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How One Law in California, “Costa-Hawkins,” Produces more Homeless than can be Helped, and has other Significant Unintended Consequences

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Abstract

This paper argues that a California law, entitled the “Costa-Hawkins Rental Housing Act” is a primary cause of homelessness in that state. The origins of that law will be discussed. The exact system by which that law produces homelessness will be modeled. The paper argues that that law is the primary reason why the homeless population in California is exceptionally high, nearly twice that of the next state. That law is also the single most important reason why all the state’s efforts, and billions of dollars spent, to alleviate the problem have failed to even stop the increase in the number of homeless. Among the unintended consequences of the law are severe mental and emotional stress for those persons who live on the threshold of becoming homeless.

Introduction

In this paper I will employ a theory of causation drawn largely from American jurisprudence, but easily adapted to service in social science. It is known as the “But For Rule.” It is a way of assessing whether, and to what extent, event X played a part in bringing about event Y. A well known text states it this way, “Causation can be established if the injury would not have happened but for the defendant’s negligence.”¹

Ultimately, my argument will be that the massive number of homeless people in California, an “injury” to society, would not be the problem it is “But For” that state’s law, called the “Costa-Hawkins Rental Housing Act,” enacted in 1995.² The focus in this paper is on the effects of rent increases for tenants in residential apartments. Thus, while Costa-Hawkins has language referring to houses, condominiums, and other matters, these will not be considered. The great bulk of the homeless population in the state resided in rented apartments prior to becoming homeless.

Isolating the Primary Cause from among the Collection of Lessor Causes

In *Homelessness Is a Housing Problem*,³ Gregg Colburn and Clayton Page Aldern examine homelessness rates in several US cities. They find that per capita rates vary significantly among those urban areas. To try to explain these variations in homelessness rates, they work through the “usual suspects” of causes, including mental illness, substance abuse, poverty, availability and amounts of public assistance, even the weather. But these notions do not result in satisfactory explanations.⁴

For example, the city of Detroit is one of the poorest cities in the US, yet Detroit's per capita homelessness rate is about 20% that of West Coast cities like Seattle, Portland, San Francisco, Los Angeles, and San Diego.⁵ States with high rates of mental illness have relatively low rates of homelessness.⁶ Likewise, cities in Arkansas and West Virginia have high rates of opioid addiction but comparatively lower per capita rates of homelessness. Indeed, in the reverse, homelessness can lead to mental illness and substance abuse.

But the common thread running through the cities studied is the correlation of high per capita homelessness rates, and high housing costs.⁷ Thus, in systems terms, “availability of affordable housing plays a determinative role in both inflow to homelessness and outflow from homelessness.”⁸ While I agree with this statement, it requires more specificity and detail, which I will provide in this essay.

Their conclusion that “homelessness is a housing problem,” is based on an economic interpretation, using the principle of supply and demand. The supply of affordable housing is inadequate to meet the demand for it. Because prices tend to increase for most products in short supply, rents go up. The tenants who cannot pay the increases form the pool from which most of the homeless are drawn. (Some may not go directly to homelessness because they have friends or relatives with whom they can board; or they otherwise obtain shelter and are not counted as homeless.)

While narrowing down the causal candidates for explaining homelessness is helpful in reducing the number of variables to puzzle over, the book glosses over what I will argue is the most salient factor in bringing about the rise of homelessness. By falling back on the language and analytic approach of academic economics, with its reliance on “market dynamics” for explaining existing conditions, the authors lose sight of the human element as a causal factor.

In this way, the authors fall into a kind of conceptual trap. Because they believe they have clarified the problem with their market analysis, they turn to the proposal of well worn economic “solutions” to it.⁹ In other words, increase the supply of housing units enough to satisfy the demand, and problem solved. Thus, constructing more buildings with affordable apartments would, in theory, create more units in which the homeless may be housed. So, governments, at all three levels should offer builders tax and other incentives to build more affordable apartment buildings. Make existing space, such as unused rooms in hotels and motels, available to the homeless as permanent housing. Also, giving out rental vouchers to more homeless folks would enable them to rent places in which to live. However, as we will see, the economics hypothesis that spending more money to both increase the supply of housing and the ability of the poor to pay their rent, has been tried in California with astonishing failure. Yet the same efforts are continued because, from the economics point of view, they seem to be the most reasonable solutions available.

