 1996, this company had thirty-six houses under an alleged claim of adverse possession. Jay E. Orr, the Riverside County Supervising Deputy District Attorney, stated: "[t]hese companies have been allowed to flourish because banks are so far behind on foreclosures."¹⁵⁷ The proprietors of Windsor Pacific ask their "house sitters" to sign a disclosure form that indicates "Windsor Pacific has attempted to file a notice of adverse possession, cleaned the house and re-keyed all locks, and notified the lender it has placed a tenant on the premises."¹⁵⁸ This disclosure states that the tenants are to move out within thirty-days notice, if and when the bank takes title. Many of these squatters are families that became interested in a property because of an advertisement for low rental rates.

Typically, these companies will ask for three months rent up front; therefore, they make money from the house sitters/squatters regardless of the results of their adverse possession claims. These squatters' agencies maintain that they are making legitimate adverse possession claims, but such claims are dubious at best. These companies do not pay property taxes, which would be required for a proper adverse possession claim under

152. Note that these agencies are for-profit organizations, unlike the squatters' agencies found in the United Kingdom. See *supra* note 76.

153. Jessica Crosby, *Urban Squatters May Be Headed for O.C. Neighborhoods*, ORANGE COUNTY REG., May 14, 1995, available in 1995 WL 5849615.

154. *Id.*

155. *Id.*

156. Rick Burnham, *Old Law Fuels New Problems[;] Squatters Take Over Abandoned Homes*, PRESS-ENTERPRISE (Riverside, Cal.), Apr. 5, 1996, available in 1996 WL 3274010.

157. *Id.*

158. *Id.*

California law. Despite the inadequacy of such adverse possession claims, it is still true that this suburban squatting is maximizing the use of land that would otherwise remain vacant for months or years at a time. One squatters' agent, who was facing thirty-six felony counts involving houses, reasoned that he was performing a public service because "[squatting] tells the banks they have to pay attention to their properties and do something with abandoned houses It gets banks off the dime."¹⁵⁹ Some law enforcement officials have taken unusual steps in dealing with squatters' agencies like Windsor Pacific. Sheriffs' deputies are now telling renters/house sitters/squatters not to pay rent. Sheriffs' deputies believe that someone has broken into "at least 13 foreclosed homes, cleaned them up, changed the locks and rented them under the name of Windsor Pacific."¹⁶⁰ If this alleged breaking and entering is true, these actions would violate California law even under the 1856 adverse possession statute.

Under a utilitarian property theory, a strong argument exists for allowing temporary use of property. However, this theory is accompanied by the distinct potential for abuse. The rights or duties of the renters or their agencies with respect to the occupied property remains unclear. Temporary squatters with little stake in the property could become careless or destructive and inflict heavy damage on valuable property. This potential for abuse of property which has been allegedly adversely possessed places a heavy burden on property holders to guard and monitor their property interests.

Monitoring can place an extremely heavy burden on property holders such as out-of-state banks that have foreclosed on property. Serious problems arise not only when banks find that foreclosed property has been claimed by squatters, but also when legitimate buyers are attempting to purchase property. One California couple bid on a \$385,000 home only to find that a squatter had moved in the day before.¹⁶¹ In that case, the purchasers obtained a restraining order that prevented the squatters from remaining in the house, but such a civil action still may take more than one month to settle.¹⁶² While the situation in California does illustrate severe abuses of squatting and adverse possession, the actions of a few should not overshadow the efforts of the legitimately homeless who squat in order to survive.

It is difficult to glean much encouragement from the United States' policies involving squatters and the homeless. Despite a strong and growing

159. Don Babwin, *Good Deal—Bad Dream[:]* *Arcane Legal Argument Tied to House Rental Scheme*, Press-Enterprise (Riverside, Cal.), May 30, 1995, available in 1995 WL 8897314.

160. Bhavna Mistry, *Palmdale 'Landlord' Suspected of Fraud*, L.A. DAILY NEWS, June 29, 1996, available in 1996 WL 6564557.

