

## 2 The Natural Right to a Homestead

All men have a natural right to a portion of the soil; and that as the use of the soil is indispensable to life, the right of all men to the soil is as sacred as their right to life itself.

—1852 Free Soil (Free Democratic) Party platform  
(Cooper and Fenton 1890, 35)

The story of early American housing reform begins and ends with Henry George, author of the international bestseller *Progress and Poverty* (1942 [1879]). Upon accepting the United Labor Party's nomination for candidacy in the 1886 New York City mayoral election, George asked the question, "Why should there be such abject poverty in this city?" He responded that "the vast majority of men and women and children in New York have no legal right to live here at all. Most of us—ninety-nine percent at least—must pay the other one percent by the week or month for the privilege of staying here and working like slaves" (Post and Leubuscher 1961 [1887], 25–26). In contrast to his contemporaries who sought to address housing problems through regulatory means, George fought poverty and housing inequality by attacking the source of the injustice: the unequal distribution of land rent. George's (1999 [1871], 59) claim that "every man born into this world has a natural right to as much land as is necessary for his own uses, and that no man has a right to any more" echoed the rhetoric of generations of American land reformers committed to an egalitarian interpretation of the doctrine of natural rights and a belief in the civic virtues of the American homestead.

This chapter explores the natural rights tradition and its influence on early American land and housing reform movements. The idea of home as a sacred domain deserving of special legal protection is an ancient idea that

American revolutionaries co-opted to justify independence from British rule. The framers of the Constitution appealed to the same idea to justify strong legal protections for private property owners. Some went further, asserting that everyone's natural right to land justifies the disposition of government-owned land, and in some cases the redistribution of large private landholdings, to American workers. This egalitarian interpretation of the natural rights doctrine provided the ideological foundation for a radical nineteenth-century land reform tradition that culminated in the American homestead movement and Henry George's unique "single tax" solution to housing injustice. The nation's first right-based land and housing reform tradition had largely disappeared by the end of the nineteenth century, but the homestead movement's ideological foundations, stripped of their basis in natural rights, later provided rhetorical fuel for the twentieth-century homeownership movement.

### **The Home as a Castle**

The home has always occupied a privileged place in US law. The Second Amendment to the US Constitution protects the right to bear arms for the purpose of defending one's home; the Third Amendment prohibits the quartering of soldiers in homes without the owner's consent; the Fourth Amendment forbids the unlawful search and seizure of property from homes; and the Fifth Amendment guarantees that homes will not be taken from the owner without just compensation and due process.

The idea of home as a sacred realm deserving special legal protection has roots that extend to ancient Rome. In 57 BC, Roman senator and lawyer Marcus Tullius Cicero returned to his home after being banished only to find it demolished and replaced with a shrine to the goddess Liberty by his political adversary, Clodius. In his case, heard before the College of Priests, Cicero pleaded, "What is there more holy, what is there more carefully fenced round with every description of religious respect, than the house of every individual citizen? Here are his altars, here are his hearths, here are his household gods, here all his sacred rites, all his religious ceremonies are preserved. This is the asylum of every one, so holy a spot that it is impious to drag any one from it" (Cicero 1900, 49–50).<sup>1</sup>

The related idea that "a man's home is his castle," also known as the "castle doctrine," was recognized under English common law by the seventeenth

century. Sir Edward Coke, attorney general of England, remarked in the 1604 case involving Peter Semayne, who sought to recover posthumous debts owed to him from the living occupant of the house, that “the house of every one is to him as his Castle and Fortress as well for defence against injury and violence, as for his repose” (Sheppard 2003, 137). The castle doctrine later found its way into colonial American jurisprudence (Barros 2006). In *King v. Stewart* (1774), John Adams addressed a jury on behalf of Richard King, whose home and business had been ransacked by an angry mob, arguing (Adams 1965, 137), “An Englishmans dwelling House is his Castle. The Law has erected a Fortification round it—and as every Man is Party to the Law, i.e. the Law is a Covenant of every Member of society with every other Member, therefore every Member of Society has entered into a solemn Covenant with every other that he shall enjoy in his own dwelling House as compleat a security, safety and Peace and Tranquility as if it was surrounded with Walls of Brass, with Ramparts and Palisadoes and defended with a Garrison and Artillery.”

By the mid-eighteenth century, the American colonists began to view British extensions of imperial power as intrusions into the privacy and sanctity of the home (Hafetz 2002). William Pitt, the Earl of Chatham, sympathized with the colonists. In a speech before Parliament, he spoke out against the Cider Bill of 1763, a British law authorizing a tax on cider production, invoking the castle doctrine (Cooley 1868, 299): “The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement!”

One source of scorn was the writ of assistance, which gave British officials the right to search for smuggled items within the homes of suspected colonists. In a powerful speech given before the Superior Court of Massachusetts in 1761, James Otis appealed to English common law to condemn writs of assistance:

Now one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and whilst he is quiet, he is as well guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege. Custom-house officers may enter our houses when they please; we are commanded to permit their entry. Their menial servants may enter, may break locks, bars, and everything in their way; and whether they break through

malice or revenge, no man, no court can inquire. Bare suspicion without oath is sufficient. (Adams 1865, 524)

American revolutionaries drew on these same ideas to oppose British taxation and justify their eventual break from the Crown. John Adams overheard James Otis's 1761 speech and later recounted in a letter to William Tudor that Otis had sparked the American Revolution: "Then and there was the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born" (Adams and Tudor 1819, 246).

### The Natural Right to Property and Home

The US Constitution defends the civil rights of individuals within their homes and protects privately owned homes from being taken without just compensation and due process, but what justifies an individual's right to own a home and the land beneath it? This question was on the mind of John Winthrop when he arrived on North American shores with a large group of Puritan settlers in 1630. To reassure settlers that their titles to land would be legally recognized, Winthrop put forth a novel idea that would shape Americans' understanding of property for centuries. In a pamphlet distributed in 1629, Winthrop asserted that "God hath given to the sonnes of men a double right to the earth; there is a naturall right, & a civill right" (Winthrop 1869 [1629], 311). Harkening back to the English practice of engrossment,<sup>2</sup> Winthrop claimed that the "inclosing & peculiar manuerance" (Winthrop 1869 [1629], 311) of land transforms an individual's natural right into a civil right with enforceable legal standing (Linklater 2013).

