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# **Just Housing**

## **The Moral Foundations of American Housing Policy**

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## 4 Modern Housing and the Homeownership Republic

Modern housing means complete new communities planned entirely from the point of view of fullest *usefulness* and long time amenity—instead of chaotic subdivision and the erection of dwellings designed only to bring quick speculative profits. It means that rentals must be geared to the capacity to pay and not to the “market.” It means that a decent dwelling is not a reward withheld for the successful, but a fundamental right to which every citizen is entitled, the provision of which becomes a responsibility of government.

—Catherine Bauer, quoted in Carol Aronovici,  
*America Can't Have Housing* (1934, 21; italics in the original)

In the 1930s, a new coalition of housing advocates influenced by the previous generation's progressive ideals called for the creation of a new federal government housing program, but this coalition faced opposition from conservative politicians and real estate interests who opposed adding homebuilding to the federal government's portfolio of responsibilities. An expansive new “two-tier” federal housing policy apparatus emerged from the ideological and political compromises among these constituencies.<sup>1</sup> To assist low-income renters, the federal government established new programs to support the construction and management of public housing, and for middle- and high-income homeowners, the federal government created a new safety net to insure mortgages and provide liquidity to the savings and loan industry. These new housing programs were part of President Franklin D. Roosevelt's larger New Deal program, which blended right-based liberalism with progressives' pragmatism and consumerism. Roosevelt proposed a vision of the welfare state that transformed housing into one of the basic entitlements of American citizenship, but the federal housing policy apparatus that he

created failed to realize its full potential. By the 1950s, New Deal-era housing programs had established the foundation of a new homeownership republic that expanded suburban housing opportunities while simultaneously denying those opportunities to people of color.

The New Deal-era two-tier federal housing policy apparatus expanded during the 1960s, but by this time many had become disillusioned by the federal government's failure to act on its 1949 goal of housing every American family (42 U.S.C. § 1441). New federal programs designed to decentralize control over community development activities paradoxically spurred new grassroots right-based housing movements that opposed strong federal oversight of housing construction in low-income areas and communities of color. This chapter examines these developments, tracing the arc of housing justice from the New Deal era through the end of the 1960s.

### **The New Deal-Era Federal Housing Policy Apparatus**

Except for two federally funded commissions appointed to investigate slum conditions in large US cities, the federal government played virtually no role in housing provision until World War I, when Congress addressed wartime housing shortages by chartering two corporations—the US Housing Corporation and the Emergency Fleet Corporation—to construct housing for wartime workers. Following the war, a new generation of advocates began to call for a more permanent government role in housing provision, with labor advocates proposing Georgist solutions and local officials calling for the extension of wartime-era emergency rent controls (McDonnell 1957). Edith Elmer Wood, an economist and influential advocate for a stronger federal government role in housing provision, criticized these solutions. She characterized the single tax as “contrary to our habits” (Wood 1931, 153) and rent controls as “the most radical interference with the rights of private property of any housing measure adopted outside of Soviet Russia” (Wood 1931, 95). She also criticized regulatory housing solutions, claiming that a restrictive regulation “may forbid the bad house, but it does not provide the good one” (Radford 1996, 31), and viewed model tenements as untenable on a large scale because “the combined requirements of sanitation and cheapness leave so small a margin of profit that capital is not attracted to such a proposition on a business basis” (Radford 1996, 36). On this latter point, Wood was correct. From 1895 until 1914, the cost of

residential construction increased by 50 percent, compared to a 20 percent increase in consumer prices, because of rising labor and material costs and restrictive regulation (Radford 1996). Given the undesirability of the alternatives, Wood was among the first to call for a more substantial federal government role in the provision of housing.

During the decade following World War I, federal officials largely abandoned the idea of large-scale government-supported housing provision, instead devoting energy to various public relations campaigns designed to promote homeownership. In 1919, the US Department of Labor joined forces with the National Association of Real Estate Boards' (NAREB) Own Your Own Home campaign. The campaign distributed promotional pamphlets, newspaper ads, buttons, banners, and posters that extolled the republican virtues of homeownership and celebrated homeowners as patriots in the battle against Bolshevism (Vale 2007). Herbert Hoover, who served as secretary of commerce from 1921 to 1928 before becoming president, picked up the homeownership mantle and elevated it to a cabinet-level policy priority. At the request of Marie Meloney, editor of the women's interest periodical *The Delineator*, Hoover presided over the Better Homes in America campaign, which promoted homeownership through an extensive network of more than 7,000 local Better Homes committees around the country that sponsored home improvement contests, demonstrations of remodeling and construction techniques, and lectures on the home's role in promoting civic virtue and good character (Wright 1981). Hoover also established the Commerce Department's Division of Building and Housing to modernize the homebuilding industry through education and the distribution of model housing and zoning codes (Vale 2007).

The Great Depression fundamentally altered the political dynamics of the housing debate. From a record high of 937,000 urban housing starts in 1925, housing construction plummeted to 330,000 new units in 1930 and 93,000 in 1933 (Barrows 1983). Although the drop in housing construction was a national policy concern, that was not because it was contributing to a housing shortage. With reduced national birth rates and lower rates of rural-to-urban migration, the ratio of new units to new urban population increased during the 1930s and 1940s (Barrows 1983). Overcrowding was also on the decline, in part because of the housing reforms adopted earlier in the century.<sup>2</sup> The real crisis was the inability of Americans to afford housing and remain in their homes as wages fell. Although the cost of living

dropped during the Great Depression, real wages fell by a much larger percentage.<sup>3</sup> With the decline in wages, many homeowners were unable to stay current on their mortgages, particularly given that most loans matured within a short time, often with large balloon payments due at maturity. The foreclosure rate increased from 3.6 per 1,000 mortgages in 1926 to a high of 13.3 per 1,000 mortgages in 1933, with approximately 1,000 home mortgages foreclosing every day by 1933 (Wheelock 2008).