Using California as my case study, I will argue that the bulk of homelessness in the state is better explained by reference to human actors following a self-enriching political strategy, which succeeds for them, but which has disastrous consequences for other human beings who reside in that state. Going beyond the dead end concepts of academic economics, as I will show, the problem is one of the *intentions* of state lawmakers and the *passions* of landlords. The key law is

Costa-Hawkins. The passion of landlords is pecuniary. The Costa-Hawkins law intentionally removes constraints on the pursuit by landlords for profits from their rental units. I will show that this law and that “liberated” passion are the major cause of the bulk of the homeless population in California.

As an alternative to the economic analysis, the approach in this paper applies empathy for both the all too human passion in landlords, and for the intentionality of the legislators who made the Costa-Hawkins law. By focusing on the intentionality of the actors involved, no pretense is made at applying non-human mechanical principles such as the so-called “Law of Supply and Demand.” Instead, the societal processes that follow from the intent of the actors are traced to their conclusion. These processes will include unintended consequences along with the intended consequences. These are human actors exercising their agency to make the choices they did. The choices they made set off the cascade of homelessness that followed.

The Origins of Costa-Hawkins

By the latter part of the 20th century, several cities in California had enacted ordinances to regulate rents in their jurisdictions. These included Santa Monica, Berkely, San Francisco, and Los Angeles. In Santa Monica, for example, in 1979, voters approved a Charter Amendment to create a Rent Control Board as part of city government. The Board had the authority to regulate rent increases on tenants and on vacant apartments as they opened up. Some cities followed Santa Monica, while others, such as Los Angeles, already had rent regulating ordinances.¹⁰

There were California landlord groups which had opposed the passage of such regulations, and there was growing resentment among landlords at what they regarded as interference with their lawful businesses.¹¹ Thus, in 1995, two California state legislators, Jim Costa and Phil Hawkins, managed to obtain a majority vote on a bill designed to limit the ability of local governments to enact rent regulating ordinances, and to roll back some of their regulations. It was signed by Republican Governor, Pete Wilson.¹²

There are several provisions in the law that deliberately diminish the power of local governments to enact rent regulations. For example, residential apartment buildings constructed after 1995 could *not* be subjected to rent control. And in those localities that already had rent regulations, whenever an apartment became vacant, the landlord could *not* be stopped from raising the rent on the empty unit to the level of the “prevailing market rent.” That usually means “what the market will bear.” These two provisions, among others, in the law put a wrap around the power of people in rent controlled cities to regulate rents. For the most part, rents now can only be regulated in old buildings, built before 1995, and the rent for new vacancies in *all* buildings cannot be capped.

The Rent Inflation-Homelessness Spiral

As might be expected, this law, has enabled *Rent Inflation* to skyrocket in California by removing some of the former restrictions on the power of landlords to raise rents, and restricting the ability of other cities to enact meaningful rent regulations.

Skyrocketing Rents

According to Property Management.com, the average monthly rent for a two bedroom apartment in California was \$620 in 1990, before the passage of Costa-Hawkins in 1995. By 2020 the average of rents had leapt to \$1614, an increase of \$994 p/m. In 2024, the average had ballooned to \$2464, an increase over the 1990 rent by \$1844 *per month*.¹³

The Unique Expansion of Homelessness in California

Prior to the passage of Costa-Hawkins the 1990 census found that California had a homeless population of 49,081. More homeless than any other state at the time.¹⁴ Years later, in a report to Congress about homelessness in the states, the Department of Housing and Urban Development (HUD) estimated that more than 181,399 people were experiencing homelessness in California in January 2023. Again, more homeless than any other state.¹⁵

Thus, in the 33 years from 1990 to 2023, the homeless population in California soared by 132,318 souls, while the average rent on a two bedroom apartment, in almost the same period, skyrocketed by \$1844 *per month*.¹⁶

This is more than a simple correlation. There is a human story behind the statistics. The inference is highly probable that increasing rents were a primary cause of the increasing homeless population. As the number of homeless in California was growing by an average of 4000 former tenants per year, the average monthly rent on a two bedroom apartment was increasing by about \$670.50 per year.