While the idea that human beings have certain prepolitical natural entitlements reaches as far back as the Stoics, most attribute the modern conception of natural property rights to Dutch lawyer Hugo Grotius. For Grotius (2005 [1625]), the land lies in common prior to appropriation, and each man has a natural right to occupy and use the commons to meet his own needs. To explain the link between the unappropriated commons and the emergence of private property, Grotius appealed to Cicero's public theater allegory. In a public theater, no one owns any particular seat, but once someone occupies a seat, that person has a right to that chosen seat for the duration of the show. Just as a ticketing system may emerge to secure a ticket purchaser's right to a chosen seat, the institution of private property

arises to secure landed property claims. According to Grotius, the institution of private property is a human creation that secures preinstitutional natural rights (Mancilla 2016, 32).

John Locke's natural rights conception of property shaped American political thought during the Revolutionary period. In his *Second Treatise of Government* (1980 [1690]), Locke argued that the protection of private property rights was one of government's primary functions. The 1776 Virginia Declaration of Rights, written by George Mason, evokes Lockean language to defend the protection of natural rights to "the enjoyment of life and liberty with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety" (Patrick 1995, 53). When writing the Declaration of Independence, Thomas Jefferson also looked to Locke. The inalienable rights to "life, liberty, and the pursuit of happiness" echo the rights to "life, liberty, and estates" mentioned in Locke's *Second Treatise* (Ely 1998, 29). According to historian Willi Paul Adams (1980, 193), "The acquisition of property and the pursuit of happiness were so closely connected with each other in the minds of the founding generation that naming only one of the two sufficed to evoke both."

Locke derives the right to own property from every man's God-given natural right to own one's body and bodily actions (Locke 1980 [1690], 19): "Though the earth and all inferior creatures be common to all men, yet every man has a property in his own person. This nobody has any right to but himself. The labour of his body and the work of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property."

According to Locke, the earth is held in common prior to the mixing of labor with land. Because those mixing labor with land own their bodies and the fruits of their labor, they also come to own the land that is mixed with labor. Others then have a reciprocal duty to respect the owner's right by not interfering with the land acquired. Locke argues that private property owners will eventually consent to a social contract that outsources the protection of private property rights to a civil government. Given his assertion that individuals do not come to own property until they mix labor with land, Locke is generally acknowledged as the father of the labor theory of property (Becker 1977), an idea that later shaped American land reformers' attitudes about property.

Upon first blush, Locke's theory seems to suggest that everyone enjoys a natural prepolitical right to acquire property for residential use. However, this interpretation raises the question of what forms of labor legitimize land ownership claims. In contrast to Grotius's natural right to appropriate unowned land from the commons, Locke's right to acquire land is derived from the natural right of self-ownership. Since we own our bodies, we also own our body's actions and all things produced by actively modifying unowned natural resources. Locke's mercurial conception of "mixing labor with land" does not establish what kind of labor or how much mixing is required to legitimize one's ownership claims, but Locke would likely have argued that labor mixing entails more than the mere enclosure of or settlement on land, as Winthrop claimed (Waldron 1988).

Locke's theory also justifies significant inequalities in property holdings, particularly if some are physically unable to work or lack the means to establish legitimate property claims. Furthermore, since the more naturally talented and skilled are more productive in the mixing of labor with land, full self-ownership of one's talents and abilities necessarily implies inequality in the distribution of improved property (Cohen 1995). Contemporary liberal egalitarians such as John Rawls (1971) question theories of justice based on the ideal of self-ownership, arguing that no one should be advantaged or disadvantaged by the moral arbitrariness of inherited traits and talents produced by the "natural lottery." Even if everyone has identical talents and abilities, Locke's theory still justifies significant inequalities in residential property holdings, because those first to acquire property will inevitably be in the position to acquire more property than those who later acquire property when land becomes scarce.

### **John Locke's Provisos and the Distribution of Property**

While most interpret Locke's theory of property as a vindication of unequal property arrangements, one feature of his theory opens the door to an alternative interpretation. Locke (1980 [1690], 19) mentions two provisos that constrain the acquisition of property: the spoliation proviso (one must use as much of the property acquired as possible before it spoils) and the sufficiency limitation (one must leave "enough, and as good" unappropriated resources for others to acquire). Underlying these provisos is a fundamental

law of nature that requires that everyone first protect themselves and second protect the rest of humanity. As self-owners, individuals have a primary obligation to survive, which gives individuals certain rights to the material means of survival (Waldron 1988). Could any of these provisos justify an equal right to enough land to establish a home?

Those seeking an answer to this question must first distinguish between the property rights acquired through labor mixing and the natural rights secured by the Lockean provisos. Contemporary property theorist Jeremy Waldron (1988), modifying terminology first proposed by H. L. A. Hart (1955), argues that the first of these two rights is a *special right in rem*. It is a *special right* because it is contingent on the occurrence of a specific action taken by the rightholder (mixing labor with land), and it is *in rem* because the right obligates everyone (not just those involved in labor mixing) to respect the rightholder's claim. If the right were *in personam*, only those involved in the labor-mixing transaction would be required to recognize the rightholder's claim. *General rights*, which may be *in rem* or *in personam*, are those that are not contingent on the occurrence of any prior action, event, or transaction. In contrast to Locke's special right to acquire property through labor mixing, a general right to property would support an egalitarian property-based institution, because everyone would enjoy an equal right to property, irrespective of any actions taken to acquire property. If the general right to property is *in rem*, everyone would also have a correlative duty to respect everyone else's property claim. Is it possible to interpret the Lockean provisos preempting property acquisition as general universal rights to the opportunity to acquire minimal property holdings?