161. Andrew Horan et al., *Foreclosure Pitfall*, ORANGE COUNTY REG., Jan. 31, 1995, available in 1995 WL 5828724.

162. *Id.*

economy, there is neither a clear solution nor a national priority to reduce the specter of homelessness in the United States. With severe cutbacks in welfare and government programs, there is little hope for the homeless in our Darwinian society, except for that provided by the already overburdened private organizations. In light of the experiences of European countries, United States municipalities should change their adversarial attitudes toward legitimate residential squatters, while continuing to enforce strict property laws against commercial squatters motivated by profit. A partnership with squatters who would become homesteaders would serve utilitarian property interests and would at the same time alleviate homelessness. With a problem as diverse and widespread as homelessness, governments with little resources should at least attempt to foster potentially viable homesteading partnerships in conjunction with other low-income housing enterprises.

F. *Least Developed Countries: Property Laws and Squatting*

The lack of established property rights in underdeveloped countries often hampers both economic and environmental progress. The lack of property rights in LDCs may be manifested through a lack of title, unclear title, or a lack of recording, but is generally exhibited through insecure title for landowners. Jeremy Bentham, in his *Theory of Legislation: Principles of The Civil Code*, defined property and its importance by stating that "[p]roperty is nothing but a basis of expectation; the expectation of deriving certain advantages from a thing, which we are said to possess, in consequence of the relation in which we stand towards it."¹⁶³ The lack of title security that citizens of LDCs face compounds the economic problems of LDCs. For many LDCs, "[l]and titling has been promoted as the key to broad-based sustainable growth."¹⁶⁴ The current lack of certainty often hampers economic investment because land owners or squatters will have less incentive to invest work into insecure land.¹⁶⁵ While LDCs are weak in terms of economic power, their populations far outnumber those of more developed nations. The weak economies result in lower net spending on

163. BENTHAM, *THEORY OF LEGISLATION: PRINCIPLES OF THE CIVIL CODE* 111-13 (Hildreth ed., 1931), reprinted in BERGER, *supra* note 1, at 3.

164. Hendrix, *supra* note 19, at 183. Hendrix in his article argues that studies show land titling is not a panacea to economic and social problems in LDCs as many proponents claim. *Id.*

165. *Id.* at 194. The author states: "[p]ersons without title may invest less 'sweat equity'—time and effort—into their land." *Id.* For a case study on urban squatters in LDCs, see generally CHARLES L. CHOGUILL, *NEW COMMUNITIES FOR URBAN SQUATTERS* (1987). Choguill examines the plan to resettle 173,000 "shelter-less" individuals in Bangladesh who were forced to resettle into three camps, and "the chasm that can exist between planning and implementation [causing] such disastrous results." *Id.* at 2. Choguill cites several factors that led to the failure of the plan, including: organizational issues, lack of resources, cultural understanding, inappropriate technology, and inadequate public participation. *Id.* at 8-12.

housing, thus increasing the severity of housing problems.¹⁶⁶

1. *Brazil*

Brazil is a country with vast natural resources and a growing population. In fact, "[b]y 2015, Brazil's economy—which already surpasses that of Russia—will be the sixth largest in the world."¹⁶⁷ Brazil's land is diverse and is nearly the size of the continental United States. However, as in many developing countries, there is a great disparity in wealth and property ownership among Brazilian citizens. The United States Department of State (U.S. State Department) reported that "[l]arge disparities in income distribution continue to exist, with the poorest fifth of the population earning only 2 percent of national income, while the richest tenth receive 51 percent."¹⁶⁸ This disparity in wealth has created a housing shortage that was estimated to be at ten million units in 1992.¹⁶⁹ In Brazil, forty-six percent of the land is owned by wealthy landowners, who account for one percent of the Brazilian population.¹⁷⁰ According to the Brazilian Institute for Geography and Statistics, just three percent of the land is owned by the

166. For an urban squatter case study from the 1970s in Zambia, see DAVID PASTEUR, *THE MANAGEMENT OF SQUATTER UPGRADING* 196 (1979). This experiment in LDC squatter development established broad and universal goals:

[t]o improve the quality of life of people in the project areas . . . [t]o enable the low income population to achieve an improved standard of housing at a cost which can be afforded [b]y providing security of tenure and land for plots [b]y provision of utilities, especially water supply, sewage disposal, refuse disposal, security lighting and road access [b]y making maximum use of self-help labour in house building [b]y providing building materials loans.