As president, Herbert Hoover viewed the Great Depression as an externally induced crisis caused by European economic and political turmoil. Hoover saw homeownership as part and parcel of America's exceptionalism, and solving America's economic crisis required bolstering this distinctive American institution (Rodgers 1998). In 1931, as the economic crisis deepened, Hoover convened the President's Conference on Home Building and Home Ownership in Washington, DC, and tasked Richard T. Ely's Institute for Research in Land Economics and Public Utilities with providing research support and policy guidance (Weiss 1989). Lawrence Veiller served on the conference planning committee, and Harland Bartholomew chaired a committee on subdivision design. The conference revealed a consensus around some form of new limited-government public-private partnership that would support, but not alter, existing housing market institutions. The savings and loan industry favored any proposal that would consolidate their industry's position by excluding other types of lenders from mortgage markets (Quinn 2010).

Congress passed two housing bills near the end of Hoover's term. The Emergency Relief and Construction Act empowered the Reconstruction Finance Corporation to make loans to private firms engaged in low-income housing provision and slum clearance. The Federal Home Loan Bank Act established 12 regional Federal Home Loan Banks, capitalized by member-purchased stock and deposits from member institutions, to provide a stable source of mortgage funds to local savings and loan banks (Schwartz 2015).

During Franklin D. Roosevelt's presidency, progressive ideas that had been circulating for decades finally found a more receptive audience (Rodgers 1998). One of the earliest actions taken by Roosevelt in the housing policy arena came with the adoption of the Home Owners Loan Corporation Act of 1933, which created the Home Owners' Loan Corporation (HOLC) to purchase and refinance distressed mortgages, extending loan terms on refinanced mortgages to 15 years, thereby reducing monthly

mortgage payments. The HOLC issued over one million loans in just under three years and established a precedent for the long-term, fixed-rate, self-amortizing, low-down-payment mortgage that was institutionalized in more comprehensive legislation adopted one year later.

With the National Housing Act of 1934, Congress expanded the supply of mortgage credit to middle-class homebuyers. In contrast to the Federal Home Loan Bank Act, which provided liquidity to member banking institutions, and the HOLC, which refinanced mortgages in default, the National Housing Act of 1934 created the Federal Housing Administration (FHA) to insure lenders against long-term mortgage risk. FHA insurance increased the terms of allowable mortgages to 25 to 30 years and increased the loan-to-value ratio on mortgages issued from one-half to two-thirds of the appraised value up to 93 percent, lowering down-payment requirements considerably. Reducing the risks associated with private mortgage lending caused mortgage interest rates to drop. By 1939, FHA-insured mortgages had risen to one-quarter of all mortgages issued, and the additional capital for mortgage financing played an important role in reinvigorating the housing industry, with housing starts increasing by 86 percent between 1937 and 1941 (Wheelock 2008; Schwartz 2015; Quinn 2010).

In addition to establishing a new institutional structure for private mortgage lending, HOLC and FHA underwriting practices had long-lasting impacts on the types of homes constructed and who would be eligible to gain access to those homes. The HOLC relied on detailed socioeconomic information and housing quality data to construct “residential security maps” that categorized neighborhoods into ordinal lending risk categories. The HOLC’s methodology downgraded communities of color and neighborhoods experiencing racial or ethnic change, institutionalizing the discriminatory lending practice known as “redlining” (Jackson 1980). Neighborhood racial and ethnic characteristics were also incorporated into the FHA’s *Underwriting Manual*, authored in the 1930s by Frederick Babcock, who had written a real estate appraisal text in 1924 as part of Richard T. Ely’s Land Economics Series (Nightingale 2012). Until ruled illegal by the US Supreme Court in *Shelley v. Kraemer* (1948), private restrictive covenants prohibiting home sales to people of color were a powerful means of enforcing the *Underwriting Manual*’s preference for “retaining stability” by ensuring that “properties shall continue to be occupied by the same social and racial classes” (Jackson 1980, 436). The *Underwriting Manual* also

incentivized suburbanization, favoring single-family structures over multi-family ones as well as new structures over rehabilitated existing ones (Jackson 1980). Once new home sales rebounded after World War II, the FHA's underwriting standards fostered the proliferation of racially and ethnically segregated neighborhoods.

The FHA turned to economist Homer Hoyt, who had been trained at the University of Chicago, to create and implement a methodology to streamline the mortgage underwriting process. Hoyt proposed replacing expensive onsite field studies with an automated cartographic method similar to the one employed by the HOLC. He instructed the FHA's insurance officers to designate the locations of different land uses and housing types on a city map and then outline blocks with "a considerable number" of populations thought to be associated with low real estate values, including "Italians or Jews in the lower income group," as well as those with 10 percent or more "negroes or race other than white" (Light 2011, 499). While Hoyt believed that race was a social construction, he also believed that if prejudice played a role in shaping one's willingness to pay for a house, scientific analysis should record this fact. Even though Hoyt viewed his method as neutral and objective, it only reinforced existing patterns of prejudice by institutionalizing bias into the standards that loan officers adopted to assess mortgage risk (Light 2011).