Here are some further examples illustrating the California experience in relation to other states;

- In 2007–2023, California experienced the *highest increase* in the number of homeless (42,413 more people), while 24 other states had lower increases, and the number of homeless declined in 25 states and the District of Columbia.¹⁷
- Between 2010 and 2020, the number of people experiencing homelessness in California increased by 31%, while nationwide the number actually *fell* by 18%.
- Between 2020 and 2022, the number of homeless increased 6% in California, and less than half a percent in the rest of the country.[10][11]
- California accounted for 49% of all unsheltered people in the country (123,423 people). This is nearly eight times the number of unsheltered people in the state with the next highest number, Florida. P16
- California had the highest percentage of unsheltered among its homeless in the US (16% of its total number of homeless). P16

Thus, the California experience is unique among states in the US. My contention is that Costa-Hawkins played a major role in this.

As we have seen, it was the intent of Costa Hawkins to remove some of the existing restrictions on the rent raising power of landlords, and to prevent further restrictions being imposed on that

power by cities that may have wanted to enact rent control. The intent was to enable landlords to profit as much as possible from rent increases. It is likely that there was no intent to drive up the number of homeless in California. But that was one of the unintended, yet probably foreseeable, consequences of landlord profit taking.

How the Rent Inflation-Homelessness Spiral works

Every year, new apartment buildings are being built because investors know that their rents will not be regulated – no matter what California city they build in. When the new buildings open up, some of the tenants in older buildings move in to the new ones, if they can afford to do so. Since there is no rent increase limit on newly vacated apartments, even if they are in rent controlled cities, the landlords can now raise the rent on these units to whatever they can fetch.

Other landlords see how much more those landlords are being paid by their new tenants. They understand those rents to be the new “market rate,” and raise their rents. Some of those tenants who were already “rent burdened,” i.e., paying more than 30% of their income on rent, cannot pay the new “market rate.” Some may have already cut to the bone their budgets on medications, food, vacations, or clothes, just so they could pay the former rent. If they have children, the budget for them likely can’t be cut anymore. But the landlord follows both the law and his or her pecuniary passions, and raises the rent. If a tenant cannot pay the market rent, then they must move or be evicted. That’s the law.

Once ousted, those tenants have to find an affordable place to live. Some of them will have to move further away from work, school, and friends. Some of those tenants may have been living on the threshold of homelessness. They may have been heavily overburdened by rent, living paycheck to pay check. Perhaps they had recently suffered a loss of income because of reduced hours at work, or an illness that cost them their job. Some will try to avoid homelessness by moving in with friends or relatives. Although this often results in the “guest” feeling guilty, and sometimes conflicts arise. Inevitably, however, some of those tenants who just can’t pay a hefty rent increase will have nowhere to go. For them, it’s the street, a car, a trailer, or, if lucky, a shelter.¹⁸

As we have seen, more than two-thirds of the homeless people in California are *unsheltered* (meaning they sleep in tents, either on the streets or in encampments, or in a vehicle). Despite the state’s efforts to combat homelessness (discussed below) the HUD report notes that this “two-thirds” unsheltered is the highest percentage of any state in the United States. While California has about 12% of the US population, nearly half of all unsheltered homeless humans in the US live in this state.

As mentioned above, since Costa Hawkins passed, in 1995, homelessness in California has steadily increased on average by over 4000 persons per year. Last year’s homeless are added on to those from the year before. This year’s homeless will be added on to them. The law that allows landlords *to cause* homelessness by raising rents to unaffordable levels for vulnerable tenants, also functions *to keep* an increasing number of homeless in that condition. If the rents on vacant apartments, including first and last month rent, security deposit, application fee, etc., are too much for an ousted person to pay, even if he or she is a senior on a fixed income, or a person among the “working poor,” then they must enter into, and remain in, homelessness.

With rent increases driving tenants out of their apartments and into homelessness every year, and rents on vacancies blocking their exit from that condition, the total homeless population will continue to grow steadily. This is the Rent Inflation-Homelessness Spiral.