Id. Although this study used a comprehensive and scientific methodology to address squatters' problems, its methods may be too complex for many LDCs. These almost utopian 1970s ideals for LDC squatter development are not unique. See also MICHAEL Y. SEELIG, *THE ARCHITECTURE OF SELF-HELP COMMUNITIES* (Sue Cymes et al. eds., 1978). This book contains 33 separate architectural entries for a worldwide contest that required the participants to design a squatter housing project for a city in the Philippines. The proposed housing had to be designed for low-income families in an area with a high density of people, with buildings that were low in height, that served as self-sufficient units, that maintained a pedestrian orientation, and that established an ecological fit. *Id.* at 27. Despite the fact that many of these designs were probably relatively easy and inexpensive to build, little progress was made in constructing novel low-income housing.

167. Fabio L. S. Petrarolha, *Brazil: The Meek Want the Earth Now*, BULLETIN OF THE ATOMIC SCIENTISTS, Nov. 21, 1996, available in 1996 WL 8994403.

168. United States Department of State, *Brazil Human Rights Practices, 1995*, DEPARTMENT OF STATE DISPATCH (Mar. 1996), available in LEXIS, International Law Lib., DSTATE File.

169. Beth Cohen, *Housing, the State and Urban Squatter Settlements: Reviewing Policy and Prospects* (visited Nov. 2, 1996) <<http://lanic.utexas.edu/project/ppb/papers93-94/cohen.html>>.

170. *Nearly 700 Landless Peasants Take Over Brazilian Farm*, AGENCE FRANCE-PRESSE, Sept. 30, 1996, available in 1996 WL 12147992.

Brazilian rural poor, who make up fifty-three percent of the country's population.¹⁷¹ Many of the landless are upset because large tracts of land are going unused in Brazil.¹⁷² Not surprisingly, this disparity in land ownership has led to squatting and subsequent violent reactions by landowners. In reporting on this violence, the U.S. State Department noted that "[t]he most serious human rights abuses continue[] to be extrajudicial killings and torture. Justice is slow and often unreliable, especially in rural areas where powerful landowners use violence to settle land disputes."¹⁷³

In Brazil, conflicts related to squatting occur most often "[w]here land title is not clear and/or government programs provide incentives for invasion."¹⁷⁴ A study commissioned by the National Science Foundation and World Bank study found that violent clashes are often caused by sluggish governmental policies and rising land values.¹⁷⁵ The U.S. State Department, noting the power of the landowners and the ineffectiveness of the government, reported: "[i]n rural areas . . . landowners [have] often intimidated judges, lawyers, and police with violence and threats of violence."¹⁷⁶ The report points out that violence has intensified "because of the slow progress of the Federal Government toward reaching its goal of granting land tenure certifications to hundreds of thousands of landless families."¹⁷⁷

It is a common characteristic of many LDCs to have uncertainty in title. Not only does this uncertainty harm economic development, but, as in Brazil, it often leads to violence and death. Brazilian governmental policies have increased violence by placing incentives and subsidies for land development in certain areas. Most of these incentive plans have been based upon development of the Amazon Basin. Moreover, police and governmental officials have been implicated in much of the violence against the squatters. On August 9, 1995, nine squatters were killed when police opened fire on a squatters' camp.¹⁷⁸ Seven of the nine squatters killed

171. *Id.*

172. Mary Anastasia O'Grady, *The Americas: Muddled Policies Spark Brazilian Land Wars*, WALL ST. J., Oct. 20, 1995, available in 1995 WL-WSJ 9904714.

173. United States Department of State, *supra* note 168. Additionally, in 1997, three squatters were killed when police attacked an abandoned housing project while trying to enforce an eviction order. *Squatter Crisis Eases in Brazil[.] Police, Homeless Back Off in Dispute that Left Three Dead*, SUN-SENTINEL (Ft. Lauderdale, Fla.), May 22, 1997, available in 1997 WL 3106330. The police captain claimed that the squatters "attacked with sticks and stones and gunfire," but one squatter claimed that the "squatters had no fire arms, 'only sticks and stones.'" *Id.* Consistent with other Brazilian police action, the squatter claimed that "he saw police shoot his friend in the back." *Id.*

174. O'Grady, *supra* note 172.

175. *Id.*

176. United States Department of State, *supra* note 168.

177. *Id.*

178. *Brazil Says Squatters Were Executed in Camp*, RECORD (Northern N.J.), Aug. 25, 1995, available in 1995 WL 3477227.