As Roosevelt was laying the foundations for the mortgage finance tier of the federal housing policy apparatus, a new generation of housing advocates—including Mary Simkhovitch, Edith Elmer Wood, Ira Robbins, and Louis Pink—established the National Public Housing Conference (NPHC) to push for the creation of a new public housing program that would house the working class (McDonnell 1957). The NPHC's first legislative success came in 1933, when Simkhovitch convinced Senator Robert Wagner to include a provision in the National Industrial Recovery Act empowering the new Public Works Administration to construct low-cost housing (Hunt 2005). Although housing advocates viewed this as a step forward, most acknowledged that it was only a temporary pump-priming economic stimulus measure (McDonnell 1957). Advocates sought a more permanent federal government housing construction and slum clearance program, organized along the lines of European limited-dividend and cooperative housing programs, but the courts saw things differently. In *United States v. Certain Lands in the City of Louisville* (1935), a circuit court of appeals ruled that the federal government could not

exercise the power of eminent domain for slum clearance and low-cost housing construction. In *New York City Housing Authority v. Muller* (1936), the New York Court of Appeals ruled that local housing authorities could use eminent domain for this purpose, thus signaling that any slum-clearance program going forward would have to be carried out by state and local authorities (Fish 1979).

Labor organizations also shaped the public housing debate. The Labor Housing Conference, established in 1934, hired as executive director one of the rising stars in the housing movement, Catherine Bauer,<sup>4</sup> whose book *Modern Housing* (1934) introduced European housing strategies to the American public. Through her experiences in Europe and work with the Regional Planning Association of America, Bauer came to view the housing issue through the broader lens of modernism, regionalism, and new town planning. She was less interested in slum clearance than in the creation of a “modern housing” program that would house a broad cross section of the working class in new suburban towns, modeled after Ebenezer Howard’s garden city concept (Oberlander and Newbrun 1999).

The political battles among these and other constituencies illustrate the complexity of the social meaning of housing among New Deal-era housing reformers. While housing advocates were unified in their support for some form of government-led effort to create housing for low-income workers, Simkhovitch and the NPHC saw slum clearance as central to this effort. In contrast, Bauer saw the problem as “not nearly so much the existing slums as it is the incapacity of private enterprise to meet the great need for new housing in the near future” (Hunt 2005, 200). Housing reformers also faced opposition from the Roosevelt administration, from Roosevelt himself, who was reluctant to lend his full support to earlier versions of the public housing bill, and from the FHA. According to urban historian Bradford Hunt (2005, 202), “Bauer resented the FHA’s insistence on single-family housing, disliked its homeownership rhetoric, and distrusted its leadership, largely taken from the real estate industry.”

The 1937 Housing Act established a federal public housing program, but various political compromises produced a program that bore little resemblance to Bauer’s modern housing vision. The act included amendments that capped allowable construction costs, imposed income restrictions, limited participation by nonprofit housing societies, and required the “equivalent elimination” of one slum housing unit for each new public housing



unit constructed (Hunt 2005). These amendments ran counter to Bauer's goal of establishing a comprehensive government housing program that would house a broad cross section of the working class in areas outside existing slums, with widespread participation from nonprofit housing organizations (Hunt 2005; Schwartz 2015). Even though she initially came out in opposition to many of the act's amendments, Bauer wrote in the *New Republic* in 1937 that the Housing Act was "a radical piece of legislation—perhaps the most clear-cut and uncompromising adopted under the New Deal" (Hunt 2005, 210).

Roosevelt did not live to see the fruits of the federal public housing program that he helped create. Anti-New Deal politicians elected in 1938 and 1942 embargoed funding for the program. During World War II, Congress funded housing for defense purposes but banned its use for low-income households (von Hoffman 2000). In the meantime, Roosevelt began to publicly express a new vision for a more expansive welfare state that secured positive rights to minimal consumer welfare. In his 1941 State of the Union address, Roosevelt outlined a list of "four freedoms" that every human being should enjoy. The third freedom on the list—freedom from want—was the basis for rights that guaranteed access to the means of material subsistence. In his 1944 State of the Union address, Roosevelt declared, "We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. Necessitous men are not free men" (Sunstein 2004, 12). With this statement, Roosevelt was not making a virtue-based argument, nor was he saying that necessitous men do not deserve to govern. Instead, he aimed to instill a much broader understanding of the rights guaranteed to all Americans. His "Second Bill of Rights" was based on the idea that a "new basis of security and prosperity can be established for all—regardless of station, race, or creed." The fifth right on this list was "the right of every family to a decent home" (Sunstein 2004, 13).

Roosevelt's Second Bill of Rights was never formally enacted into law, but his successor, Harry Truman, embraced it. Following Roosevelt's death in 1945, Truman requested that Congress pass a list of domestic reforms that included housing reform (von Hoffman 2000). While there was public support for measures designed to alleviate the nation's pent-up demand for housing, particularly for workers returning from World War II, conservative opponents of the New Deal in Congress and real estate interests played a more significant role than in earlier debates and set an agenda that

prioritized slum clearance and redevelopment over public housing. Not wanting to be left out of the growing movement to reform housing and urban development policy, public housing advocates eventually threw their support behind a new law that would combine urban redevelopment with public housing provision. It would take several years for the fragile alliance between public housing advocates and real estate interests to coalesce, but by the end of the decade, Congress had passed the Housing Act of 1949. It established, for the first time, the national goal of providing “a decent home and a suitable living environment for every American family” (Housing Act of 1949, 42 U.S.C. § 1441). Title I of the act authorized \$1 billion in loans to help cities acquire blighted properties for redevelopment, and Title III authorized federal loans and grants to build 810,000 public housing units over the next six years.