Waldron (1988) does not think so. He demonstrates that while Locke's sufficiency limitation resembles something like a general right to the opportunity to acquire property, Locke's nesting of the various provisos and complications that arise from the introduction of money contradict this egalitarian interpretation of Locke's theory. Regardless of whether we can find in Locke a theory of universal minimal property entitlements, some have interpreted his writings in this way, and philosophers since the Middle Ages have discussed the universal duty of charity to those in need and the corollary right of those in need to take matters into their own hands to satisfy their needs when no charity is provided (Mancilla 2016).<sup>3</sup>

Both Thomas Jefferson and Thomas Paine entertained egalitarian views of property along these lines. In *Agrarian Justice* (1995 [1797]), Paine proposed a tax on land inheritances that would be used to create a “national fund” supporting pensions for the elderly, disability assistance, and a stakeholder grant to be distributed equally and unconditionally to all individuals upon reaching adulthood. Since he believed that everyone enjoyed a general right to “natural property, or that which comes to us from the Creator of the universe,” Paine viewed the national fund as a form of “compensation in part, for the loss of his or her natural inheritance, by the introduction of the system of landed property” (Kerr 2017, 132). In contrast to Locke, who understood the “enough, and as good” proviso as a constraint on the exercise of one’s natural right to acquire property, Paine viewed the national fund as a form of compensation for the establishment of a system of private property that robs some of their natural inheritance (Lamb 2015). *Agrarian Justice* was Paine’s attempt to offer a solution to the problem of poverty that was a compromise between the English Poor Laws and the socialism of François-Noël Babeuf. Unlike Babeuf, Paine accepted the legitimacy of the institution of private property. In contrast to English Poor Law advocates, Paine thought that everyone had a right to the means of basic subsistence that was not conditional on inhumane work requirements or other means tests (Kerr 2017).

Thomas Jefferson held that a republican form of government requires a widespread distribution of privately owned land and an agrarian economic base that cultivates the republican virtues of self-reliance, thrift, and economic independence. During a trip to France in the 1780s, Jefferson briefly entertained various redistributive measures designed to reduce the concentration of landownership, but he retracted these ideas when he returned to the United States (Katz 1997). Despite Jefferson’s preference for a more egalitarian distribution of landed property, most American founders did not share his views. Paine’s *Agrarian Justice* did not appear until after the ratification of the Constitution, and his *Common Sense* appealed to a more traditional Lockean view of property. James Madison, widely regarded as the father of the US Constitution, saw men as inherently unequal in their ability to acquire and improve property and viewed the preservation of those inequalities as one of the government’s most important functions (Ely 1998). Moreover, the founders’ unwillingness to abolish the institution of slavery belied their egalitarian commitments.



### American Liberal Republicanism

According to historian Louis Hartz (1955), America's distinctly liberal political culture is defined by its full-throated embrace of Lockean values: moral individualism, private property rights, economic and social equality, limited government by consent, and toleration of conflicting and controversial ideologies. Hartz (1955) contends that while different political parties have interpreted the content of rights differently and defined consensual government in different ways, no major political party has diverged from the course charted by Locke.

More recently, Hartz's liberal consensus theory has been called into question by Bernard Bailyn (1967), J. G. A. Pocock (2003), Quentin Skinner (1998), Gordon Wood (1998), and other philosophers and historians who argue that the older civic republican tradition played a more important role than the Lockean liberal tradition in shaping Revolutionary political thought. The civic republican tradition has roots that extend to the ancient Roman republic, particularly the writings of Publius, Cato, and Cicero, which were rediscovered during the Italian Renaissance by Machiavelli and Montesquieu and again during the seventeenth century by radical Whig Commonwealthmen. Pocock (2003, 561) contends that while liberalism emphasizes rights "to which one may lay claim (perhaps because it is inherent in one's nature)," republicanism emphasizes the virtues "which one must find in oneself and express in actions undertaken with one's equals." For Philip Pettit (1997), the more important distinction between liberalism and republicanism lies in how each understands freedom. Whereas liberals understand freedom as the absence of external interference, republican freedom consists in the absence of arbitrary domination of the will. The republican emphasis on freedom as nondomination explains republicans' advocacy of self-governance and checks on political opportunism.

James Harrington's *The Commonwealth of Oceana* (1992 [1656]), a seminal republican treatise written after the English Civil Wars, shaped the American founders' views of property and government (Sitaraman 2017). For Harrington, the distribution of property arrangements shapes the distribution of political power, and a roughly equal distribution of property is the most appropriate distribution for a republican form of government. "Equality of estates causeth equality of power," Harrington wrote, "and equality of power is the liberty not only of the commonwealth, but of every man" (Harrington

1992 [1656], 20). To foster an equal distribution of property, Harrington proposed limits on individual property holdings that were inspired by Roman agrarian laws (Sitaraman 2017). In contrast to Locke, who viewed property as a natural prepolitical right justifying consensual government, Harrington believed that property rights are government creations that play an instrumental role in fostering government stability. According to Thomas Gordon and John Trenchard, two eighteenth-century republican English Commonwealthmen writing under the pseudonym Cato, “The first principle of all power is property; and every man will have his share of it in proportion as he enjoys property” (Trenchard 1755, 151).

Despite the revival of scholarly interest in the civic republican tradition, many contemporary scholars now characterize early American political thought in terms of the fusion of liberal and republican ideas.<sup>4</sup> Luigi Braddizza (2013, 24) claims that “the founders supported republican duties—and therefore republican virtues—in addition to liberal rights.” According to Thomas West (2017), the founders looked to natural law to derive two complementary roles for government: the liberal protection of individual rights and the republican promotion of the common good. One way of understanding the founders’ fusion of liberalism and republicanism is to say that the founders held a Lockean liberal view of rights and a Harringtonian republican theory of government. The fusion of liberalism and republicanism helps to explain the founders’ view of property as both a God-given natural right and an instrument for promoting the civic virtues of thrift, economic independence, and civic responsibility.

The founders appealed to republican arguments to defend strong constitutional protections for the liberal institution of private property. According to Jennifer Nedelsky (1990), the founders were anxious about extreme inequalities in property holdings not because inequality per se was problematic but because a propertyless political majority posed a threat to the stability of a republican form of government. James Madison and Alexander Hamilton were in agreement that “nothing like an equality of property existed: that an inequality would exist as long as liberty existed, and that it would unavoidably result from that very liberty itself” (Syrett and Cooke 1962, 218). To protect economic and political stability, Madison proposed various checks and balances on democratic rule, including the separation of powers and other measures designed to reduce the influence of sectional interests. Madison even proposed adding the following Lockean clause to

bolster constitutional protections for property rights: “That government is instituted, and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety” (Ely 1998, 54).