"were shot point-blank in the face, neck, chest, and back."¹⁷⁹ According to the Pastoral Land Commission, the battles over land have "left 74 people dead."¹⁸⁰ A human rights group also "attribute[s] 10 percent of that state's homicides to the police. . . . [and] speculates that the actual number may be higher since no suspects have been found in one-third of these cases."¹⁸¹ Supporting the peasants are groups like the Landless Workers Movement that organized "controversial land occupations to help dispossessed farm workers and those longing to escape from the slums to establish small agricultural encampments on Brazil's vast tracts of privately owned but idle land."¹⁸² This squatting group has become powerful as "[h]undreds of thousands of workers have become involved."¹⁸³ The fact that "[n]early a half-million Brazilians have been resettled in this manner" demonstrates the group's success.¹⁸⁴ However, acquiring housing in this manner involves great risk; the Unified Worker Central reports that "more than 1,700 [workers] have been killed in the last decade" by "[t]hugs hired by private landowners, the police, or the two together."¹⁸⁵

In addition to violence, there are also critical collateral problems with respect to property in Brazil. In the Brazilian rainforests, squatters and squatters' camps have been linked to destruction of the forest. For instance, occupants without property rights are unwilling to invest in "erosion control, fertilizers, and irrigation."¹⁸⁶ One squatter stated that "[w]e don't have any machinery or fertilizers, so the only way to prepare the soil is by burning [it]."¹⁸⁷ These squatters, who are clearly in a difficult situation, need the support of international organizations capable of helping them secure viable farm land and educating them on environmentally friendly farming techniques. Nevertheless, the environmental degradation caused by insufficient property rights is not unique to Brazil, but plagues other LDCs as well.¹⁸⁸

Brazil, a dynamic and growing country, needs guidance in decreasing the terrible incidents of violence against squatters. For Brazil, it will not be enough to simply mandate or support land titling procedures or to enact

179. *Id.*

180. *Nearly 700 Landless Peasants Take Over Brazilian Farm*, *supra* note 170.

181. United States Department of State, *supra* note 168.

182. Petrarolha, *supra* note 167.

183. *Id.*

184. *Id.*

185. *Id.*

186. Hendrix, *supra* note 19, at 195 (quoting PETER C. BLOCH, *LAND TENURE ISSUES IN RIVER BASIN DEVELOPMENT IN SUB-SAHARAN AFRICA* 26 (1986)).

187. Jan Rocha, *Burning Ambition[.:] Brazil's Rainforest is Being Destroyed Not Only by Ranching and Logging But by the Farming Methods of Landless Poor Fighting to Eke Out a Living in Squatter Camps*, *GUARDIAN* (London), Nov. 20, 1996, available in 1996 WL 13388272.

188. Squatters and poor property rights have also caused environmental degradation in Malaysia. See *infra* Part IV.F.2.

Western property schemes. In light of the international "right to housing"¹⁸⁹ and other human rights agreements, other nations must provide support as well as pressure to prevent further squatter tragedies.

2. Malaysia

As a former British colony, Malaysia has a common law legal history. Like many LDCs, Malaysia is besieged by squatting problems. In a recent Malaysian census, "552,196 squatters had been identified . . . [and] most squatters settlements were built on government land."¹⁹⁰ Squatters are very prevalent in the Malaysian cities of Selangor, Kuala Lumpur, and Johor.¹⁹¹ In these cities, costs of living are so high that even legitimately employed workers are forced into squatting for survival.¹⁹² Furthermore, illegal immigration represents a significant problem in Malaysia: "Perlis . . . [is] a major entry and transit point for illegal workers, especially those from the Indian sub-continent. Most head straight for the capital, Kuala Lumpur."¹⁹³ To address the illegal immigrant problem the Malaysian parliament passed the "Immigration Act (Amendment) 1996 . . . [under which] employers who hire illegal workers can be fined . . . [and] those responsible for bringing them in [to the country] can be fined . . . , jailed and caned."¹⁹⁴ The government has resorted to these harsher laws because, as Malaysian Deputy Finance Minister Datuk Dr. Affifuddin Omar has reported, "studies show that the inflow of foreign workers and their families not only cause[s] the population density to rise in major towns but also affect[s] house [sic] prices and rentals as well as cause[s] health problems."¹⁹⁵