For the first time since the homestead acts, the federal government assumed a significant role in the acquisition and disposition of land for human habitation, this time in urban areas rather than on the frontier. The 1954 and 1956 revisions to the Housing Act expanded this provision of the law, adding the term “urban renewal” and expanding the scope of the act beyond mere land clearance, providing funds for the rehabilitation and conservation of existing structures, enforcement of building codes, relocation of displaced inhabitants, and citizen participation in urban renewal planning (Schwartz 2015). The 1954 and 1956 revisions reflected the growing influence of a constituency that was inspired by the success of the 1945 Baltimore Plan, which emphasized aggressive code enforcement, quasijudicial enforcement mechanisms, and property rehabilitation over the mere clearance of slum properties. The political alliances supporting the Baltimore approach to redevelopment mirrored those established in turn-of-the-century New York, with landlords objecting to restrictive regulations and real estate developers and investors favoring comprehensive code enforcement as a way to stabilize urban property values in the face of change (von Hoffman 2008).

In the end, the ideological underpinnings of the New Deal–era federal housing policy apparatus reflected a marriage of convenience between right-based liberalism and progressivism. Whereas classic liberals such as John Locke looked to government to protect the rights of property-owning producers, the intellectual leaders of the New Deal–era housing movement saw government as the guardian of rights that secured positive freedoms to

minimal consumer welfare. According to Catherine Bauer (Aronovici 1934, 21), “A decent dwelling is not a reward withheld for the successful, but a fundamental right to which every citizen is entitled, the provision of which becomes a responsibility of government.” Echoes of this same idea resurfaced in Roosevelt’s “right of every family to a decent home” (Sunstein 2004, 13) and the 1949 Housing Act’s goal of providing “a decent home and a suitable living environment for every American family” (Housing Act of 1949, 42 U.S.C. § 1441).

When asked about the intellectual origins of his New Deal, Roosevelt hearkened back to the British new liberalism of David Lloyd George: “Lloyd George a quarter of a century ago put through in two years a greater body of radical reforms than the New Deal has attempted in five.” It is for this reason that Roosevelt preferred to describe his New Deal initiatives using the term “liberal” rather than “progressive” (Rodgers 1998, 423–424). Roosevelt resurrected right-based liberalism using the language of progressivism while appealing to middle-class consumers as individual bearers of rights rather than members of a collective class (Donohue 2003). As discussed in the next section, the New Deal–era federal housing policy apparatus ultimately failed to secure rights to housing, and the contradictions between expanded housing opportunities for some and the denial of these same opportunities to others defined the postwar American housing debate.

### **The Postwar Homeownership Republic**

By the 1950s, America had established the foundations of a new “homeownership republic,” characterized by homeownership, suburbanization, homogeneous housing styles, and socioeconomically segregated neighborhoods. The FHA partially enabled the homeownership republic through expanded access to financial capital and restrictions on who could access that capital and where. Local zoning ordinances reinforced the homogeneity of housing styles, the separation of residential and commercial areas, and the exclusion of low-income rental housing from neighborhoods dominated by the owned single-family detached home. Frank Lloyd Wright’s Broadacre City, with its similarly sized single-family homes on one-acre lots stitched together by a vast network of roads, elevated the homeownership republic into a utopian ideal. While Wright celebrated the homeownership republic as a spatial manifestation of America’s legacy of moral individualism and

freedom, cultural critics William H. White and David Riesman equated the homeownership republic with conformity and the loss of freedom (Fishman 1987).

The homeownership republic was also made possible by changes in homebuilding. By the 1950s, the American homebuilding industry had evolved beyond its early origins in small-scale craft production. Landowners constructed early American homes directly, with assistance from local friends and relatives or local craft builders. During the late nineteenth and early twentieth centuries, prospective homebuyers purchased land and paid for home construction using the proceeds from construction loans financed by local building and loan associations.<sup>5</sup> This process began to change in the 1920s, when large-scale community builders emerged to purchase large plots of suburban land and construct homes in advance of home purchase agreements. By the 1950s, mass-produced tract-home subdivisions had proliferated throughout America (Harris 2009).

The rise of community builders transformed the prospective homebuyer into an anonymous consumer, whose tastes and preferences had to be anticipated in advance rather than communicated through a personal face-to-face dialogue between the builder and homebuyer (Harris 2009). With this transformation, community builders, rather than housing consumers or social reformers, began to play a more important role in shaping the American social meaning of housing. Not everyone preferred to live in homogeneous suburbs, of course, and some large community builders responded to the latent demand for neighborhood diversity by offering developments characterized by a variety of housing styles, price ranges, and types. For example, during the 1960s, Maryland developer James Rouse, a leading figure in the implementation of the Baltimore Plan, built the large master-planned suburban mixed-use community of Columbia, Maryland, touting its diversity of housing options as a selling point. Regardless of whether community builders provided homogenous suburbs or mixed-use communities, they were the ones shaping the social meaning of housing.

The anonymization of the housing consumer and the proliferation of suburban master-planned communities also transformed the connection between housing and citizenship. The homeownership republic required a new type of citizen—the “consumer-voter”—whose most important democratic act was voting with their feet to satisfy individual preferences for housing and local public goods and services. Charles Tiebout’s (1956)

classic article provided an economic justification for decentralized public good provision and, by implication, suburbanization, because the proliferation of local governments on the urban periphery enabled those with unique preferences for local public goods to live among others who shared their preferences. Bruce Hamilton (1976) demonstrated that when local governments rely on property taxes to finance local public goods, they face strong incentives to “zone out” inexpensive homes that do not generate enough property tax revenue to cover the home’s share of the cost of providing local public goods and services. The insights of Tiebout (1956) and Hamilton (1976) suggest that in the homeownership republic, homeowners face incentives to become more civically engaged, not because they are more virtuous or more attuned to the common good but because they have an economic interest in propping up the collective value of owned homes (Fischel 2005).

