

3 Housing for the Common Good

We must go a long way to revise our national viewpoint regarding ownership rights as against community rights in land.

—Robert D. Kohn, quoted in Carol Aronovici,
America Can't Have Housing (1934, 11)

As historian Richard Hofstadter wrote in *The Age of Reform* (1960, 23), describing late nineteenth-century America on the eve of the progressive revolution, “The United States was born in the country and had moved to the city.” Between 1800 and 1900, the percentage of the population living in urban areas swelled from 6 percent to 40 percent (US Bureau of the Census 1949, series B 13–23). In 1800, no American city housed 100,000 people or more, but by 1900, 38 cities of this size existed, with 10 of those added during the previous decade (US Bureau of the Census 1949, series B 145–159). Cities grew in size and density. The island of Manhattan, for example, grew from 2,773 people per square mile in 1800 to 84,091 people per square mile in 1900, with the largest percentage increase in density occurring between 1820 and 1860, when large numbers of Irish and German immigrants settled in the city (Demographia 2001).

The transition from a rural agricultural economy to an advanced urban industrial economy throughout the nineteenth century brought new housing crises that previous generations of reformers were not willing or prepared to address. Migration from rural America and immigration from abroad increased the number, size, and density of American cities, and the private housing market was ill equipped to house the expanding urban workforce. Land prices skyrocketed in employment centers, and to economize

on rising land costs, homebuilders reduced the size and quality of homes. Urban property owners subdivided single-family homes into apartments, converted basements to living space, constructed small homes in alleyways, and within the largest cities constructed multifloor tenements to house working families in small, cramped living quarters. With overcrowded living conditions came public health crises, racial and ethnic tensions, and labor unrest.

Social reformers on both sides of the Atlantic responded to urban housing crises in different ways. European reformers were skeptical that the “housing question” could be solved through a capitalist system of housing provision. According to Friedrich Engels, “As long as the capitalist mode of production continues to exist, it is folly to hope for an isolated solution to the housing question or of any other social question affecting the fate of workers. The solution lies in the abolition of the capitalist mode of production and the appropriation of all the means of life and labor for the working class itself” (Engels 1975 [1872], 73–74). Nineteenth-century American land reformers were less critical of capitalism and often turned a blind eye to the plight of the cities, advocating instead for policies designed to depopulate urban areas. For Henry George, the answer to the housing question lay not in urban deconcentration or the abolition of capitalism but in the partial socialization of housing value through the single tax on land.

By the late nineteenth century, a new generation of American reformers had joined the debate, shifting the focus of urban reform from land to housing and reorienting the basis of housing justice from rights to goals and virtues. The late nineteenth- and early twentieth-century generation of American housing reformers sought to address urban housing crises using regulatory means, rejecting both European collectivist housing strategies and American land reformers’ natural rights ideology. Some American housing reformers looked to Europe for new ideas, but the solutions imported from abroad were modified with a uniquely American twist, elevating the owned single-family detached home over all other housing types (Hirt 2014). This chapter examines these developments, concluding with an explanation for the shift from the earlier generation’s emphasis on right-based reforms toward new utilitarian and progressive strategies.

Natural Rights and Laissez-Faire Constitutionalism

To fully comprehend the ideological underpinnings of the late nineteenth-century American housing reform movement, it is first important to understand the evolving legal framework within early postbellum America. The US courts had historically defined private property rights in Lockean terms, upholding the right to acquire and transfer property but denying the existence of a general right to property as such. In *Vanhorne's Lessee v. Dorrance* (1795, 2), Justice William Patterson asserted that “the right of acquiring and possessing property, and having it protected, is one of the natural, inherent and unalienable rights of man.” James Kent wrote in *Commentaries on American Law* that “the right to acquire and enjoy property” is among the “absolute rights of individuals” (Kent 1826, 1). In 1848, Daniel Webster questioned the government’s power of eminent domain, writing that if “the legislature or their agents are to be the sole judges of what is to be taken, and to what public use it is to be appropriated, the most levelling ultraisms of Anti-rentism or agrarianism or Abolitionism may be successfully advanced” (Ely 1998, 78).

Three crucial developments marked the period extending from the Civil War through the New Deal era. First, the courts recognized corporate entities as having many of the same rights as persons under the US Constitution.¹ Second, state and local governments expanded their authority under the police power doctrine (Gerstle 2015).² These two developments combined to shape the strategies adopted by state and local governments to address housing problems. Although the courts recognized municipal governments as right-bearing corporate entities, the courts also distinguished between public corporations or municipalities and private corporations or firms. A fuzzy boundary separated municipalities’ public and private activities (Frug 1980). In his influential *Treatise on the Law of Municipal Corporations* (1872), John Dillon argued that most municipal functions should be understood as public activities, and state governments enjoyed wide discretion to define the scope of these public functions. Several states subsequently adopted “Dillon’s Rule” laws that limited the scope of municipal governments’ police powers, complicating the realization of the Jeffersonian ideal of a decentralized self-governing republic (Frug 1980; Wiebe 1967).

After the Civil War, a third development, combined with the first development mentioned, strengthened and extended the Lockean understanding

of private property rights. The doctrine of “laissez-faire constitutionalism,” best exemplified in the *Lochner v. New York* (1905) Supreme Court decision invalidating a minimum work hour law, united the liberty of contract doctrine with the substantive due process concept to insulate businesses from government attempts to constrain corporate rights of property and contract (Lindsay 2010).³ Those appealing to the liberty of contract doctrine understood the Fourteenth Amendment as placing significant limits on the government’s ability to interfere with voluntary contracts between individuals and corporations. The Supreme Court relied on the liberty of contract doctrine in *Allgeyer v. Louisiana* (1897) to invalidate a state law that prohibited out-of-state insurance companies from conducting business in Louisiana. In *Lawton v. Steele* (1894), the court relied on similar reasoning to rule that the “legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations” (Ely 1998, 90).

The second component of laissez-faire constitutionalism was a substantive interpretation of the due process clauses of the Fifth and Fourteenth Amendments. In contrast to procedural due process, which addresses the question of whether the government follows fair rules when infringing on life, liberty, or property, substantive due process asks whether the infringement is justified by a legitimate public purpose and whether it relies on legitimate means to achieve the public purpose. In a dissent to the majority opinion in the *Slaughterhouse Cases* (1873), Justice Joseph Bradley foreshadowed this doctrine with his argument that “a law which prohibits a large class of citizens from adopting a lawful employment, or from following a lawful employment previously adopted, does deprive them of liberty as well as property, without due process of law” (Wallace 1873, 122). In *Mugler v. Kansas* (1887), Justice John Marshall Harlan declared that the courts could “look at the substance of things” in cases involving the exercise of police powers, adding that there were “limits beyond which legislation cannot rightfully go” (Ely 1998, 89).