Despite some of the serious labor and housing problems, squatters in Malaysia do hold some power. In Malaysia, "[t]he tolerance level for squatters has . . . been traditionally high."¹⁹⁶ Atypical of most LDCs and perhaps attributable to the squatters' power, Malaysia has taken affirmative steps to cure some of the problems associated with squatters and their

189. The international right to housing is supported by numerous United Nations covenants, conferences, resolutions, declarations, and recommendations. *See supra* note 6.

190. Dewan Negara, *552,196 Squatters Identified Under Ministry Census Note*, NEW STRAITS TIMES, May 27, 1997, available in 1997 WL 2962833. Interestingly, of the half-million squatters, "90,417 were foreigners." *Id.* Malaysian officials estimate that, "450,000 legal foreign workers [and] more than one million illegal labourers, mainly from Burma, Bangladesh, India, Indonesia, Pakistan, the Philippines and Thailand" currently reside in Malaysia. Joseph Chin, *Malaysia Prepares New Year Crack Down On Illegal Workers*, AGENCE FRANCE-PRESSE, Dec. 30, 1996, available in LEXIS, World Lib., ALLNWS File.

191. *Squatting on a Problem*, NEW STRAITS TIMES, Apr. 3, 1996, available in 1996 WL 9812791.

192. *Id.*

193. Chin, *supra* note 190.

194. Hamisah Hamid, *Malaysia: No More Exercise to Legalize Illegal Foreign Workers*, BUSINESS TIMES (Malaysia), Jan. 7, 1997, available in LEXIS, World Lib., ALLNWS File.

195. *Id.*

196. *Squatting on a Problem, supra* note 191.

communities. Squatting safety is one area in which Malaysian government officials have made significant progress. In Kuala Lumpur, it is estimated that 226,000 squatters reside in 255 squatter settlements.¹⁹⁷ To some degree, the government has accepted their existence and decided to limit the safety risks that the squatters may encounter. For example, "[t]he government is prepared to provide fire-fighting equipment and training" to 150,000 squatters if they are willing to set up "volunteer fire response units."¹⁹⁸ Malaysian government officials have also made plans to limit the impact of waste and garbage on squatters' areas.¹⁹⁹ One government official stated that "rubbish dumping in squatter areas has become a big issue. . . . [Polluters,] including factory owners, [have been] dumping toxic waste near squatter areas."²⁰⁰ Malaysian officials have also sought to improve the lifestyles of squatters by providing them with a sense of community. The government has moved towards "build[ing] community halls in traditional and squatter villages . . . as they serve as a focal point for community activities."²⁰¹ These centers would be used "for social activities like meetings, gatherings, as public libraries, reading rooms and kindergartens."²⁰² As evidence of the success of squatters in Malaysia, one government official noted "the positive development in squatter villagers [sic] to date especially the readiness of squatters to support development in their area and development proposals squatter committees have sent him."²⁰³

The Malaysian government has accepted the reality that squatters and squatters' movements are an integral part of their country. Instead of fighting the squatters, Malaysian officials are taking real and logical steps to assist the squatters: this type of partnership is a model that other LDCs should emulate and follow.

3. Philippines

The Philippines is a LDC that is rapidly growing in population. As in many LDCs, there is a great disparity between the rich and the poor. The Philippine government has started a program called "Philippines 2000" that aims "to convert its agrarian-based, paternalistic economy into an industrial,

197. Teoh Teik Hoong, *Government Offers to Help Squatters in Fire-Fighting*, NEW STRAITS TIMES, Aug. 31, 1995, available in LEXIS, World Lib., ALLNWS File.