Although the mortgage finance tier of the two-tier federal housing policy apparatus remained intact during the 1950s, several forces converged to threaten the long-term viability of New Deal-era antipoverty initiatives. Economic prosperity during the postwar era led many to conclude that the United States had solved the problem of poverty. In reality, the nation had only isolated and hidden the problem from the tract homes of the suburban homeownership republic. The sterility and security of suburban life lulled Americans into believing that New Deal-era antipoverty initiatives were no longer needed. By the mid-1950s, most of those receiving direct aid from the federal government were served by the Aid to Dependent Children (ADC) program, and an increase in the share of single Black women receiving ADC payments fueled racially motivated attacks on the program. Many states and localities added fuel to the fire, restricting ADC eligibility through residency rules and intrusive “man-in-the-house” policies. The fates of New Deal-era antipoverty programs were also shaped by Cold War politics. Senator Joseph McCarthy and the House Un-American Activities Committee launched a full-scale attack on individuals, organizations, and ideas that smacked of communism, and many conservative members of Congress leveled the same attacks on the New Deal-era public housing program (Katz 1996).

By the late 1950s, many began to question the truth of the prevailing narrative of an increasingly prosperous and affluent American society. John Kenneth Galbraith, a post-Keynesian economist who coined the term “affluent society” in his 1958 book of the same name, questioned whether the

rising economic tide would lift all boats (Galbraith 1958). Social critics such as Michael Harrington (1962) argued that the affluent society masked a growing population of “invisible poor” who were concentrated, isolated, and segregated within urban neighborhoods and rural Appalachia. A decline in the demand for unskilled labor combined with an increase in migration to cities fueled a rise in urban poverty. Foreign aid programs awakened Americans to the plight of the poor in developing nations, and the persistence of US poverty gave the Soviet Union rhetorical ammunition for its Cold War propaganda machine (Immerwahr 2015). John F. Kennedy responded to these trends and made poverty alleviation a central component of his presidential platform. One of the signature efforts of his administration was the 1962 Public Welfare Amendments to the Social Security Act, which greatly expanded federal support to states for local casework, job training, job placement, and other social services. As Kennedy focused attention on the problem of poverty, the civil rights movement shone a bright light on urban poverty and the institutional racism that perpetuated it.

### **The Return of Right-Based Housing Reforms**

By the 1960s, many had become disillusioned by the federal government’s failure to act on its 1949 goal to provide “a decent home and suitable living environment for every American family” (Housing Act of 1949, 42 U.S.C. § 1441). Although the Housing Act of 1949 committed the nation to constructing 810,000 units of public housing within six years, that goal was not met until 1968 (von Hoffman 2000). Efforts led by the federal government to decentralize control over housing and community development activities paradoxically spurred new grassroots housing movements that were opposed to strong federal oversight of housing provision in low-income areas and communities of color. These movements spoke a new language of rights, translated from the liberal and natural rights traditions into a more inclusive tongue, to underscore the moral urgency of their demands for reform.

### **The Civil Right to Fair Housing**

Throughout the twentieth century, America’s civil rights warriors fought to dismantle the discriminatory housing market barriers that excluded people of color from the homeownership republic, but the moral language of American housing reform offered few words to express warriors’ rallying

cries. Under the classic liberal interpretation of property and contracts, individual property owners enjoyed the right to sell or lease property to whoever they wished. While some republicans called for the redistribution of landed property to people of color, others appealed to republican values to deny access to housing and property. The debates surrounding the terms of labor contracts during the Progressive Era rarely extended into the realm of housing contracts, and progressive reforms such as zoning more often restricted rather than expanded access to housing for people of color.

Despite liberalism's poor track record, many civil rights advocates still understood the right to fair housing as a liberal right that had been constitutionally guaranteed but not yet extended to all Americans. In *Buchanan v. Warley* (1917), Boston attorney and National Association for the Advancement of Colored People (NAACP) member Moorfield Storey led the fight against a Louisville, Kentucky, racial zoning ordinance that prohibited people of color from seeking housing on blocks where whites were in the majority. Classic liberalism provided the ammunition needed to strike down the ordinance. The Supreme Court concluded that the Louisville law deprived people of color of their right to alienate property without due process, a testament to the power of the liberal interpretation of property rights when those rights are taken seriously (Ely 1998).

After racial zoning ordinances were ruled unconstitutional, whites turned to racially restrictive covenants—private deed restrictions that prohibited the sale of homes to people of color—to maintain racial segregation patterns. The legal battle against racially restrictive covenants proved to be more of a challenge because, unlike racial zoning ordinances, deed restrictions were enforced through voluntary private contracts, not state actions. Several restrictive covenants were successfully challenged on technical grounds, but it was not until 1948, in *Shelley v. Kraemer*, that racially restrictive covenants were ruled unconstitutional.

*Shelley* marked a shift in legal tactics from *Buchanan*. In *Muller v. Oregon* (1908), Louis Brandeis had established a precedent for the application of statistical data and consequentialist reasoning to cases questioning the legitimacy of government regulations. At a 1945 NAACP meeting in Chicago, Charles Houston, dean of the Howard University Law School, recommended that the same strategy be applied to racially restrictive covenant cases. In *Shelley*, attorney George L. Vaughn presented social science

evidence to demonstrate that restrictive covenants were antithetical to sound public policy because they forced Black persons to live in segregated conditions, and segregation was detrimental to Black quality of life (Ware 1989).<sup>6</sup> Thurgood Marshall later relied on the same strategy to argue the landmark civil rights case *Brown v. Board of Education* (1954).