Costa-Hawkins set the stage for the unique growth of homelessness in California. “But For” that law, California would not have its out of control, massive homelessness problem. As we have seen, prior to the passage of Costa-Hawkins, California cities had begun enacting rent regulating ordinances. This trend would likely have continued, because renters in one city seeing the success of other cities would have done likewise. The authors of Costa-Hawkins anticipated this likelihood, and acted to prevent it in 1995.

Costa-Hawkins not only liberates the passion of landlords, but by legalizing, and thus protecting its unrestrained exercise, the law *encourages* the effort to maximize profits by raising rents. Thus emboldened, landlords raise rents beyond what even the “working poor” can pay, up to the maximum extent middle earners and higher can withstand. *But for* that law, California cities could have enacted rent control laws that enabled tenants to stay in their apartments. But Costa-Hawkins cleared the way for landlords to fully indulge their pecuniary passions, no matter the unintended consequences. In this way, Costa-Hawkins functions as a homeless producing machine, churning out some 4000 homeless per year.

The Tenant Protection Act

In response to this Rent Inflation-Homelessness Spiral, the California government, enacted the “Tenant Protection Act of 2019.”¹⁹ It capped rent increases at 5% plus another 5% for inflation, if it rose that much. In short, the law creates *the appearance* of allowing landlords no more than a yearly rent increase of 10%. But appearances can be deceptive. That Act is restricted by Costa-Hawkins.²⁰ Generally, only tenants living in buildings built before 1995 receive that state protection. For tenants living in buildings built after that date, the Rent Inflation-Homelessness Spiral can keep spinning.

Moreover, while Costa-Hawkins states that it only protects buildings from rent regulation if they were built after 1995, that’s not the case for those cities that had passed rent control ordinances prior to 1995. Costa-Hawkins roles back the date for buildings to the year the city enacted its rent regulations. For example, in Santa Monica the cut off year is 1979. Buildings built after that date become protected against rent regulations. In other words, Costa-Hawkins cuts out an extra 16 years of buildings for protection against rent control in that city. Statewide, this provision results in *hundreds* of more buildings whose tenants can be caught up in the Rent Inflation-Homelessness Spiral. Thus the law stripped away some of the power of local governments that had enacted rent regulations.

California’s Failed Efforts to Alleviate Homelessness

What, if anything, is the California government doing about its homeless population?

In February 2023, the state’s Interagency Council on Homelessness reported to the State Assembly on exactly that question.²¹ This agency is tasked with overseeing the state’s homelessness strategy. It is also responsible for both distributing funds to the numerous

organizations and agencies involved, and for assessing the success of state program implementation. The report says that between 2018 and 2021, the state had spent \$9.6 billion to alleviate homelessness. Some of the funds went to providing assistance and other services to the homeless, such as shelters and food. About 571,000 people were served during that period.

The report also states that, despite these expenditures, most of the homeless did *not* receive housing; indeed, the number of homeless in California actually *increased* during the period audited. In other words, as a result of spending nearly Ten Billion Dollars to reduce homelessness, the number increased.²² A 2023 joint report from the Corporation for Supportive Housing and the California Housing Partnership recommended an increase in the pace of building affordable housing, and put the price tag at \$8.1 billion every year for more than a decade.²³

One reason the Interagency Council report gave for the state's abject failure is the chaos and duplication among the nine state agencies, hundreds of county and municipal governments, and the numerous nonprofits and charitable organizations working on various aspects of the homelessness issue. Each was following its own program, with no central coordination. But the report *omitted* to mention another reason why the state has failed so badly. Nothing has been done about Costa-Hawkins. In fact, by unleashing the landlord passion for profit making, Costa-Hawkins is producing more homeless each year than the state or local governments can keep up with.

Perhaps elected officials simply do not realize that the law they made is producing the homeless, and keeping the homeless in that condition. No matter how much tax payer money is expended on the problem, experience seems to suggest that nothing will reduce the ever increasing number of homeless as long as Costa-Hawkins is allowed to stay in operation. The obvious implication for a way to stop the increase is to repeal Costa-Hawkins, and restore the state to the legal environment wherein cities and counties can enact rent regulations as they see fit. Indeed, a measure is on the November 2024 ballot, "Prop 33," that would do just that. (Proposition 33 will be discussed further below.)