In *Jacobs* (1885), the New York State Court of Appeals invoked substantive due process to invalidate a law prohibiting cigar manufacturing in tenements, finding no rational relationship between cigar manufacturing in tenements and the health of cigar makers or the public. Theodore Roosevelt, the sponsor of the bill to enact the law, recalled later in his autobiography that “conditions rendered it impossible for the families of tenement-house

workers to live so that the children might grow up fitted for the exacting duties of American citizenship," linking housing conditions to republican citizenship ideals (Roosevelt 1924, 80). While some may have viewed this case as a blow to efforts to regulate housing conditions in tenement buildings, the courts in *Jacobs* based their decision on the tenement's role as a workplace, leaving open the question of the legality of regulations designed to improve residential living conditions (Garb 2003).

The American housing reform movement was born within this legal context. Laissez-faire constitutionalism and Dillon's Rule limited the range of solutions that housing reformers could pursue to address slum housing conditions. At the same time, the courts upheld legitimate uses of the police power to enhance public health, safety, and welfare. Two overlapping approaches to housing reform emerged within this legal environment: (1) a utilitarian approach that rejected natural rights ideology but otherwise held on to the liberal Lockean conception of property, and (2) a progressive approach that offered a new interpretation of property that was more firmly grounded in a concern for the common good. The first approach shaped tenement housing regulations, whereas the second provided an ideological basis for land-use zoning ordinances.

The Utilitarian Origins of American Housing Reform

The American housing reform movement has intellectual origins in the English sanitary reform movement, particularly in the work of British social reformer Edwin Chadwick. Chadwick was a student and secretary for Jeremy Bentham, founder of the utilitarian approach to government reform. According to Bentham, just actions are those that produce the greatest happiness for the greatest number of people, where happiness is defined in terms of the presence of pleasure and the absence of pain. Bentham held that no actions are intrinsically good or bad. Actions are instrumentally good to the extent that they produce pleasure and instrumentally bad to the extent that they cause pain.⁴

Bentham's instrumental view of morality signaled a significant departure from the natural rights tradition. Famously referring to natural rights as "nonsense upon stilts" (Waldron 1987, 53), Bentham only acknowledged those rights recognized and enforced by positive law and saw the promotion of aggregate utility as both the goal of legislation and the means of

evaluating social progress. Natural rights theorists such as Locke acknowledged a role for government in the promotion of the common good but believed that preinstitutional natural rights constrain government actions, even if the government action increases aggregate social welfare. Although Bentham welcomed restrictions on property rights that enhanced social welfare, his utilitarian understanding of rights was not a significant departure from the moral individualism of the Lockean liberal tradition. Since utilitarian social welfare is merely the sum of individual pleasures minus pains, in Bentham's view there exists no separate "common good" that is distinct from the sum of the individual utilities that compose it.

Utilitarians' understanding of equality was also a departure from the natural rights tradition. For natural rights theorists, equality means equal respect for individual rights, and the extent of equality turns on the definition of what those rights are. For utilitarians, equality means equal consideration for each person's utility in the utilitarian calculus (Kymlicka 2002). Bentham argued that to evaluate the morality of a given action, one needed only to examine the intensity, duration, certainty, proximity, fecundity, and purity of an action's consequences (Crimmins 2017). The utilitarian principle of diminishing marginal utility implies that more equal distributions will tend to produce more utility, but equality per se has no independent value.

Edwin Chadwick's social reform work put Bentham's ideas into action. As a member of the 1832 Royal Commission into the Operation of the Poor Laws, Chadwick worked to transform poor relief in accordance with utilitarian principles. The Poor Law Amendment Act of 1834 incorporated many of his ideas, particularly those designed to improve the efficiency of the poor relief system by transferring the administration of relief to formal institutions. The act also limited relief to those deemed "deserving" of aid, curtailing public assistance for the able-bodied poor. Through a policy known as "less eligibility," the act intentionally stigmatized relief so that the poor would be discouraged from seeking it (Slack 1995).

Chadwick also pioneered the use of sanitary surveys to document and propose Benthamite solutions to public health problems. His 1842 *Report on the Sanitary Condition of the Labouring Population of Great Britain* proposed various engineering and administrative reforms designed to improve sanitary conditions in urban residential areas. The report also concluded that the overcrowded and low-quality housing conditions of the poor harmed the inhabitants' moral state.

Similar sanitary surveys conducted in mid-nineteenth-century New York provided ammunition for an organized attack on the American slum. Following outbreaks of cholera in Lower Manhattan that claimed over 5,000 lives, in 1843 a group of wealthy Protestant businessmen established the Association for Improving the Condition of the Poor (AICP) to address the problem of the slum. The AICP warned that unless conditions in the slums improved, the poor would “overrun the city as thieves and beggars—endanger public peace and the security of property and life—tax the community for their support, and entail upon it an inheritance of vice and pauperism” (Lubove 1962, 7). The AICP proposed reforms that ranged from utilitarian administrative and engineering reforms to “model tenements,” which Roy Lubove (1962, 8) describes as tenements “built by the individual capitalist or company which voluntarily limited profits in favor of higher structural and sanitary standards than those found in the ordinary speculative tenement. Model tenements, sound investments rather than speculative adventures, might reap diminished profits, but investors would be rewarded by the pleasure of having served the poor.”

John Griscom, a devout Quaker and medical doctor for the city's poor, who worked with the AICP, was inspired by Chadwick's report to lead a similar effort in New York. In *The Sanitary Conditions of the Laboring Population of New York* (1845), Griscom argued that the slum's filth, polluted air, and overcrowding harmed the moral fiber of the urban poor. Despite Griscom's equation of poor housing conditions with the “subjection of the tenantry to the merciless inflictions and extortions of the sub-landlord” (Foglesong 1986, 64), his proposed solutions did not address landlord exploitation. Instead, he recommended the appointment of a city health inspector and other administrative reforms, very much in line with Chadwick's earlier report.

Other US cities soon conducted similar sanitary surveys and reached comparable conclusions about the social costs of the slums. In Chicago, Oscar Coleman De Wolf led a tenement housing inspection campaign during the 1880s that called attention to the poor living conditions of slum dwellers, making a clear distinction between the tenement slum and the neighborhoods inhabited by owners of single-family detached homes. Health inspectors entered tenement dwellings without court orders, but they inspected single-family homes only at the request of physicians, occupants, or owners. Although De Wolf acknowledged that low wages and seasonal employment

left workers unable to afford adequate housing, he did not support labor's demands for higher wages or shorter working hours, advocating instead for the construction of model tenements to alleviate workers' poor housing conditions (Garb 2003). In Boston, reformers characterized the slum as "a perfect hive of human beings . . . in many cases, huddled together like brutes, without regard to sex, or age, or sense of decency" (Vale 2000, 60). As in Chicago, Boston's reformers proposed model tenements to alleviate slum housing conditions. In 1871, Henry Bowditch established the Boston Co-operative Building Company, which sponsored the construction of small single-family homes for "applicants of good character, and of habits of neatness" (Vale 2000, 64).