*Shelley* and *Brown* sent a clear message to those in the fair housing movement that the courts were more likely to dismantle discriminatory housing market barriers that produced harmful segregation patterns. Armed with new social science evidence linking racial segregation with social disorder and “institutionalized pathology” (Clark 1965), civil rights activists and activist-scholars began to call more forcefully for the elimination of de facto segregation patterns that perpetuated racial concentrations of urban poverty. The Commission on Race and Housing, an independent citizens group that included several prominent social scientists among its members, released a report in 1958 recommending that “authorities in charge of low-rent public housing should vigorously combat the tendency for public housing projects to become low-income and racial ‘ghettos’” (Commission on Race and Housing 1958, 66). In 1965, the National Committee against Discrimination in Housing (NCADH) held a national conference on “How to Break Up the Racial Ghetto” (von Hoffman 1998b).

In 1968, two presidentially appointed commissions also called attention to the harms of segregation. The National Advisory Commission on Civil Disorders, also known as the Kerner Commission, linked segregation to racial inequality and urban poverty, claiming that America was moving toward “two societies, one black, one white—separate and unequal” (National Advisory Commission on Civil Disorders 1968, 1). The Kerner Commission presented two options for addressing the social ills caused by residential segregation: “enrichment” strategies designed to improve living conditions in majority-Black central city neighborhoods and “integration” strategies designed to open up majority-white suburbs. Of these two options, the Kerner Commission expressed a clear preference for the second option but conceded that some mixture of the two was likely needed (Farley 2008). The National Commission on Urban Problems, also known as the Douglas Commission, released a report titled *Building the American City* that echoed the Kerner Commission’s concerns with segregation but placed more emphasis on state and local housing plans and the elimination



of local regulatory barriers to affordable housing (National Commission on Urban Problems 1968).

Against this backdrop, the US Congress considered the adoption of fair housing legislation.<sup>7</sup> Initial attempts to pass a fair housing law failed, in part because of opposition from the real estate community and the lack of support among moderate Republicans and southern Democrats. The assassination of Rev. Dr. Martin Luther King Jr. and subsequent demonstrations in Washington, DC, and other large American cities spurred a call to action that forced congressional opponents of fair housing legislation to reconsider their positions. Following an emergency session of Congress called amid the turmoil surrounding demonstrations in DC, Title VIII of the 1968 Civil Rights Act—the Fair Housing Act (FaHA)—was enacted into law.

Although the harms caused by residential segregation were in full view by 1968, the words “segregation” or “integration” did not appear in the final version of the FaHA. The bill’s sponsors, Massachusetts Republican senator Edward Brooke and Minnesota Democratic senator Walter Mondale, tended to view the elimination of private-sector housing market discrimination as sufficient to create more racially integrated residential patterns (Yinger 1995). One HUD general counsel later agreed, saying, “Congress anticipated that the abolition of racially discriminatory housing practices would ultimately result in residential integration” (Polikoff 1986, 48). While those in Congress held different views of what was required to achieve integration, the FaHA’s sponsors viewed integration as a legitimate government interest that was later acknowledged by the courts in *Linmark Associates, Inc. v. Willingboro* (1977) (Yinger 1995).

Although the version of the FaHA signed into law by President Lyndon B. Johnson never addressed residential segregation directly, one provision of the FaHA has since been interpreted as a desegregation mandate. Section 808 of the FaHA requires the federal government (HUD) to administer programs and activities “in a manner affirmatively to further the purposes of” fair housing, a directive that fair housing advocates have dubbed the “affirmatively furthering fair housing” (AFFH) mandate (Fair Housing Act 1968, § 808). The scope of the AFFH mandate—and the question of how to affirmatively foster integrated housing patterns without compromising other housing policy goals—eventually drove a wedge between integrationists and advocates committed to the goal of housing people of color in the places where they already lived.

### The Right to Community

In contrast to the civil right to fair housing, understood by most as an individual right not to be denied housing opportunities on the basis of race or ethnicity, and for some the right to live in an integrated neighborhood, the “right to community,” as I define it, has been understood as a collective right held in common by the members of a minority racial or ethnic group inhabiting a place.<sup>8</sup> For right to community advocates, the civil right to housing embodies more than nondiscrimination. It recognizes a person of color’s racial or ethnic identity, acknowledges a racial or ethnic group’s shared historical experience of discrimination and oppression, protects a community’s right to foster a distinctive place-based sense of collective identity, and secures the political right to collective self-determination and self-governance.

There are many similarities between the idea of a right to community and the republican ideal of self-governance. Jefferson’s yeoman republic and Lewis Masquerier’s rural republican townships were each based on visions of a nation of stakeholders bound to the earth and to each other by networks of decentralized self-governing communities. Municipal governments had the potential to play an important role in the realization of these republican ideals, but the proliferation of Dillon’s Rule laws during the late nineteenth century constrained cities’ ability to effectively govern themselves until twentieth-century progressive reformers such as Cleveland Mayor Tom Johnson successfully secured home rule for some municipalities (Frug 1980).

Throughout America’s history, Black and Indigenous people of color have appealed to the right to community only to have their pleas ignored. During the Jacksonian years of territorial expansion, George Henry Evans was among the few who called attention to the injustice of America’s forced displacement of native tribes, appealing to Native Americans’ rights to community throughout his career. Evans attacked the Indian Removal Act of 1830, claiming that the states had “no more right to jurisdiction over the territory of the Cherokees than we have to be King of France” (Buhle and Dawley 1985, 17). The success of postbellum Black homesteader colonies and freedmen’s towns hinged crucially on collective solidarity and strong local institutions, but this sense of community emerged in the absence of, not because of, America’s formal recognition of Black Americans’ collective rights to land as restitution for the evils of slavery (Friefeld et al. 2019).