### Civic Republicanism and the Social Meaning of Home

The early American home was the embodiment of republican citizenship. During the colonial period, colonists often evaluated a town’s stature, in part, on the quality and consistency of its collective housing stock. In a letter to the first settlers of Plymouth Colony, Robert Cushman wrote that the construction of large homes was a needless waste of the community’s resources and should be discouraged (Cohn 1970). When a wealthy group of settlers landed in New Haven in 1636, they were criticized for constructing gaudy and grandiose homes. According to one local observer, the wealthy settlers had “laid out too much of their stocks and estates in building of fair and stately houses, wherein they at first outdid the rest of the country” (Cohn 1970, 10). The colonists denounced pretentious and flamboyant housing styles while simultaneously condemning “huts” and “hovels” as evidence of sloth and idleness (Cohn 1970, 5). A shanty amid a community of stately homes was an insult to the community, while an ample supply of well-kept but modest homes signaled collective success and virtue.

In colonial New England, the political rights of town members, including the right to vote on matters affecting the town, were often restricted to freeholders.<sup>5</sup> The Puritans believed in the Christian duty of charity, but they interpreted this duty as a narrow obligation to assist town members who were physically unable to work. Native Americans were not eligible to receive poor relief, and migrants were screened and cast out if they held unacceptable religious beliefs or were unwilling to work. Before the construction of Boston’s first almshouse, community residents viewed to be deserving of aid—mostly the elderly, the disabled, and orphans—were boarded in private houses or were allowed to live on their own at the public’s expense, while those unable to find work were often auctioned into indentured servitude (Vale 2000).

Thomas Jefferson fused republican ideas about home and country with his liberal love of private property. He believed that a nation of small-scale

property-owning farmers—a yeoman republic—best embodied the republican citizenship ideal. The cultivation of privately owned land fostered good judgment, and those who owned enough land for farming were free from dependence on wage labor or charity. Jefferson’s yeoman republican citizen was tethered to the community rather than being constantly on the move, and this attachment gave each citizen a stake in the common good. In *Notes on the State of Virginia* (1954 [1787]), Jefferson gave physical form to this ideal. “A country whose buildings are of wood,” he argued, “can never increase in its improvements to any considerable degree” (Jefferson 1954 [1787], 154). He encouraged the use of brick or stone instead because durable homes would more firmly connect citizens to the land and the community, saying, “whereas when buildings are of durable materials, every new edifice is an actual and permanent acquisition to the state, adding to its value as well as to its ornament” (Jefferson 1954 [1787], 154). An appreciation for flexibility and adaptability tempered Jefferson’s affinity for republican stability. He recommended that farmers shift to crop rotation to preserve and replenish the soil, thereby stabilizing the nation’s agricultural base, and understood that homes often required modification to accommodate evolving household needs. Even though it still stands today in a form that resembles its original design, Monticello is a house that will never be truly finished, much like the Jeffersonian republic (Faherty 2007).

### Radical Land Reform and the Homestead Ideal

When Jefferson evoked his ideal of the yeoman republic, he did not anticipate the fundamental economic changes that would reshape America’s political economy in the nineteenth century. Although Great Britain was in the midst of an industrial revolution at the time of the American Revolution, the American economy was still primarily driven by agricultural production. Things changed during the nineteenth century with the rise of industrialization and later the rapid growth of cities spurred by rural-to-urban migration and immigration from abroad. By 1860, the United States was producing nearly one-fourth of the world’s manufacturing output, second only to the United Kingdom (North 1966).

The nineteenth-century American industrial economy was a boom-or-bust economy that was shaken by economic crises in 1819, 1837, 1857, and 1873. In the wake of each crisis, reformers called for various laws designed to

stabilize employment, improve working conditions, and undercut the market power of large monopolies. Trade unionists and labor reformers called for land reforms designed to reduce the concentration of land ownership and promote the economic self-sufficiency of the average worker by opening up the public domain to (white male) workers (Lause 2005).

Calls for land reform began with debates surrounding the disposition of federal land. With the Louisiana Purchase in 1803, the Oregon Compromise with England in 1846, and the cession of lands by treaty after the Mexican War in 1848, the federal government soon came to own the majority of American land. Between 1781 and 2015, the federal government disposed of approximately 1.3 billion acres of the public domain, primarily to private landowners (Vincent et al. 2017). Tensions arose over the often incompatible goals of generating government revenue from public land sales and promoting the settlement of western land by the growing population. Following the Land Ordinance of 1785, the US government sold 640-acre sections of land at \$1 per acre, an amount that was well beyond the reach of the average skilled worker. The Land Act of 1796 doubled this price to \$2 per acre, but subsequent legislation reduced the minimum acreage for purchase and the down payment requirement. By 1820, land prices were still beyond the means of the average worker (Lause 2005). Most public lands were acquired by land speculators until the passage of the Preemption Act in 1841, which granted squatters' rights to those who resided on and improved public land not officially for sale, at a cost to the squatter of \$1.25 per acre (Gates 1941).

With the elimination of property requirements for voting (for white males) in many US states, trade unions began to organize politically in the early 1800s, and land reform was a central platform. Reformers saw land reform as a solution to two related problems. First, granting free land to western settlers would enable those facing poor working conditions in the East to escape wage labor and become self-owners by working their own plot of land. Second, the settlement of western land would provide a "safety valve" to curb the oversupply of labor in eastern US cities. Westward labor migration would eventually boost the wages of those who continued working in eastern cities (Perlman 1923). In Philadelphia and later in New York, reformers commingled land reform with other ideas, including minimum work-hour laws and collective public education schemes inspired by Scottish communitarian reformer Robert Owen.

New York was the site of the creation of the Working Men's Party, a land and labor reform party led by Robert Dale Owen (son of Robert Owen), Thomas Skidmore, Frances Wright, and George Henry Evans. Skidmore and Evans looked to Thomas Paine for inspiration for their cause (Lause 2005). Alexander Ming Jr., whose father was a friend of Thomas Paine, published Skidmore's (1829) *The Rights of Man to Property!* Skidmore was a Jeffersonian, but he objected to Jefferson's use of the phrase "life, liberty, and the pursuit of happiness" in the Declaration of Independence, arguing that "man's natural right to life or liberty, is not more sacred or unalienable, than his right to property" (Skidmore 1829, 59).