Back in New York, the recommendations of the Council on Hygiene led to the creation of the Metropolitan Sanitary District and Board of Health of New York and, in 1867, the adoption of the nation's first tenement housing law (Foglesong 1986). The 1867 law and a revised 1879 version were largely viewed as ineffective because they permitted the construction of "dumb-bell" tenements with poor external lighting and central air shafts that collected garbage and waste. The New York State Tenement House Act of 1901 perfected New York's regulatory apparatus, adding requirements that new tenements include sufficient lighting and ventilation, an open courtyard, indoor toilets, and adequate fire protection systems. Lawrence Veiller, secretary of the New York State Tenement House Commission (which he helped create) and previous secretary and director of the Tenement House Committee of the Charity Organization Society, played a key role in drafting and lobbying for the adoption of New York tenement housing regulations. The Tenement House Act of 1901 soon became a model for national housing reform. Veiller produced a model ordinance based on the New York law, and most state and local housing laws passed between 1901 and 1920 were based on the model ordinance (Lubove 1961).

While Veiller was more a pragmatist than a philosophically consistent utilitarian, the New York tenement house laws were a landmark achievement of utilitarian housing reform. Extensive empirical analysis and evaluation of the efficiency of alternative solutions supported the design and redesign of each tenement housing law. According to Veiller (1914, 77), "The question which every housing reformer must face is, what method will give the largest results with the least expenditure of energy and effort? It is largely a question of emphasis. The method which will return 90 per cent

of results and not 10 per cent is obviously the method to follow.” Housing reformers viewed tenement housing regulations as a way to maximize social benefits while minimizing social costs, where social costs included both the internal costs incurred by tenement housing dwellers and the external costs inflicted on society at large (Marcuse 1980; Friedman 1968).

American housing reformers appealed to “associationism” to provide a moral and psychological foundation for their utilitarian reforms. According to the doctrine of associationism, exposure to the external world of experience leaves a mental imprint that can elevate or degrade one’s mental faculties and moral sensibilities (von Hoffman 1998a). Associationism provided the groundwork for a paternalistic and environmentally deterministic brand of utilitarianism that reaffirmed the republican belief in the home’s civic function. Statistical surveys of overcrowded tenement housing conditions in large cities like New York, given life by muckraking journalists such as Jacob Riis, painted an image of slum housing that was in sharp contrast to the republican ideal of the single-family home. In *How the Other Half Lives*, Riis (1890, 2; italics in the original) attributes the majority of crimes against property and persons to slum inhabitants who “have either lost connection with home life, or never had any, or whose *homes had ceased to be sufficiently separate, decent, and desirable to afford what are regarded as ordinary wholesome influences of home and family.*” In contrast to the image of home as a refuge of privacy and a platform for the cultivation of civic virtue, American housing reformers saw the urban slum as a parasitic force, degrading the tenement dweller’s moral fiber and infecting middle-class urban society (Friedman 1968).

The synergy between utilitarianism and republicanism helps to explain why early housing reformers rejected housing reform ideas that were filtering in from abroad. Members of the National Housing Association, founded by Lawrence Veiller with support from the Russell Sage Foundation, traveled abroad to learn about European collectivist housing strategies but returned unconvinced that such ideas would work in America. According to Veiller,

In housing reform we need especially to beware of importations from across the sea, not because they are from across the sea—I hope no such provincial view of life controls us—but because the conditions which exist in the old-world countries are so totally different from those which prevail in America. . . . The methods which have been successful in Europe have been so because they have been suited to the conditions which exist there. To be successful here we should have

to engraft upon our civilization the governmental bureaucracy which we find in Europe. For these reasons the label “made in Germany” when attached to plans for housing reform should be viewed with caution. (Veiller 1914, 77)

Early American housing reformers interpreted American housing problems through the evolving American social meaning of housing. The owned single-family home on a detached lot was the physical manifestation of republican virtue, and the slum threatened the American ideals of individualism, economic independence, and self-reliance. According to Veiller,

There is probably no country in the world where the individual detached house occupied by a single family, containing most of the comforts and conveniences of living, exists to the extent that it does in America. This is the normal type of home of the American wage-earner. The conditions which are found in the foreign colonies and slums of our large cities are exceptional and abnormal, symptoms of disease, not of health; conditions which of course must be dealt with. But we should not let their existence overshadow or cloud our vision with regard to the real conditions which exist. (Veiller 1914, 72)

Although Veiller saw the owned single-family detached home as an ideal housing type, he did not believe, as many in the nascent building and loan industry did, that homeownership provided the best solution to the tenement housing crisis. He saw the tenement housing problem as a more “serious social menace which threatens to overwhelm American institutions” and believed that “any effort toward considering more interesting and attractive forms of housing had to wait” until tenement housing conditions were improved (D. Mason 2004, 42). Veiller also objected to the promotion of low-income homeownership on utilitarian grounds. He observed that in cities where the working class owns their own homes, “sanitary authorities have the greatest difficulty meeting health needs, securing adequate appropriations, and enforcing higher standards” (D. Mason 2004, 42).

Progressivism and Zoning

Land-use zoning was the second significant regulatory approach to American housing reform to appear around the turn of the twentieth century. Many urban scholars tend to characterize zoning as an extension of earlier tenement housing reforms. To some extent, this is accurate. For example, Lawrence Veiller, the father of tenement housing regulations, was also an ardent advocate of zoning. The “balancing test,” developed by progressive

jurists Oliver Wendell Holmes and Louis Brandeis and later applied in *Pennsylvania Coal Co. v. Mahon* (1922) to evaluate the constitutionality of a regulatory restriction on subsurface mining, is a clear-cut application of utilitarian ethics. Despite these similarities, zoning emerged later, during a time when progressivism overshadowed utilitarianism as the intellectual foundation for urban reform. Progressives were more receptive to ideas from abroad, particularly from Germany, and their justifications for reform appealed to a new view of property and a collectivist conception of the common good.

By the early twentieth century, social and economic conditions were considerably different from the conditions prevailing during the initial years of the tenement housing reform movement. Although the plight of the unemployed worker during the late nineteenth century was dire, prices declined steadily from 1865 through 1896, increasing real wages for those able to find and secure work. Things changed during the early twentieth century, when the United States entered a period of economic prosperity but rising inflation. Between 1900 and 1914, real hourly wages remained stagnant as increases in the prices of goods and services offset nominal increases in wages (Hofstadter 1960).