Life on the Threshold of Homelessness

The Costa-Hawkins Rent Inflation-Homelessness Spiral does more than push tenants into homelessness. Homelessness is just the *visible* harm to society. Far less visible is the gut wrenching anxiety felt by those tenants who live on the threshold of homelessness, and worry about when they will be next.

Even before any Notice of Eviction, or any threats by the landlord, there are tenants who *feel* themselves to be within the threshold of homelessness. Maybe they are living pay check to pay check. Maybe they have just lost a job, or have become seriously ill, are pregnant, or are already heavily rent burdened. Indeed, one study found that 11% of the homeless respondents were pregnant during the six months prior to eviction.²⁴

Researchers from Drexel University, and some participating state agencies, conducted a study of normally housed people in the US, between 2021 and 2022, who worried about eviction.²⁵ These were not folks who had received an Eviction Notice, but who *feared* that they were likely to face

eviction sometime within the near future. The study found that “the perceived risk of eviction is associated with [severe stress and other] elevated mental health problems.” Indeed, compared with a control group that felt secure, “the odds of depression, anxiety, and prescription medication use in the at-risk eviction group were significantly higher than in the reference group.” The study also found that during the COVID pandemic, in those states that put out a temporary eviction ban, such “state-level eviction moratoria was associated with a reduction in emotional distress.”

80% of stressed renters report that they have had to cut back on food, transportation, and health care costs. Of those folks, another 80% feel pressure to move, but haven’t “because of a lack of affordable options in the housing market.”²⁶ In California, “one million renters are behind on rent payments, and almost 150,000 believe eviction is likely in the next two months.”²⁷ These folks feel that they are in the pool of potential homeless from which the Rent Inflation-Homelessness Spiral may draw. Their stress is intense.

These distressing pressures and mental health pathologies appear to be a direct result of the unfettered power Costa-Hawkins gives to landlords to raise rents on both occupied apartments, and on vacancies. One implication of this causal analysis seems to be that rent regulations would make apartment life a little more secure, rents a little more stabilized, and life a little less stressful.

The Social Harms of Bad Law

Historians understand that the 1920’s law prohibiting the sale and use of alcoholic beverages, that is, the 18th Amendment to the US Constitution, and the Volstead Act, had the terrible and *unintended* consequence of growing organized crime. This included Chicago’s Al Capone and the Five Families that constituted the Mafi in NYC. Singed by their own poor judgment, Congress and the states repealed that law with the 21st Amendment, albeit 13 years, and many deaths, later. Prohibition was a harsh lesson about the damage a Bad Law can do to the lives of people.

Suppose that a law can be considered “bad” if it does more harm than good to a society. For example, if it serves some small special interests, while also doing greater harm to the common good. If a legislature in a “democracy” is supposed to, at least in part, pass laws that serve “the public” interest, then a law which enriches a special interest at the expense of the public interest can reasonably be deemed a “bad law.”

While only intending to enrich their landlord clientele, the Jim Costa and Phil Hawkins law is currently causing ordinary Californians considerable unintended harms. Those include the increasing number of homeless who were driven from their apartments by unbearable rents, and human beings who, though housed, are plagued with the kind of worries about their potential for homelessness that can give a person ulcers.

Finally, experience suggests that in cities, homelessness exacerbates the problems of substance abuse, thefts, robberies, assaults, and sexual violence against both men and women. This is the reverse of the theory that those social ills are the cause of homelessness. Here is another set of unintended consequences of the Costa-Hawkins Rental Housing Act.

Can Costa-Hawkins be Repealed?

On the November 2024 ballot there is a proposition, “Prop 33,” which will repeal Costa-Hawkins, if it passes. A majority “yes” vote on Prop 33 will result in repealing that law. This, in turn, will allow the People of each local community and local government to decide for themselves how to regulate housing in their jurisdiction.

Proposition 33 is just 23 words:

"The state may not limit the right of any city, county, or city and county to maintain, enact or expand residential rent control." That repeals Costa-Hawkins, and protects local governments from any more state interference in their efforts to regulate rents as they, in conjunction with their communities, deem best for themselves.²⁸ (Why does it say, “any city, county, or city and county”? Because if it read “any city or county,” that could be construed in court as meaning either/or but not both. So the option for both to enact rent regulations has to be made explicit.)