Skidmore's understanding of the natural right to property differed from the right conceived by Locke. For Skidmore, neither occupancy, possession, nor labor establishes private property rights. Instead, every person's pre-political natural right to life gives them a right to an equal share of nature's resources. As Skidmore put it, "May not a man expand his lungs and inhale the air; may he not open his eyes, and enjoy the light; may not his body occupy the space which it actually does; without any necessity to suppose the existence of legislation? Most certainly" (Skidmore 1829, 77). Skidmore argued that these natural rights of persons bear no relation to the civil right to own private property, which requires the consent of those excluded from privately owned property.

Skidmore was a primary author of the 1829 Working Men's Party platform, which called for a grant of 160 acres of land to every man and unmarried woman over the age of 21. All land holdings in excess of 160 acres were to be confiscated by the government and redistributed to those without land. Skidmore viewed land redistribution to be the best means of realizing "man's natural right to an equal proportion of property" (Ellis 1992, 832). Robert Dale Owen called for the addition of a communal public education proposal to the Working Men's Party platform. Despite some local electoral success, divisions within the party eventually led to its demise. Skidmore was a primary source of these tensions. His aggressive land redistribution program was not favored by most in the party, and many were turned off by his prickly demeanor (Pessen 1954).

Lewis Masquerier, another New York land reformer and Owenite communitarian with family connections to Thomas Paine, agreed with Skidmore that the natural right to life gave men a natural right to the land, stating that, "As each person's natural wants and producing powers are so

nearly equal, they entitle all to an equal share of the soil, appurtenant elements, and the whole product of their labor. . . . The equalness, then, of each one's natural wants for light, warmth, air, water, food, clothing, and shelter, is the true foundation and necessity for an equal share of homestead" (Masquerier 1877, 56). Masquerier merged his land reform ideas with a utopian plan for "rural republican townships" that were six square miles in size and divided into 160-acre farms. In the center of each township was a square mile set aside for parks, public buildings, and lots for those not engaged in agriculture (Masquerier 1877).

George Henry Evans's periodical, the *Workingman's Advocate*, was one of several labor newspapers that disseminated land reform and labor reform ideas between the 1820s and the 1840s. After the demise of the Working Men's Party, Evans continued to advocate for land reforms, drawing inspiration from Paine, Jefferson, Skidmore, and English land reformer Thomas Spence, among others. In 1841, Evans called for the establishment of an organization bound by the agreement "to support or vote for no man for any public office who will not pledge himself to exercise all proper influence of his station to restore to the people, in some equitable manner, the Equal Right to Land" (Lause 2005, 16).

Like other land reformers before him, Evans believed that the right to life grants everyone a natural prepolitical right to land. Although Evans and Skidmore drew inspiration from many of the same sources, Evans did not agree with Skidmore's radical proposal to redistribute existing private property holdings and instead proposed distributing publicly owned land to workers for no charge, an idea that would later be co-opted by the homestead movement. In an 1844 issue of the *Workingman's Advocate*, Evans connected the right to a homestead to the natural right to subsistence (Evans 1844, 2; italics in the original): "If man has a right on the earth, he has a right to land enough to raise a habitation on. If he has a right to *live*, he has a right to land enough to till for his subsistence. Deprive him of any one of these rights, and you place him at the mercy of those who possess them."

Evans and John Windt eventually founded the National Reform Association (NRA), which attracted a large following of land reformers holding a wide variety of ideological views (Lause 2005). One of its famous slogans was the phrase "Vote yourself a farm." Other land reform organizations and publications eventually adopted the phrase. In the Boston labor periodical *True Workingman*, the authors wrote, "If a man have a house and a

home of his own, though it be a thousand miles off, he is well received in other people's houses; while the homeless wretch is turned away. The bare right to a farm, though you should never go near it, would save you from many an insult. Therefore, Vote yourself a farm" (Davis 1997). According to economist and labor historian Selig Perlman (1923), of the 2,000 papers published in the United States in 1845, 600 had supported land reform by 1850.

Land reformers managed to push a homestead bill onto the floor of Congress in 1848, but the bill was killed by southern congressmen who viewed the bill as an attack on slavery. If, following the land reformers' Lockean reasoning, property ownership came from mixing land with labor, those enslaved were the only ones with legitimate titles to the land they worked. Southern slaveowners objected to this reasoning and sought to protect the institution of slavery in southern states and newly settled western territories (Arrington 2012).

Although southern slaveowners objected to the implications of homesteading for slaveowning in newly settled western territories, many in the south still acknowledged the appeal of the ideal of home evoked by homestead advocates. Southern legislators adopted various laws designed to protect the sanctity of the home and the institution of the nuclear family by exempting homesteads from debt obligations. The Texas Constitution of 1845 included a homestead exemption, and by the Civil War, 10 of the 11 states that eventually comprised the Confederacy had enacted homestead exemption laws (Hadden and Minter 2013).

The pervasiveness of homestead exemptions in southern states suggests that southern opposition to national homestead legislation was grounded not in opposition to the use of government machinery to protect the homestead ideal but in the implications of a national homestead policy for the preservation and expansion of slavery. Northern opposition to slavery eventually brought abolitionists into the tent of the NRA. Many land reformers who were initially ambivalent about the issue of slavery eventually came to oppose slavery in western territories, not because land reformers necessarily viewed slavery as immoral but because they believed that western slave labor would undercut the wages of white workers migrating to the region (Lause 2005).

In 1849, Evans retreated to his New Jersey farm and the NRA lost steam, but the die had already been cast. The homestead movement gained traction



when national political parties adopted the cause and integrated it with the free labor ideology of the antislavery movement. The 1852 Free Democratic (Free Soil) Party platform included a reference to “the right of all men to the soil” (Horne 1990, 226). New York editor and vocal land reformer Horace Greeley insisted that a homestead plan be included as a central component of the Republican Party’s national platform in 1860 (Foner 1995).

When homestead bills finally reached the floors of Congress, pro-homestead advocates appealed to republican citizenship ideals to sell their proposals (Zundel 2000). In 1860, eventual US president Andrew Johnson, then a senator from Tennessee, proclaimed (Johnson 1860, 1653), “Let each man have a home, and when your elections come around he is a freeman, he is an independent man; he goes to the ballot-box and votes his own vote, and not the vote of his landlord or his master.”