According to Hofstadter (1960), the progressive movement arose to meet the urban consumer's demands for new forms of organization. As Walter Lippmann observed in 1914, "We hear a great deal about the class-consciousness of labor; my own observation is that in America to-day consumers'-consciousness is growing very much faster" (Lippmann 1914, 73). One object of middle-class scorn was the monopolist. Industrial monopolists enjoyed market power and exacerbated consumer status inequality through what Thorstein Veblen described as "conspicuous consumption," where "members of each stratum accept as their ideal of decency the scheme of life in vogue in the next higher stratum, and bend their energies to live up to that ideal" (Veblen 1912 [1899], 84). At the same time, middle-class consumers criticized labor unions for fomenting urban unrest and political corruption. Urban consumers were stuck in the middle, searching for new voices who could address their concerns.

Progressives answered the call, appealing to the common good to justify reforms on behalf of urban consumers. By the early 1900s, the target of urban reformers' scorn had evolved from the slum to the problem of urban congestion more broadly. According to Florence Kelley, organizer of the

New York Committee on Congestion of Population (CCP), "When people are crowded, poverty, tuberculosis and crime arise among them" (Kelley 1906, 81). Progressive urban reformers such as Kelley viewed spatial congestion as the by-product of the concentration of land ownership, just as progressive economists blamed economic inequality on the concentration of financial capital. Kelley went so far as to criticize other housing reformers who ignored the "land problem" (Marsh 1953, 30).

Within this context, American land-use zoning was born. In contrast to the first generation of housing reformers, who appealed to American exceptionalism to justify property-use restrictions, progressive zoning reformers welcomed ideas from abroad, particularly those from the late nineteenth-century German intellectual tradition that appealed to historical contingency; an organic view of society; scientific experimentation; a strong role for the state; and a positive, instrumental, and social conception of rights. Late nineteenth-century German intellectuals welcomed British utilitarians' rejection of natural rights but criticized the British liberal affinity for laissez-faire economics. For American progressives trained in the German tradition, the institutional economists from the German historical school (Adolph Wagner, Gustav Schmoller, Karl Knies, and Johannes Conrad) and the jurists from the German historical school of jurisprudence (Gustav von Hugo and Friedrich Carl von Savigny) were particularly influential. Many American economists who would later become leaders in the progressive movement, including John Commons, Richard T. Ely, Edwin R. A. Seligman, and Simon Patten, traveled abroad to receive their training from these and other German professors teaching at the universities of Halle, Berlin, and Heidelberg (Rodgers 1998; Schafer 2000; Leonard 2005).

In 1885, Ely and Seligman founded the American Economic Association (AEA). In private correspondence, Ely stated that "the idea of the AEA is to accomplish in America what the Verein für Socialpolitik has done in Germany" (Rodgers 1998, 102). The founders of the AEA saw the new profession of economics as providing service to a muscular reformist state. As stated in the opening line of the AEA Constitution, "We regard the state as an agency whose positive assistance is one of the indispensable conditions of human progress" (Ely 1886, 35). Ely also wanted to include a statement that "the doctrine of laissez-faire is unsafe in politics and unsound in morals," but not all founding members of the AEA shared his views (Rodgers 1998, 102).

Several leaders in the American zoning reform movement had either been educated in German universities or been influenced by German historicist thinking. Benjamin Marsh, the first executive secretary of the New York CCP, studied with Simon Patten at the University of Pennsylvania. Patten had earlier convinced Richard T. Ely to enroll in Johannes Conrad's economics course at the University of Halle, an experience that convinced Ely to switch from philosophy to economics (Rodgers 1998). Rexford Tugwell, planner and head of the Resettlement Administration during the New Deal, was also a student of Patten. Edwin R. A. Seligman, a German-trained economist and professor at Columbia University, was a member of the CCP's executive committee. For Seligman, "unrestricted individualism" and the "unaided and unregulated sway of private competition" were to blame for urban congestion, and German-style planning offered the best solution to the congestion problem (Peterson 2009, 126). Ernst Freund, author of the classic text *The Police Power* (1904), which zoning advocates widely cited to defend the constitutionality of zoning, was educated in the German historical school of jurisprudence at the universities of Berlin and Heidelberg (Schafer 2000). The attendance roll for the first National Conference on City Planning and Congestion was a who's who list of American progressives with degrees from German universities (Kantor 1974).

Two important ideas borrowed from the German tradition established the intellectual foundation on which American zoning was built: (1) the idea that property rights are not natural or prepolitical but are socially and historically contingent "bundles" of rights created and defined by the state, and (2) the idea that the concept of and justification for private property cannot be understood without reference to the common good.

The Unbundling of Property

German institutional economists viewed rights not as eternal gifts from God but as historical creations that evolved in response to social contingencies. Richard T. Ely (1914, 165) held that "private property is established and maintained for social purposes." He explicitly rejected Locke's assertion that individuals' rights to own private property could be derived from their natural rights of self-ownership, "so we cannot trace an absolute right of private property to the absolute right over one's person, because on the one hand we may have to give our life for the general welfare, and on the other hand we must not take it" (Ely 1914, 176). According to John Dewey,

who received his PhD from Johns Hopkins University under the tutelage of German-trained Hegelian philosopher George Sylvester Morris, natural rights theory “blinded the eyes of liberals to the fact that their own special interpretation of liberty, individuality and intelligence were themselves historically conditioned, and were relevant only to their own time. They put forward their ideas as immutable truths good at all times and places; they had no idea of historic relativity” (Pestritto and Atto 2008, 5). Progressive reformers and legal realists argued that legal principles do not embody static ideals but are dynamic, contextual, and responsive to the needs of society. In *Muller v. Oregon* (1908), Louis Brandeis applied this reasoning to defend a state-imposed limit on the working hours of women factory workers. He argued that the unique health needs of women justified their disparate treatment under the law (Ely 1998).

The view that property rights are social creations opened the door for a more significant role for the government in defining, protecting, and even limiting private property rights. Freund (1904, iii) defined the state’s police power as “the power of promoting the public welfare by restraining and regulating the use of liberty and property.” In true German historicist fashion, Freund agreed with Veiller that laws appropriate for Germany might not be suitable for the unique circumstances found in America. Freund argued that the police power should be understood “not as a fixed quantity, but as the expression of social, economic and political conditions. As long as these conditions vary, the police power must continue to be elastic, i.e. capable of development” (Freund 1904, 3). Given that *laissez-faire* constitutionalism defined the early twentieth-century American legal context, Freund concluded that “government powers ought not to run very far ahead of that conservative sentiment which is represented by the courts” (Schafer 2000, 135). New York attorney Edward M. Bassett and political scientist Robert H. Whitten took the same approach as they crafted the legal arguments supporting New York’s landmark 1916 comprehensive zoning law. Bassett and Whitten’s careful attention to the constitutional constraints on state regulatory power “made it easier for judges to accept their innovations by providing the jurisprudential analogies necessary to make zoning seem like a familiar, legitimate regulatory activity” (Revell 1999, 56).