Proposition 33 aspires to *democratize* the process of rent regulation, rather than allowing a small elite *monopoly* to dominate the process. However, a coalition of corporate landlords, builders, and related interests have reported contributions of about \$34M to oppose the proposition, while contributions to proponents are reported to be about \$15M. Similar attempts to repeal Costa-Hawkins, in 2018 and 2020, were defeated.²⁹

In *What's the Matter with Kansas*, Thomas Frank³⁰ explores the reasons why the voters in that state tend to vote against measures that are clearly in their own best interest. If Prop 33 fails for a third time, perhaps a study similar to Frank's could be done in California, where a law that is harmful to the state has reigned undisturbed for nearly 30 years.

Conclusion

This paper eschews the dominant academic economics approach to analyzing the problem of homelessness. That approach is incapable of understanding the human dimension of the subject. Rather, the method of empathy, or entering into another human being's point of view, is used. Not only does this approach shed more light on the problem, but it implicates a completely different way of considering “solutions.” Because the Costa-Hawkins law protects and encourages the base motivation of avarice in landlords, and results in great suffering in tens of thousands of homeless persons, as well as perhaps a million or more tenants living on the threshold of homelessness in California, its repeal seems to be a more urgent matter than spending billions of dollars more on housing. Yet, this step in solving the problem is rarely, if ever, mentioned by those who take the economics approach. Of course, after the more urgent step has been taken, the many attempts that are already being tried should be continued. But they will probably only be effective in any major way after stopping the bleeding.

¹ Hylton 2016, pp. 195-196. The “injury” here would be the excess homelessness, and the “negligence” would be the failure of the state legislature to exercise due care when it enacted Costa-Hawkins. Also see, Kelleher, 2024.

My use of the term “landlord,” herein, includes the owners of rental properties or their agents. The distinction between the two is not important for the purposes of this paper.

² California Civil Code, section 1954.50 et seq.

³ Colburn et al 2022

⁴ Ibid., p. 10.

⁵ Ibid., p. 80.

⁶ Ibid., p. 87f.

⁷ Ibid 10, 33f.

⁸ Ibid., p. 192.

⁹ These are offered in Chapter 7, “Response,” but are also discussed throughout the book. Similar recommendations are in Kushel et al, 2023. Neither sources mention Costa-Hawkins.

¹⁰ Shearer, 1982.

¹¹ Goodman, ND.

¹² Ballotpedia. 2024.

¹³ Property Management.com. 2024.

¹⁴ Fulwood, 1991.

¹⁵ HUD, 2023.

¹⁶ The math: 49,081 from 181,399 is 132,318. 132,318 divided by 33=4000 p/yr. The monthly 2024 rent is an increase of \$1844 over the 1990 rent of \$620. The average annual rent increase is \$22,128.

¹⁷ These, and the following, statistics are from HUD 2023, pp. 16, 18.

¹⁸ Cf. Kushel et al, supra, and Desmond, 2016.

¹⁹ See, CA DOJ, 2020.

²⁰ See CC 1947.12 (m) (2) and (3)

²¹ Christopher, 2023, and Homelessness in California: The State’s Uncoordinated Approach to Addressing Homelessness Has Hampered the Effectiveness of Its Efforts, Report 2020-112, February 2021.

²² A Hoover Institute publication says that California has spent “about \$24 billion on homelessness” from 2019 to 2024. In this 5 year period, the Institute says, “homelessness increased by about 30,000, to more than 181,000.” That is “about \$160,000 per person.” The comment recommends building more affordable housing, but does not mention Costa-Hawkins, or its role in the problem. See, Ohanian, 2024.

²³ Christopher, 2023.

²⁴ Kushel et al, 2023.

²⁵ Jung et al., 2024.

²⁶ Id.

²⁷ Johnson, et al., 2023.

²⁸ Ballotpedia, 2024.

²⁹ Id. Cf. Cal Matters Voter Guide. 2024.

³⁰ Frank, 2004.

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