Congress passed the Homestead Act in 1862, in large part because of the secession of southern states following the outbreak of the Civil War. The act allowed any qualifying settler to acquire up to 160 acres of public land. Settlers who paid a small administrative fee, occupied the land within six months, cultivated at least 10 acres, and remained on the property for five consecutive years gained title to the land they occupied (Arrington 2012). Between the Civil War and the New Deal era, Congress also passed several additional homestead acts that expanded opportunities to establish homestead claims in areas not covered by the original act.

Although land reformers initially viewed the 1862 Homestead Act as a success, the program failed to accomplish reformers’ larger goals of smoothing labor supply and reunifying laborers with the fruits of their labor. By 1862, most of the remaining federal land was not suitable for farming, and by 1890, the US Census Bureau had announced that the frontier had closed. Many homestead claims were in areas not served by transportation or other community amenities (Lause 2005). Rampant land speculation and fraud also tarnished the program’s reputation (Billington 1974; Anderson 2011).

Homestead reformers ultimately missed the mark in their attempts to sell the dream of a Jeffersonian yeoman republic to a rapidly urbanizing society. By the mid-nineteenth century, industrialization was rapidly replacing rural home production, and the practicality of the homestead ideal and its associated safety-value theory of labor was out of step with the role of the home in the new industrial economy. As wage labor physically separated workers from their homes and the means of production, homestead advocates

naively clung to dreams of reunifying home and work while ignoring the plight of those who continued working in the urban wage sector.

The homestead also embodied two moral ideals that were in tension with one another: the spatially fixed ideal of republican citizenship and the mobile, dynamic ideal of economic opportunity. For eastern urbanites with no agricultural expertise, the homestead opportunity was a mirage. Most homestead settlements also lacked the sense of community found in older, established eastern cities. As Thomas H. O'Connor observed, in response to a failed effort to encourage Irish workers living in Boston to move to the western territories, the city retained its appeal to "gregarious people devoted to clan, family, and religion, with little experience in large-scale farming and no inclination to see their sons and daughters scattered to the four winds. They preferred to remain in Boston, close to their friends, their relatives, their priests, their sacraments, and their pubs. . . . The small piece of turf they had carved out along the shabby waterfront might be unsightly and unsanitary, but it was theirs, and they did not intend to give it up" (Vale 2000, 103).

By the second half of the nineteenth century, the owned single-family detached home became the new manifestation of the frontier homestead ideal once retrofitted to reflect the new industrial reality of wage sector employment. Although most Americans still lacked the means to purchase a single-family home outright, the ideal became embedded in popular culture. Walt Whitman wrote that a "man is not a whole and complete man unless he *owns* a house and the ground it stands on" (Whitman 1856, 93; italics in the original). Whitman observed that "democracy looks with suspicious, ill-satisfied eye upon the very poor, the ignorant, and on those out of business. She asks for men and women with occupations, well-off, owners of houses and acres, and with cash in the bank" (Whitman 1964 [1892], 384). A contributor to the *American Builder* wrote in 1869, "It is strange how contentedly men can go on year after year, living like Arabs a tent life, paying exorbitant rents, with no care or concern for a permanent house" (Jackson 1985, 50).

Changes in the nature of work also shaped the families living within American homes. In nuclear families headed by a male wage earner, the daytime physical separation between husbands and wives contributed to a gender-based division of labor within the home. Women became the new stewards of republican civic virtue. Publications such as *Ladies' Home Journal*,

Horace Bushnell's *Christian Nurture*, and Sara Josepha Hale's *Godey's Lady's Book* taught young women the art of homemaking (Jackson 1985). Catherine Beecher's *Treatise on Domestic Economy, For the Use of Young Ladies at Home and at School*, published in 1841 and reprinted dozens of times, became the bible of the new "cult of domesticity" (Jackson 1985, 62). Although the cult of domesticity assigned a new civic role to married female homemakers, women were excluded from active participation in public civic life. Married women also were not compensated for their domestic work and did not enjoy the spatial separation between home and work that male laborers enjoyed (Hayden 1984).

Not everyone accepted the values and ideals attached to the single-family home. A contributor to an 1844 Fourierist journal remarked that the semirural cottage "is wasteful in economy, is untrue to the human heart, and is not the design of God, and therefore it must disappear" (Jackson 1985, 52). First-wave feminists, including Charlotte Perkins Gilman, Melusina Fay Pierce, and Victoria Woodhull, equated the nuclear family and domestic life with the enslavement of women and promoted kitchenless houses and multifamily dwellings as alternative architectural ideals (Jackson 1985). Pierce called for the creation of neighborhood-based domestic labor cooperatives that would enable women to be "paid for what they were already doing" (Hayden 1984, 72).

### Henry George and New York Housing Reform

In 1879, Henry George published his international bestseller *Progress and Poverty* (1942 [1879]). Echoing his land reforming predecessors, George blamed poverty and social injustice on the concentration of land ownership. However, George did not call for land redistribution, limitations on landholdings, or the expansion of homesteading. Instead, he proposed that land rent, net of the income earned from improvements to land, be fully taxed and redistributed to the community to support public improvements. His "single tax" proposal appealed to the idea that land's value is a monopoly rent derived from "natural elements which human exertion can neither produce nor increase" (George 1942 [1879], 140). This rent "is due to nothing that the land owners have done." It is a "creation of the whole community" that should be returned to the community through taxation (George 1942 [1879], 306). While the single-tax idea was not new,<sup>6</sup> George attracted

a large following, in part because of his unique ability to express concrete policy proposals in the language of populism.

Henry George's engagement with the New York labor movement in the 1880s bears remarkable similarities with George Henry Evans's involvement with labor in the early part of the century. In addition to their similar names and parallel ties to the labor movement, both drew inspiration from John Locke and Thomas Paine, which likely explains why neither reformer comfortably sided with socialists. Apart from these similarities, each offered contrasting reform proposals. Whereas Evans saw homesteading as an urban safety valve that would siphon off excess labor from the city and promote farming on the frontier, George viewed the single tax as a way to help workers live and work in the city. George theorized that by capturing land's speculative value, the single tax would increase the supply of affordable homes and provide a new source of revenue for public improvements.