Other progressives offered a more expansive interpretation of the government’s power to not only restrain property use but also define the meaning of property. Progressives argued that an owner’s property rights are best

understood as “bundles” of rights. The state’s role was to define those bundles, adding or subtracting elements from the bundle to ensure that the institution of property served the common good. As progressive economist John R. Commons wrote, property is “not a single absolute right, but a bundle of rights. The different rights which compose it may be distributed among individuals and society” (Commons 1893, 92).⁵ Wesley Hohfeld (1919) contributed to this project by developing a structural system of legal relations tying claims of right to their corollary duties. He argued that all legal incidents could be defined in terms of privileges, claim rights, powers, immunities, or some combination of these four, with many rights having a complex internal structure.

According to Eric Claeys (2004), zoning marked a transition from an exclusion-based regime of land-use regulation typical of the tenement housing regulation era to a governance-based regime. Henry Smith (2004, 973) defines an exclusion property regime as one that “grants owners a gatekeeper right that protects the owners’ interest in a wide and indefinite class of uses without the need ever to delineate—perhaps even to identify—those uses at all.” Tenement housing regulations prohibited property owners from taking actions that compromised the health and safety of occupants. Still, owners had wide latitude over property use decisions within the constraints established by minimum property standards. Progressive zoning, on the other hand, delineated “a list of use rights holding between all potential pairwise combinations of persons with respect to any (at least heretofore) conceivable activity that has any impact on anyone” (Smith 2004, 972–973). Zoning transferred the individual property owner’s previously unencumbered rights over property use to local political bodies and zoning commissions, who used their powers to define broad categories of uses that would be prohibited from certain zones and in some cases from the community at large.

The bundle-of-rights conception of property deconstructed property rights, and the new governance conception of property defined how the various sticks in the bundle were to be reassembled to enhance community welfare. By creating a command-and-control form of land-use regulation that empowered local administrative and political bodies to dictate community land-use goals, zoning marked a transition toward a more substantial collective role in property use (Claeys 2004). As described in the next section, this transfer of power often had negative consequences for low-income renters and people of color.

Property and the Common Good

Progressives and utilitarians both believed that property rights should promote the common good, but progressives' definition of the common good appealed to an image of society that was a stark contrast with the utilitarians' collection of atomistic individuals. Institutional economists trained in the German tradition understood society as an organism whose purpose is growth and survival. Herbert Croly described American society as an "enlarged individual." John Commons believed that individuals were organs "bound up in the social organism," which was "a living thing, actuated, like all the higher creatures, by the instinct for self-preservation." Walter Rauschenbusch argued that the aim of economic reform was not a matter of saving individuals "but of saving the social organism" (Leonard 2016, 101). Early American city planners appealed to these same organic metaphors. Frederick Law Olmstead Jr. described city planning as "a growing appreciation of a city's organic unity, of the interdependence of its diverse elements" (Akimoto 2009, 458). Frederic Howe (1913, 186) described the planning profession as one that "treats the city as a unit, as an organic whole."

A Darwinian view of social progress informed progressives' embrace of the society-as-organism metaphor. Both defenders and detractors of *laissez-faire* economics looked to Charles Darwin to support their views. Whereas *laissez-faire* apologists such as Herbert Spencer and William Graham Sumner interpreted Darwin as implying that economic agents deserved the profits they earned because they were the fittest to survive in the marketplace, progressives looked to Darwin to defend "artificial," rather than natural, selection. Social biologist Lester Frank Ward appealed to the selective breeding of plants and animals to argue that the administrative state should guide social change by manipulating the process of human evolution. Herbert Croly believed that the state had a responsibility to "interfere on behalf of the really fittest." The purpose of legislation was to improve "the methods whereby men and women are bred" (Leonard 2016, 104).

Nowhere was the society-as-organism metaphor stronger than among University of Chicago sociologists, who developed the human ecology approach to sociology during the 1920s. For Robert Park, two different social processes operated at different scales to give order to urban life. Neighborhood life was organized according to symbolic and cooperative ties, while, at the city level, separate communities interacted through competition and differentiation. Park's student Roderick McKenzie developed

these ideas further, arguing that spatial economic competition resulted in the most successful groups occupying the most favored locations within the city. Based on these ideas, Ernest Burgess developed a model of urban growth that explained urban agglomeration and differentiation in terms of competition over the most desirable spaces within the city, producing “concentric zones” of differentiated land uses within cities. University of Chicago economist Homer Hoyt developed a “sector model” of urban growth that modified and extended Ernest Burgess’s model to account for outward urban expansion (Gottdiener, Hutchison, and Ryan 2014).⁶

Progressives’ organic conception of society had implications for their understanding of individual liberty and its relation to the common good. Most progressives rejected the negative conception of liberty advanced by Lockean liberals, arguing instead that individuals could be free from government interference but still lack the resources to live purposeful lives.⁷ Most progressives argued that the appropriate role for the state was not simply to step aside but rather to create the conditions that fostered the cultivation of positive liberty.

For American progressives who were influenced by Thomas Hill Green, Leonard T. Hobhouse, John A. Hobson, and others from the British “new liberal” tradition, positive liberty meant individual self-development through the pursuit of the common good (Freedman 1978). For Green, the common good was a relational concept, and free actions were those taken by individuals acting to develop their individual goods in concert with others. Green understood rights as instrumental means of promoting the general welfare and rejected the idea that rights had preemptive authority over state actions. For Green, the common good was not reducible to the sum of individual goods, because the common good was a shared ideal that justified individual rights (Weinstein 2007).

The German institutionalists also appealed to a positive conception of liberty, but their view of society as having a will and telos that were independent of and prior to the individual pointed to a potential conflict between individual and collective freedom. Freund, for example, saw the police power as a collective power that conflicted with individuals’ rights of due process. In the face of conflicts between individual and collective positive freedom, many German institutionalists argued that individuals should renounce their individual desires and beliefs and submit to the will of the collective. Freund, while influenced by this tradition, was reluctant to go this far, advocating

instead for a more conservative interpretation of the police power. Freund was concerned not with motivating individuals to submit to the collective will but with narrowly tailoring the scope of police powers to promote collective health, safety, and welfare (Schafer 2000).

Even though progressives appealed to the common good to justify reform proposals, they rarely defined the common good in terms of the good for all humanity. Woodrow Wilson and Herbert Croly appealed to a nationalistic conception of the common good, while Howe, Ely, and Albert Shaw advanced a localized conception of the common good. Within cities, progressive planners also often prioritized the collective interests of those who owned residential property and those from certain socioeconomic groups. When progressives defined the common good narrowly in this way, proposals for reform had an exclusionary character.