The contemporary right to community movement began as a way to open up housing opportunities for people of color, a goal that was originally broadly consistent with the integrationist aims of the fair housing movement. In 1942, the Metropolitan Life Insurance Company began planning for Stuyvesant Town, a large development designed to house returning war veterans. From the beginning, the project was designed to be an exclusively white enclave. The chairman of Metropolitan Life told a reporter that “Negroes and whites don’t mix. Perhaps they will in a hundred years but not now” (von Hoffman 1998b, 19). Low-income families were displaced, and the rental policy for Stuyvesant Town homes banned people of color. A protracted legal battle ensued, led by the NAACP, the American Civil Liberties Union, and the American Jewish Congress. In *Dorsey v. Stuyvesant Town Corp.* (1949), housing and civil rights advocate Charles Abrams argued the case, claiming that government-subsidized property constituted a “state interest” and that the “right to lease and occupy a home is a civil right” protected by the equal protection clause of the Fourteenth Amendment (Gold 2014, 48). The appeals court ultimately rejected this argument. Refusing to give up the fight for minority tenants’ rights, the coalition of advocates who argued the *Dorsey* case formed the New York Committee on Discrimination in Housing, which eventually grew into the NCADH (von Hoffman 1998b).

During the 1950s and 1960s, the right-to-community movement faced a new foe: the federal urban renewal program. Although urban renewal projects enjoyed broad support among many central city mayors, critics argued that urban renewal projects took too long to complete, subsidized high-value real estate projects rather than low-income housing construction, displaced the poor and people of color, and destroyed the social fabric of many thriving communities of color (Wilson 1966). Although fair housing and right to community advocates presented a unified front in the fight for open housing within suburban areas, the urban renewal battles exposed new conflicts between integrationists and right to community advocates (Goetz 2018). Urban renewal plans often appealed to the integrationist aims of “stabilizing” urban neighborhoods and stemming white flight, goals that right to community advocates interpreted as coded language for gentrification and displacement. For example, in one 1959 description of the Hyde Park-Kenwood Urban Renewal Plan, University of Chicago anthropologist Sol Tax (1959, 22) painted a picture of a neighborhood that, prior to urban renewal, was “being engulfed by a tidal wave of population from the

segregated, long-contained black belt at the borders of our neighborhood.” He applauded the Hyde Park-Kenwood Urban Renewal Plan, characterizing it as “the first case of an urban neighborhood’s being saved from becoming a slum” by “breaking the pattern of racial residential segregation which has characterized cities in the North.”

In addition to mobilizing in opposition to top-down government programs that threatened to destroy communities, right to community advocates have fought to catalyze the bottom-up development of local economic, political, and social institutions required for effective self-governance. In the early 1950s, residents of the Back-of-the-Yards district in Chicago<sup>9</sup> tried to secure resources to upgrade the neighborhood’s housing stock, but the district had been redlined, and banks were unwilling to lend to residents. The Back-of-the-Yards Council, created in the late 1930s by community organizer Saul Alinsky, leveraged its organizational power to secure services from city hall and convince local banks to lend to district residents (Jacobs 1961).<sup>10</sup> By the late 1950s, community advocates in partnership with large philanthropies mobilized to spur grassroots community uplift campaigns in other American cities. The Mobilization for Youth program in Manhattan and the Ford Foundation’s Gray Areas initiative attracted the attention of US senator Robert Kennedy and later served as a national model for community development.

As part of his Great Society domestic policy initiative, President Johnson marshaled the power of the federal government to lend support to grassroots community development efforts. Soon after being sworn into office, President Johnson launched a full-scale “war on poverty.” A centerpiece of Johnson’s war on poverty was the 1964 Economic Opportunity Act, which funneled federal money through the Office of Economic Opportunity (OEO) to local nongovernmental community action agencies (CAAs) that were designed to be the fiscal agents for a variety of antipoverty initiatives. CAAs were designed to enable the “maximum feasible participation” of local community residents in the design and implementation of community development strategies (Halpern 1995). The CAAs embodied the ideals of republican self-governance, as reflected in one early OEO bulletin, which stated: “Above all, an acceptable antipoverty plan must be a program in which projects are carried out not *for* the community, but rather *by* the community—with external financial assistance—to attack community problems” (Katz 1996, 267; italics in the original).

Although Johnson's community action program created a large number of local institutions supporting community uplift and self-governance, many of which still exist today, the program was not without its critics. Community representatives on CAA boards often represented the narrow interests of friends and families rather than the broad interests of the most disenfranchised members of the community. As Daniel Patrick Moynihan observed, "Patronage, which was the source of stability in the original ethnic neighborhood political organization, became a source of instability in the contrived organizations created to fill the gap left by the destruction of the real thing" (Moynihan 1969, 138).

Johnson failed to fully appreciate the inherent contradictions embedded within his top-down approach to community development. Many community organizations relied on OEO funds to contest formal local governance institutions and support militant forms of community action. In Syracuse, for example, an organization led by Saul Alinsky relied on federal community action funds to organize tenants' unions, bail protesters out of jail, and run a voter-registration drive to defeat the incumbent mayor (Immerwahr 2015).