Urban historians have underappreciated George's contributions to the housing reform movement (Stobo 2008). Most scholarly investigations of the New York housing reform movement begin with the work of private philanthropists and public service advocates leading up to the adoption of New York's tenement housing regulations (see Friedman 1968; Lubove 1962; Radford 1996). George entered the housing reform movement through his work with the labor movement, where he sought to apply his single-tax philosophy to address working tenants' poor housing conditions. To fully appreciate George's contribution to the New York housing reform movement, it is useful to first establish the broader context of land and housing reform in New York.

During the mid-nineteenth century, the New York tenant class was one of the most vocal supporters of measures designed to restructure the rights of housing occupancy to favor tenants. Demands initially came not from New York City renters but from rural tenant farmers living in upstate New York. A remnant of the old Dutch "patroonship" system of feudal landownership existed in upstate New York until the 1800s. Following the death of Stephen Van Rensselaer III in 1839, his sons Stephen IV and William tried to collect overdue rents from the tenant farmers working the Van Rensselaers' land. The farmers refused, and years of tenant agitation ensued. In 1842, the NRA sent Thomas Devyr to assist the tenants in the establishment of an anti-rent association that lobbied for legislative reforms and state assistance to tenant farmers. A proposal to break up large estates upon

the death of the owners was defeated, but a new state constitution adopted in 1846 abolished feudal leases and outlawed the selling of tenant property for the nonpayment of rent (Lause 2005).

In New York City, a speculative bubble in the years leading up to the Panic of 1837 caused massive inflation that increased the prices of housing and other commodities. In February 1837, a crowd of between 5,000 and 6,000 gathered in the city to denounce the “landlords, and holders of flour, for the prices of rents and provisions” (Heskin 1983, 16). The depression following the Panic of 1837 temporarily put the brakes on rent increases, but by the mid-1840s, rents began to rise again, particularly following the arrival of large numbers of Irish and German immigrants after 1845 (Blackmar 1989). Irish land reformers established the citywide Tenant League, which called for reforms designed to secure tenants’ access to affordable rental housing. In 1848, it called on the municipal government of New York to restrict rents to 7 percent of assessed value, impose a triple tax on unimproved urban land, and sell city lots to homesteaders for a minimal price. It also called for the repeal of regulatory measures thought to increase the cost of housing. During the 1850s, land reform activists joined forces with tenant organizations to call for the distribution of common land to city homesteaders and the construction of working-class housing (Blackmar 1989).<sup>7</sup>

Several factors complicated the New York City tenant movement. Workers were acutely aware of their unsafe and crowded living conditions, and sanitary and social reformers increasingly called attention to these conditions. A newly established board of health conducted home inspections to address the housing issue, but early public health regulations were mostly ineffective. More importantly from the tenants’ standpoint, those who complained often faced eviction if inspectors reported their substandard living conditions to the authorities. Labor reformers and tenants often cast the blame for increased rents not on the owners of rental properties but on those who rented several units and subleased the units to individual tenants. Since the owners of rental apartment buildings often collected rents from several sublessors, it was often difficult to determine who should be the object of any organized opposition (Blackmar 1989).

Peculiarities of certain trades, particularly the clothing and cigar-making industries, often shifted the focus of labor’s emphasis in the housing arena away from workers’ living conditions to the workers’ ability to organize effectively. Unlike most workers who lived and worked in separate

locations, cigar makers and clothing manufacturers tended to live and work in tenement buildings owned by their employers. These conditions made labor organizing virtually impossible, and organized factory labor soon began to see tenement labor as a threat. As a result, trade unions such as Samuel Gompers's Cigarmakers' International Union called for a boycott of tenement-produced goods and the prohibition of tenement cigar making (Stobo 2008).

Given New York's unique experience with land reform, it is not surprising that labor reformers welcomed Henry George's entry into the housing reform arena. In the 1880s, George moved to New York to put his theory into practice through engagement with the local labor movement. *Progress and Poverty* was widely read and discussed on New York factory floors and in the meeting halls of various leftist organizations. Land reform was also on the agenda of reform-minded Irish American workers, who helped sponsor two of George's European speaking tours (Barker 1955).

In his 1885 testimony before the Senate Committee on Labor and Education, George argued that a single tax could solve New York's housing crisis by creating incentives to construct new housing on underutilized land. In the same meeting, Louis Post of the Central Labor Union argued that George's single tax would ease overcrowding and stimulate housing construction, adding that there was "no remedy for the suffering of the industrial classes short of taking ground-rents for public use" (Stobo 2008, 18). George also attracted followers from the Knights of Labor. Terence Powderly of the Knights stated to the General Assembly in 1884 that land should be taxed at its full value, and the Knights' newspaper, *Journal of United Labor*, helped advertise George's work (Stobo 2008).

In 1886, Henry George was nominated as the Labor candidate for mayor. Upon accepting the nomination, George adopted a platform that applied his single-tax philosophy to the working-class housing crisis. One plank of the platform stated:

We declare the crowding of so many people into narrow tenements at enormous rents, while half the area of the city is yet unbuilt upon to be a scandalous evil, and to remedy this state of things all taxes on buildings and improvements should be abolished, so that no fine shall be put upon the employment of labor in increasing living accommodations, and that taxes should be levied on land irrespective of improvements, so that those who are now holding land vacant shall be compelled either to build on it themselves, or give up the land to those who will. (Speek 1915, 68)

Both the Democratic Party candidate, Abram Hewitt, and the Republican Party candidate, Theodore Roosevelt, criticized George's single-tax proposal for being overly radical. In the November election, Hewitt received 41 percent of the vote, George received 31 percent, and Roosevelt received 28 percent. Although he did not win, George was the most successful Labor candidate ever to run for mayor of New York City (O'Donnell 2015). George's land reform ideas helped him win the support of the Irish working class, but scholars remain divided over the importance of George's single-tax proposal to his electoral success. Philip Foner (1998, 120), for example, argues that labor and socialists supported George "not on account of his single tax theory, but in spite of it." Others maintain that the single tax was too abstract and not comprehensible to the average voter (Young 1916).

Edward O'Donnell (2015) offers another explanation for George's success. He argues that George's brand of "progressive republicanism" appealed to the laborer's belief in the virtues of work and the perceived injustice of land monopolization without abandoning the American commitment to private property and capitalism. Much as Thomas Paine did a century earlier, George blended liberalism and republicanism into a distinctly American brand of egalitarianism. George appealed to a conception of home and property that was grounded in Jeffersonian ideals, updated for a new urban reality. George's political career and direct engagement with the New York housing reform movement ended with an unsuccessful bid for New York secretary of state but, as discussed in chapter 3, his ideas had a lasting influence on twentieth-century land reform and city planning movements.