Land-use zoning fostered exclusion by elevating the ideal of the owned single-family detached home, enhancing the collective value of owned homes, and insulating homeowners from invasion by people and property uses deemed inferior. New York City's 1916 comprehensive zoning law, for example, was designed in part to "enhance the value of the land of the city and conserve the value of the buildings" (Foglesong 1986, 220). In *Village of Euclid v. Ambler Realty Company* (1926), the Supreme Court decision that established the constitutionality of zoning, Justice George Sutherland supported the division of property into districts in part because property division enhanced the collective value of residential property (Ely 1998). According to Garrett Power (1989, 7), "Zoning, when viewed as a technique for suppressing nuisances, turned utilitarianism inside out; it sought the greatest good for the fewest and richest in number." For these reasons, it should come as no surprise that some of the strongest advocates for zoning, such as Lawrence Veiller and Richard T. Ely, later played important roles in the debates leading to the adoption of federal homeownership legislation (Weiss 1989).

Progressives also relied on zoning to exclude certain socioeconomic groups from neighborhoods and entire communities. Before 1917, when the practice was ruled unconstitutional in *Buchanan v. Warley*, progressive planners relied on zoning and other land-use restrictions to promote the segregation of cities by race and ethnicity. In the late nineteenth century, several California cities adopted regulations designed to contain the spread of laundries owned by Chinese immigrants. In 1910, Baltimore mayor J. Barry Mahool, an advocate of various progressive reforms, enacted the nation's

first citywide racial zoning ordinance (Power 1983).⁸ The southern cities of Richmond, Atlanta, Greenville, Winston-Salem, Birmingham, and Louisville soon followed the exclusionary path established by Baltimore (Silver 1997). Even after explicit racial zoning was ruled unconstitutional, cities continued to use zoning and other land-use restrictions to perpetuate racial segregation and exclusion, often through indirect means that obscured the racist motivations underlying racially neutral policies (Silver 1997; Rothstein 2017).

Progressives often defended racist and xenophobic policies by appealing to the scientific method's cover of objectivity. For social Darwinists drawn to the idea of artificial selection, the state's role was to promote human development through the selection of and support for those with the most desirable racial and ethnic characteristics, with native-born whites placed atop the social hierarchy. Several progressive economists drawn to this idea called for race-based immigration restrictions to forestall "race suicide." Edward Ross, a founding member of the AEA, feared a time when "the higher race quietly and unobtrusively eliminates itself rather than endure individually the bitter competition it has failed to ward off by collective action" (Leonard 2005, 209).

Progressives also developed scientific classification methods to inform the design of exclusionary urban policies. Richard T. Ely (1917, 27) observed that urban land "needs extensive classification in order to frame wise urban land policies." Harland Bartholomew developed scientific land classification and allocation methods that he applied to the design of land-use zoning ordinances in communities across the nation (Akimoto 2009). According to Bartholomew, a goal of the 1919 St. Louis zoning ordinance was to prevent movement into "finer residential districts . . . by colored people." He observed that without a zoning law, neighborhoods would fall into decline, and homes would either become "vacant or occupied by colored people" (Rothstein 2017, 1919). As discussed in chapter 4, Homer Hoyt developed a method that the Federal Housing Administration employed to reinforce racial and ethnic housing market inequalities by institutionalizing whites' reluctance to purchase homes in minority-majority neighborhoods (Light 2011). W. E. B. Du Bois was one of the rare progressives to call for reforms that were designed to reduce the racial inequalities that he documented in his social science investigations. On the first page of his landmark study *The Philadelphia Negro* (2007 [1899]), Du Bois attributes the plight of Black Philadelphians to the same patterns of racial segregation that other progressives sought to reinforce.

Land-use zoning combined all these elements—a bundle-of-rights conception of private property, an organic conception of the social division of labor, the spatial separation of social groups and economic functions deemed incompatible, and the empirical classification of urban land into different functional types—to carve urban space into zones that maximized the perceived organic unity of land utilization. The Frankfurt Zoning Act of 1891 was the first modern application of these ideas, and American planners trained in Germany or who had visited Germany on international excursions were particularly taken by the Frankfurt approach (Hirt 2013). When zoning appeared in the United States, it was transformed with a distinctly American twist. Unlike most European ordinances, US zoning laws separated residential districts according to exclusive use categories and within those districts designated space solely for the single-family detached home (Hirt 2013). Thus, just as tenement housing reformers fused utilitarianism with republicanism to elevate tenement homes to a level of quality deemed compatible with civilized American life, appealing to the ideal of the single-family home as a model of how that life should be lived, American zoning reformers fused progressivism and German institutionalism with republicanism to create organically unified single-family districts that were spatially isolated from threats to American ways of living.

The Death and Resurrection of Henry George

Following Henry George's failed mayoral bid, he largely disappeared from the housing reform movement, but his ideas were later resurrected as old wine in new bottles, stripped of their natural rights foundations and repackaged under the auspices of progressivism. The story of the evolution of George's ideas provides additional insights into the ideological basis of early twentieth-century housing and land-use reforms.

On the eve of the twentieth century, Henry George's single-tax idea was uniquely positioned to update land reformers' natural rights ideology for a new urban era, but a series of events stood in the way of efforts to implement the single tax. Labor's initial support for the single-tax idea as a solution to the housing crisis was more strongly tied to the personality of Henry George than to the idea itself, and organized labor's advocacy on behalf of the single tax waned after George's death. Lawrence Veiller saw tax reform as part of the "postgraduate" phase of housing reform, to be pursued only

after the adoption and implementation of regulations governing building quality (Veiller 1914). Veiller's close alliance with real estate interests, who were adamantly opposed to any form of property taxation, also shaped his views of the single tax (Foglesong 1986).

Another source of conflict came from the courts. In 1892, a single tax enacted in Hyattsville, Maryland, was overturned by the Maryland Court of Appeals in *Wells v. Commissioners of Hyattsville* (1893). Representative James Maguire of California proposed a national land tax, but the US Congress rejected the measure (Young 1916). In *Pollock v. Farmers' Loan & Trust Co.* (1895), the Supreme Court invalidated an income tax designed to offset lost tariff revenue, ruling it to be a direct tax that the Constitution required be apportioned among the states according to their populations (Ely 1998). In addition to temporarily halting any discussion of the income tax until the adoption of the Sixteenth Amendment, *Pollock* also likely put the brakes on any further discussion of anything resembling a national land tax.

Several early twentieth-century New York progressives proposed reforms similar to the single tax but never managed to successfully implement their ideas. As mentioned, by the early 1900s, the concern with the slum had morphed into a concern for urban congestion more broadly. Florence Kelley, who earlier had worked to address women's working conditions in the factories of Lower Manhattan, assembled a group of reformers to establish the CCP. In 1907, Benjamin Marsh became the committee's executive secretary. Marsh had earlier been captivated by Simon Patten's progressive economics and Henry George's single tax and sought to apply Georgist solutions to the problem of urban congestion.