198. *Id.* These fire brigades might have helped squatters recently when "100 people were made homeless after their container homes were destroyed by fire." Noor Adzman Baharuddin, NEW STRAITS TIMES, *100 Loose Container Homes in Fire*, Jan. 3, 1997, available in 1997 WL 2943254.

199. Khairunnisa Hussin, *Plan to Take Over Trash Collection in Squatter Areas*, NEW STRAITS TIMES, Jan. 27, 1995, available in LEXIS, World Lib., ALLNWS File.

200. *Id.*

201. *Priority for Building of Community Halls*, NEW STRAITS TIMES, Jan. 5, 1996, available in 1996 WL 8260695.

202. *Id.*

203. *Id.*

market-driven one."²⁰⁴ Despite these lofty goals, poverty and homelessness are prevalent throughout urban and rural areas in the Philippines. High rates of homelessness have led to numerous incidents of squatting and subsequent government action to remove squatters. According to the U.S. State Department, the Philippine government has illegally "forced eviction of squatters" since 1992.²⁰⁵ The State Department's report indicates that "[h]uman rights NGO's [nongovernmental organizations] have criticized government efforts to resettle tenant farmers and urban squatters to make way for infrastructure, commercial, and housing developments."²⁰⁶ These industrial developments often collide with squatters' housing and shanty towns. The State Department's report found that governmental policies in the Philippines were ineffective because of the "extensive poverty, the limited availability of affordable housing for the urban poor, and squatter syndicates that exploit human misery and legal safeguards for pecuniary or political ends."²⁰⁷

Manila, the capital of the Philippines, contains a very large concentration of squatters. The National Housing Authority estimates that "[a]bout 3.5 million people live in squatter colonies in and around Manila, representing 39 percent of the capital's population."²⁰⁸ Squatters armed with "rocks, darts, broken bottles and gasoline bombs" have fought police in an attempt to "prevent government wrecking crews from demolishing more than 500 shanties and semi-concrete houses they had built on private property. Many of them have been living in the area for more than a decade."²⁰⁹ One particular area of Manila has been a hot spot for squatter activity. "Smokey Mountain" is a huge dump sight that houses thousands of squatters and has been described as "a small mound [that] soon spread out of control, sprawling over a nine-acre area and containing 2.2 billion tonnes [sic] of rotting rubbish."²¹⁰ Although squatters and scavengers benefitted from the mound by "collecting bottles, nails and copper wire for recycling . . . [and by obtaining] their rent-free shanty houses," there were serious dangers as demonstrated by the "[u]ntold numbers of scavengers [who] died after falling into the flames . . . [and] [o]thers [who] were run over by bulldozers or dust carts, or [who] succumbed to lung diseases and other illnesses that were rife on the dump."²¹¹ However, the government has treated these squatters

204. United States Department of State, *The Philippines Human Rights Practices, 1995*, DEPARTMENT OF STATE DISPATCH (Mar. 1996), available in LEXIS, International Law Lib., DSTATE File.

205. *Id.*

206. *Id.*

207. *Id.*

208. *Squatters Battle to Save Dwellings in Philippines*, SAN DIEGO UNION-TRIBUNE, Jan. 16, 1997, available in 1997 WL 3111525.

209. *Id.*

210. Claire Wallerstein, *New Houses Rise from City Dump; Smokey Mountain Has Been Built Over*, GUARDIAN (London), Sept. 1, 1997, available in 1997 WL 2398877.

211. *Id.*

poorly as evidenced by its preparation for last year's APEC [Asian Pacific Economic Cooperation] forum: "[h]undreds of squatter shacks [were] bulldozed along the capital's major roads leading from the international airport to the big hotels and convention sites."²¹² "Imelda Marcos, widow of former president Ferdinand Marcos, used to call [the bulldozing] beautification"²¹³ This "beautification" of Manila left "at least 10,000 of the city's estimated 3 million people homeless About 1,000 families were removed from a stretch of land reclaimed from Manila Bay, and 200 more families were left homeless when the bulldozers plowed though the Paco slum."²¹⁴ This strategy of "[r]elocating squatters to distant relocation camps [didn't] work; the people return[ed] since there [was] no work there."²¹⁵

The international community should not support the mistreatment of squatters by allowing countries like the Philippines to host prestigious summits such as APEC. Additionally, the world community can provide practical and effective assistance to help LDCs with housing problems by facilitating the establishment of partnerships between squatters and governments. However, this assistance must be contingent upon a government's willingness to adhere to internationally recognized values and human rights.