### The Broader Reach of American Land Reform

The nineteenth-century American land reform movement fostered a reexamination of the institution of property as understood by the founders. At times, American land reformers adopted philosophical positions that sound anachronistic to modern ears. Early American anarchists, unified in their opposition to government reforms, often appealed to strongly communitarian values grounded in religion or secular humanism. Individualist anarchists took the opposite approach. Josiah Warren, initially attracted to Robert Owen's ideas, eventually abandoned communitarianism for a strongly individualist philosophy that resembled American land reformers' radical Lockeanism. Individualist anarchists Ezra Heywood and Joshua Ingalls fought

against the problem of land monopoly, arguing that the only legitimate rights of land ownership were the rights of occupancy and use. Ingalls joined the antislavery cause but believed that the abolition of slavery would have little impact on land monopoly, while the end of land monopoly would make slavery untenable (Martin 1957).

After the Civil War, Radical Republicans took up the issue of land reform as part of the Reconstruction effort. The short-lived Freedmen's Bureau, established in 1865, was initially authorized to divide abandoned and confiscated Confederate property into 40-acre plots for rent to former slaves. General William T. Sherman went one step further, issuing Special Field Order No. 15, which promised "forty acres and a mule" to freed slaves, to be acquired from confiscated land along the South Carolina, Florida, and Georgia coasts. Congressional Radical Republicans proposed other similar measures, but Reconstruction ultimately failed to become the land redistribution program that many had envisioned. President Andrew Johnson, an early supporter of land reform, vetoed Sherman's field order, and the Freedman's Bureau was eventually abolished. Reconstruction of the South was further stalled by the rise of Jim Crow laws and hate groups such as the Ku Klux Klan (Foner 1990).

Despite the failure of Reconstruction to remedy the historical injustices associated with slavery, the constitutional amendments adopted by Congress during and after the Civil War extended civil rights to millions of Americans who had previously been denied those rights. Before the Civil War, enslaved Black Americans were considered property, and white male property owners were the only ones who could genuinely claim the full benefits of American citizenship. The Civil Rights Act of 1866 and Thirteenth Amendment extended these benefits to those formerly enslaved, and the Fourteenth Amendment guaranteed full citizenship rights, including the rights of equal protection and due process, to all persons born or naturalized in the United States. During the twentieth century, several social movements fought to expand these and other rights of citizenship previously denied to racial and ethnic minorities, women, persons with disabilities, and the poor.

The Civil Rights Act of 1866 and Civil War-era amendments also opened up new homesteading opportunities for Black Americans on the frontier, including many former slaves who were previously prohibited from owning land. In contrast to many white homesteader settlements, which often struggled to



establish self-sustaining community institutions, Black homesteader communities often bonded in solidarity to develop thriving churches, recreational facilities, schools, and other community institutions in places such as Nicodemus, Kansas; Dearfield, Colorado; Empire, Wyoming; DeWitty, Nebraska; and Blackdom, New Mexico. Collective solidarity and thriving community institutions provided security to Black homesteaders seeking to escape the racial violence and oppression they faced in the Jim Crow South (Friefeld, Eckstrom, and Edwards 2019). For these settlers, the right to establish a community was part and parcel of the right to own land.

Perhaps the most enduring legacy of the nineteenth-century land reform movement for US housing policy was its influence on the rhetoric surrounding the burgeoning movement to expand opportunities for homeownership. The building and loan industry, which was still in its infancy during the nineteenth century,<sup>8</sup> promoted homeownership as a way to “remove the youth of the nation from the terrible ever present temptations of the crowded tenement dens” (D. Mason 2004, 27). Articles published in national periodicals such as *Scribner’s Magazine* and *North American Review* touted building and loan organizations as a way to “encourage the development of thrift and providence among wage-earners” (D. Mason 2004, 27). Urban reformers appealed to the ideal of the homestead to call for the establishment of mutual aid associations and model homes.

Nowhere was the connection between homesteading, homeownership, and urban reform more apparent than in Boston. Horace B. Sargent wrote in the 1854 pamphlet *Homesteads for City Poor* that single-family homes on the outskirts of town would provide the overcrowded urban poor with “dignity, manhood, moral, and political independence” (Vale 2000, 107). Several homestead clubs and savings and loan organizations were established to promote suburban homeownership (Vale 2000). In 1879, Reverend Edward E. Hale proposed housing cooperatives such as the Boston Cooperative Society and the Pioneer Bank to finance the creation of new towns designed to relieve urban congestion (Kersten 1973). Reverend Hale stressed the need for the “workingmen of our cities” to own homesteads, arguing that civilization required “a separate house, owned by the tenant, with windows on each side, ready ventilation, and a patch of land large enough for the ornament at least of the home” (Vale 2000, 108).

In the end, American land reformers’ adherence to natural rights ideology arguably contributed to the demise of the frontier homestead ideal.

By the end of the nineteenth century, the frontier had closed, forcing land reformers to adapt their thinking to the more difficult problem of redistributing privately owned land to those who had less, a task that was not viewed favorably by the US courts. Land and labor reformers also held differing views on the significance of land to the urban housing problem. Those living in the slums often perceived the housing crisis to be the direct result of landlord rent-gouging practices and landlords' reluctance to maintain units at a decent standard of quality. For labor organizations, the problem of poor living conditions was often secondary to the dilemma of organizing those who worked in tenements.

As discussed in chapter 3, turn-of-the-century urban reformers sought to improve the living conditions of the urban poor, but regulations designed to improve housing quality eventually became vehicles for enhancing the value of the owned single-family detached home. The federal government catalyzed the nascent homeownership movement during the 1920s with various public relations campaigns and again during the 1930s with the creation of an expansive federal housing policy infrastructure that bolstered the savings and loan industry. One of the great ironies of the history of American housing reform is that the twentieth-century movement to expand homeownership, which has been vilified for institutionalizing housing inequality, had origins in a radical egalitarian movement to extend rights to housing and land.

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# Just Housing

## The Moral Foundations of American Housing Policy

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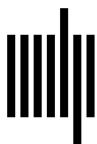
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