Others in the New York housing movement were less receptive to George's ideas. Robert De Forest, who was instrumental in the adoption of New York's tenement housing laws, warned Marsh, "If you touch the land problem in New York, you probably won't last here two years" (Marsh 1953, 35). Marsh did not drop his obsession with the single tax. Later, as a member of a city commission established to address the congestion issue, Marsh pushed for a land tax. Fellow progressive Frederic Howe initially supported Marsh, stating that "the housing question is the land question" and that "an ounce of land taxation will do more than a pound of regulation" (Kantor 1974, 425). While the commission's report did not go so far as to propose a single tax, it recommended similar measures, and this alone was enough to scare off those closely aligned with real estate interests. Leaders of the nascent city planning

profession were also critical, including Charles Mulford Robinson, who criticized Marsh's push for a "radical change in methods of taxation" (Kantor 1974, 426). Despite writing an early text on city planning and helping to establish the first National Conference on City Planning and Congestion, Marsh soon became marginalized from the American city planning movement. After the first National Conference on City Planning and Congestion, Veiller and De Forest formed a separate National Housing Association, and the word "congestion" (and with it the emphasis on the single tax as a solution to congestion) disappeared from the subsequent National Conference on City Planning. The city planning profession soon placed more emphasis on technical analysis and professionalization, dropping their attention to social problems related to housing until the 1960s. With this new emphasis, zoning, rather than the single tax, became the solution of choice for city planners (Kantor 1974).

Professional economists, including many progressive founders of the AEA, such as Francis A. Walker, Edwin R. A. Seligman, Richard T. Ely, and John Commons, were also resistant to George's ideas. Some were critical of the natural rights foundation of George's ideas, while others expressed reservations about his single-tax proposal. Seligman devoted an entire chapter of his book on taxation to refuting the single tax. John Bates Clark, one of the founders of the marginalist revolution in neoclassical economics, went so far as to deny that land was a distinctive factor of production that deserved any special emphasis in economic analysis (Gaffney and Harrison 1994).

George's ideas eventually filtered into the American municipal reform movement. As mayor of Cleveland from 1901 to 1909, Tom Johnson championed George's single-tax proposal and transformed it into a broad progressive reform platform that included municipal ownership of streetcars and electric power, acquisition of lakefront property for public spaces, and a successful campaign to secure "home rule" (the antithesis of Dillon's Rule) for Ohio's cities (Miller 2010). Single-tax advocates were active throughout Washington, Oregon, and Colorado. Several Pennsylvania cities adopted a variation on the single tax known as "split-rate" taxation, taxing land at a higher rate than buildings, and single-tax communities appeared in Arden, Delaware, and Fairhope, Alabama (Young 1916).⁹

George's ideas were influential abroad and later returned to the United States in a slightly modified form. In the 1880s, through sponsorships from

New York's Irish working class, George took several trips to Great Britain and Ireland. Irish nationalists appealed to George's ideas to attack landlords and advocate for stronger Irish representation in Parliament. George also found a receptive audience among members of the socialist Fabian Society, particularly Edwin Pease, Sidney Webb, and George Bernard Shaw. Thomas Hill Green and Leonard T. Hobhouse fused Fabianism and liberalism to create British new liberalism. Chancellor of the Exchequer David Lloyd George incorporated Henry George's ideas into his 1909 "people's budget," which relied on a land tax to fund social welfare programs (Lough 2013).

Several single-tax communities appeared in Europe, Australia, and Asia. In Germany, Adolf Damaschke established the Union of German Land Reformers, which advocated for a variation on the single tax. Frankfurt applied an "increment tax" to the unearned incremental increase in land values between sales. Hundreds of other German cities and counties soon followed suit with the adoption of similar tax policies, and in 1911 the German Reich briefly introduced an increment tax as a replacement for certain state taxes (Bryson 2011; Ladd 1990). Henry George inspired Ebenezer Howard's plans for English garden cities, and the transnational garden city movement influenced several American New Deal initiatives (Rodgers 1998). Later in the twentieth century, George's ideas morphed again into the community land trust movement.

Although the American radical land reform tradition died with Henry George, the idea that the community should recapture socially created value was consistent with progressive zoning advocates' desire to organize land uses to promote the common good. Zoning was less objectionable to real estate interests and lacked the populist political baggage attached to the single tax. The courts also looked more favorably on zoning and tenement housing regulations because they were justifiable under the police power doctrine and not seen as purely redistributive measures.

Explaining the Demise of Right-Based Housing Reform

American progressive reformers set out to redefine private property and reform property-based institutions to promote the common good. In practice, most reformers pursued a conservative regulatory approach to reform, using the state's police powers to transfer particular sticks in the property rights bundle

to government bodies, thereby collectivizing the right to exclude. Early American housing reformers studied European collectivist housing strategies but rarely strayed from the path of American exceptionalism.

With the rise in collective authority over land-use decisions came the demise of the previous generation's right-based approach to social reform. Around the turn of the century, the most vocal supporters of expanded rights for the urban poor were women activists and settlement house workers. Sophonisba Breckinridge, a professor at the Chicago School of Civics and Philanthropy, argued that to fulfill the "critical right" of citizenship, the Black American must be able to "claim a decent home for his family in a respectable neighborhood and at a reasonable rental" (Argersinger 2010, 795). This tradition of "progressive maternalism" ultimately did not have the same level of influence on housing and land-use reform, partly because progressive maternalists were less interested in deferring to the demands of property owners (Argersinger 2010). Although male reformers ostensibly sought to improve the housing conditions of the poor and working class, their reforms failed to expand access to decent, low-cost housing. Instead, they prioritized the minimization of social costs, the containment of communities of color, and the enhancement of urban property values (Marcuse 1980).

Why did a reform movement that was so critical of *laissez-faire* capitalism ultimately leave existing institutions of property intact without seeking to expand tenants' rights to property and decent housing? One answer is that American progressive reformers were, in the end, pragmatists and not ideologues, so they adopted tools from home and abroad that were best suited to addressing American housing problems. Reformers such as Veiller and Freund did not seek to abandon private property but instead sought to retool private property institutions to address new urban social problems. While this may be an accurate description of some reformers, others, such as Frederick Howe and Frederick Law Olmsted, appealed to a utopian image of the good city to justify their reforms.

Richard Foglesong (1986) argues that America's conservative regulatory approach to housing reform satisfied capitalists' political and ideological interests in social control without fundamentally disrupting the property-based institutions that enabled capital accumulation. According to Foglesong (1986), American housing reformers did not challenge the prevailing *laissez-faire*, free-market ideology of the times but instead sought reforms that were

legally justifiable within that framework. While this is true of reformers such as Ernst Freund and Lawrence Veiller, who worked within the framework of the prevailing interpretation of the US Constitution, others, such as Richard T. Ely and Frederic Howe, sought to upend laissez-faire individualism and fundamentally reform the institutions of private property to promote the common good. Ultimately, Foglesong's explanation overplays the role of capitalists in shaping the character of reform without adequately accounting for the role played by the urban reformers themselves.