V. CONCLUSION

In examining why squatters are treated so differently in different parts of the world, it is clear that the rights of squatters are directly linked to the amount of support given by their communities. In Europe, squatters and squatters' movements are generally well supported by the public; thus, squatters in Europe have had more success. As for squatters' movements in

212. Keith B. Richburg, *10,000 Left Homeless in Manila Beautification: Heavy-Handed Move Reminiscent of Marcos Abuses*, OTTAWA CITIZEN, Nov. 18, 1996, available in 1996 WL 3624689. Other Asian countries have attempted to remove squatters from their settlements. For example, in India, the government created a "scheme to rehabilitate the 55,000-odd squatters living in ['objectionable areas']." *India: Squatters to Be Rehabilitated Outside City*, HINDU, Dec. 5, 1996, available in 1996 WL 14122800. Under this plan squatters will be removed from their dwellings "along rivers, canals, roads and rail tracks in the metropolitan area . . . [to] tenements to be built outside the city." *Id.* A reported "56,000 families live on objectionable locations" and their resettlement, coupled with adequate replacement housing, might act to improve the health, safety, and welfare of both squatters and non-squatters. *Id.* See generally DEVENDRA B. GUPTA, *URBAN HOUSING IN INDIA* (1985). Gupta claims that "because of the enormity of the problem of slums and squatting and the paucity of resources, the focus of the government program has presently shifted to the worst slums." *Id.* at 102. It remains to be seen whether the new-found economic success of India will impact its many citizens who face housing and basic sustenance problems.

213. *Id.*

214. *Id.*

215. *Housing for Asia's Poor*, MARKET ASIA PACIFIC, Apr. 1, 1996, available in LEXIS, World Lib., ALLNWS File.

the United States, it might simply be that their time has not come. European nations in the twentieth century have been more socially progressive and more advanced in environmental areas. The United States may be following in their path. The fate of squatters in LDCs, on the other hand, depends on the willingness of governments to accept and foster partnerships with squatters and squatters' communities. Without such relationships, the tension between property rights and those attempting to survive often results in tragedy.

Utilitarianism and efficiency are proper models for the establishment and maintenance of property laws. Despite the desire for wealth and profit, the efficient use of property benefits all of society. Property that stands idle or unused simply acts as an anchor on the ultimate progress of society. Governments should put to use unused public lands by creating new housing and settlements. Thus, a mere accounting of governmental resources, adverse possession laws, and attitudes towards squatters, the homeless, and homesteaders may itself lead to the alleviation of homelessness.

Governments should also reform adverse possession laws to place heavier burdens on private land owners to monitor and preserve their land. Long statutes of limitations are simply anachronistic. Statutes of limitations in adverse possession laws should be uniformly shortened to coincide with the increased scarcity of property and housing. Likewise, governments worldwide should strive for greater certainty and clarity with respect to real property rights. Indeed, governments should consider such reforms to be their duty and should take action to reduce violence caused by unclear property rights.

As a matter of policy, governments and municipalities should be held accountable for vacant property. If this burden is too great, they should allow squatters and homesteaders to fill their resource gaps. Instead of antagonizing squatters, governments should strive to support squatters' efforts and should provide safe solutions by forming community partnerships. Moreover, governments must establish minimum support for the health, safety, and welfare of squatter residences and settlements. Homesteading should be encouraged. This type of squatting provides homeless people with a sense of purpose and lowers the costs for governments in providing housing.

This note has illuminated existing property laws, policies, and solutions that serve both legitimate property interests and the interests of society at large, while serving the general goals of equity and efficiency. Nonetheless, the potential for realizing these goals globally would be even greater if more governments engaged in the aforementioned activities and supported

squatting efforts instead of criminalizing these actions. All squatters should not be viewed as opportunistic criminals. Instead, squatters should be respected as citizens who choose not to wait for governmental solutions, but choose self-help and attempt to remedy to their problems independently.

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