Most accounts of the early American housing reform movement also fail to adequately explain labor's limited role in it. Ira Katznelson (1981) argues that most American labor organizations prioritized concerns for working and workplace conditions over housing issues. As the discussion in chapter 2 illustrates, this argument ignores nineteenth-century labor organizations' support for expanded tenants' rights and land reform. A more likely explanation for labor's limited influence on the late nineteenth-century housing movement is that labor was highly fragmented and lacked the support of an organized socialist movement. In contrast to Europe, where capitalists sought to reproduce labor power by responding to workers' demands for collective forms of consumption (Castells 1979), the flow of immigrants to the United States during the late nineteenth century reduced the pressure on capitalists to bend to the demands of the working class. Things changed during the early twentieth century, as immigration dropped off considerably and labor became more organized. Still, even during this period, the relationship between labor and housing movements was often more contentious than conciliatory.

Even if we accept some role for labor, the early American housing reform movement was never really a working-class movement. Hofstadter (1960) convincingly argues that the constituency for urban reform was not the disenfranchised worker but rather the middle-class American native who had recently migrated to the city for professional employment. For these new urban professionals, who still held firmly to rural American republican values, the slums were a concern because they threatened deeply held American cultural values. Furthermore, urban reformers often viewed organized labor as more of a threat than an ally. The violence associated with the Haymarket riot, Homestead strike, and Pullman strike caused middle-class professionals to fear, not bond in solidarity with, the urban working class. Progressive reformers were also more interested in breaking up the

political patronage systems that benefited urban immigrant workers than in organizing on their behalf (Hofstadter 1960).¹⁰

Sonia Hirt (2014) provides a cultural explanation that accounts for the power of the ideal of the owned single-family detached home. She argues that “zoning ultimately gained legitimacy because its advocates presented it as a mechanism that was deeply embedded in the noble American traditions of political, economic, and spatial individualism” (Hirt 2014, 134). Her argument is consistent with Walzer’s (1983) proposition that societal conceptions of distributive justice reflect the social meaning of the good being distributed. Housing reform strategies that were out of step with the prevailing social meaning of housing were difficult to sell to the different constituencies competing in the space of ideas.

An understanding of the evolving social meaning of American housing casts the early housing reform movement in a different light. Both tenement housing and zoning reformers appealed to an ideal American housing type—the owned single-family detached home—to justify a variety of reforms that protected the ideal while demonizing housing types deemed inferior, such as the multistory rental tenement building. As a symbol, the owned single-family detached home flexibly accommodated the values embedded in America’s liberal and republican political traditions. It embodied America’s liberal love of privacy while at the same time providing a connection to republican civic virtues.

By the late nineteenth century, the ideal of the owned single-family detached home had evolved considerably from the frontier home revered by American land reformers. With the rise of wage labor and the separation of home from work, the home evolved from a site of production into a site of consumption. Whereas land reformers sought to address the alienation of the urban worker by returning the worker to home-based production and restoring Lockean self-ownership, tenement housing reformers sought to improve the quality of life of the working poor in the places where they lived. Veiller was especially critical of efforts to address urban problems by depopulating the city: “In a city where the children of the poor were dying from typhoid because of impure milk, I think we should feel that it was trifling with a serious problem if it were urged that nothing could be done through legislation but that the only way to insure a better milk supply was to encourage the people to move to the country where they could have

their own cows and thus insure the right kind of supply for their children” (Veiller 1914, 76).

The American home, which had earlier been viewed as a private sphere to be protected from government intrusion, had become a public concern by the late nineteenth century, thanks in large part to the work of muckraking journalists such as Jacob Riis. During the same period, Samuel Warren and Louis Brandeis (1890) made the case for a right to privacy, but they understood this right as a personal right, ignoring the home’s role in securing the right to privacy (Igo 2018). As E. L. Godkin observed, privacy is “a distinctly modern product, one of the luxuries of civilization, which is not only unsought for but unknown in primitive or barbarous societies” (Godkin 1890, 12). The courts expanded legal protections for personal and familial privacy over the course of the twentieth century but failed to recognize a public duty to provide private spaces for the exercise of privacy rights.

As the legal concern for privacy shifted from the home to the person, the privacy provided by the home came to be viewed as a virtue to be promoted through the establishment of minimum property standards. Tenement housing reformers’ primary concern with the slum was that it caused overcrowding and robbed people of the virtues cultivated by privacy. The shift away from the earlier generation’s emphasis on rights shaped the solutions that tenement housing reformers considered. Rather than view the lack of privacy in the slums as a right to be more equally protected or more widely distributed, tenement housing reformers looked to restrictions on private property to guarantee that homes provided enough privacy to cultivate civic virtue.

These three changes in the social meaning of home—the spatial separation of work and home, the increased attention to housing’s consumption value, and the publicity of housing—limited the rhetorical value of natural rights language while at the same time increasing the utility of republican appeals to civic virtue. Once the reality of wage labor was accepted, Lockean appeals to self-ownership and the unification of land and labor appeared anachronistic. With the abandonment of the ideal of home as a site of production, the home became a thing to be consumed, and private consumption took on a public dimension. Homeowners engaged in conspicuous consumption to signal their relative social status, and reformers sought to cultivate civic virtue by securing a minimum level of privacy in working-class homes.

The republican conception of home complemented utilitarian and progressive ideologies. Republicans and utilitarians both viewed property rules as instrumental means of achieving collective ends. For republicans, the ends were self-governance and republican liberty, while for utilitarians the ends were defined in terms of aggregate utility. Progressivism was also consistent with the republican tradition, once republicanism was stripped of its natural rights foundations. Echoing James Harrington, progressives argued that property rights embodied social conventions about the use of land that were legitimized and enforced by the state. Both Veiller and Freund contextualized their justifications for reforms by appealing to a historicist understanding of private property's role in American society.

The idea of the common good also played an important role for both progressives and republicans, even though each interpreted the obligation to promote the common good in different ways. The American founders sought to promote the common good through checks and balances on the exercise of government power and strong protections for individual rights. Nineteenth-century liberal-republican land reformers appealed to the civic virtues of home to promote an egalitarian distribution of owner-occupied housing. For progressives, the common good was an organic thing in and of itself, defined through citizens' collective engagement with each other, and the home was central to this engagement. As the social meaning of the American home evolved, republicanism survived, but liberalism and the natural rights tradition fell by the wayside, carving a path for utilitarian and progressive approaches to housing reform.

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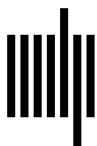
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