The use of community action funds to support radical forms of community activism should not have come as a surprise. If discriminatory federal policies were responsible for creating conditions of concentrated poverty and racial segregation, it was only natural that once gaining power, disenfranchised communities would seek to alter the structures of inequality that produced the problems they faced. As Saul Alinsky wrote in the first chapter of his influential book *Rules for Radicals* (1971, 3), "The Prince was written by Machiavelli for the Haves on how to hold power. Rules for Radicals is written for the Have-Nots on how to take it away." In their calls for reform, some community advocates began to see the nation-state as an increasingly irrelevant actor. In 1970, Huey Newton called on the global "dispersed collection of communities" to "seize the means of production and distribute the wealth" within "a small unit with a comprehensive collection of institutions that exist to serve a small group of people" (Immerwahr 2015, 159).

In the end, the philosophical contradictions embedded within the community action program and the political backlash facing Democrats in the years leading up to the 1968 presidential election eventually contributed to the demise of the OEO. In 1967, Congress required that state or local governments supervise the activities of all CAAs. These changes, along with

an eventual reduction in funding for the program, led to the departure of those within the OEO who supported the ideals of maximum feasible participation. Moynihan recommended dismantling the OEO entirely, and during the Nixon administration, the administration of the OEO was placed into the hands of Donald Rumsfeld and Dick Cheney, neither particularly sympathetic to the idea of community action. Nixon tried to dismantle the OEO, but it remained intact until the Reagan administration (Immerwahr 2015).

The perceived failures of the community action program led to changes in the federal government's approach to community development within low-income communities. Under the 1966 Model Cities program, citizen participation in community development was encouraged, but federal funding flowed to municipal governments rather than directly to community organizations. In 1968, as part of an amendment to the Economic Opportunity Act, the Special Impact Program was created to fund the establishment of local community development corporations (CDCs)—private nonprofit corporations that received funding from a variety of sources, often working in collaboration with government and industry to promote neighborhood revitalization, housing, job training, and social service coordination (von Hoffman 2012b). The CDCs' collaborative public-private partnership organization model was a stark contrast to the radical anticapitalist approach favored by many CAAs.

The transformation of The Woodlawn Organization (TWO), an Alinsky-supported civil rights organization in Chicago, illustrates how CDCs charted a path toward community development that was markedly different from the path favored by advocacy-oriented CAAs. When it was initially created in 1961, TWO favored confrontational tactics, such as rent strikes and protests. Organizers drove groups of 40 to 50 tenants to the suburbs to picket the homes of slumlords. When TWO became a CDC, it reoriented its mission toward community development projects funded by private foundations and government agencies (Fisher 1994). Robert Fisher (1994, 144) describes TWO's evolution from an activist neighborhood organization to a professional mission-oriented organization as a transition from "confrontation to coexistence."

### **Tenants' Rights and Welfare Rights**

As the homestead movement grew throughout the nineteenth century, a quiet revolution simmered beneath the surface as tenants mobilized to

secure new rights to remain on rented land without being evicted during times of economic hardship. The New York anti-rent movement scored an early victory in the mid-nineteenth century with changes to the New York State Constitution that outlawed feudal tenure arrangements. In response to rising rents on New York's Lower East Side during the early twentieth century, tenants staged a series of rent strikes that resulted in landlord concessions (Lawson 1984).

The tenants' rights movement has been more sporadic and disorganized than other right-based housing movements. Tenant organizing has always been difficult, because rent increases often displace potential tenant organizers. Furthermore, tenant groups tend to disband after securing landlord concessions. In New York, alliances between tenants' rights groups and socialist organizations scared away mainstream social reformers, particularly during periods when US anticommunist sentiment ran high. Labor's support for tenant causes has been episodic, and in some cases labor organizations have actively opposed tenant organizations (Drier 1984).

One of the tenant movement's most significant policy victories came with the adoption of rent controls in large US cities such as New York and Washington, DC. During World War I, the US Housing Corporation established vacancy registration bureaus and "fair rent" committees in several US cities to handle complaints about unjustified rent increases during the war-induced housing shortage (Radford 1996). Several local jurisdictions followed up with emergency rent controls. In *Block v. Hirsch* (1921), the Supreme Court upheld the constitutionality of the District of Columbia's emergency rent controls. Justice Oliver Wendell Holmes argued that there was a public interest in the temporary regulation that was analogous to the public interest in utilities (Ely 1998). Three years later, in *Chastleton Corp. v. Sinclair* (1924), the courts concluded that the housing emergency had passed, and the rent control law was struck down. In New York, a similar emergency rent control ordinance was revoked in 1929 by preemptive state action. Rent controls returned to New York during World War II, when the federal government froze rents in several cities to curb inflation. Although the federal government no longer plays a role, rent control has remained in New York City since then. Rent controls eventually returned to other US cities in the 1960s, but states often responded by enacting laws that preempted the further adoption of local rent controls (Keating, Teitz, and Skaburskis 1998).

During the 1960s, the tenant movement aligned with the civil rights movement to pursue new avenues for reform on behalf of renters of color. The rent strike was a common method of protest. In 1963, Black and Puerto Rican tenants organized a rent strike in Harlem to protest their dilapidated living conditions. The strike eventually grew from 16 to 500 buildings, according to some estimates (Fox Piven and Cloward 1967). The Northern Student Movement, Mobilization for Youth, East Harlem Tenants' Council, the Congress of Racial Equality (CORE), and the Metropolitan Council on Housing joined the tenants' cause. Tenants won an early legal victory when the courts recognized tenants' right to refuse to make rent payments when facing hazardous living conditions. The city responded with a vermin remediation and rental housing renovation campaign, but the tenant coalition lacked the strength to endure drawn-out legal battles, and the rent strike came to an end in 1964 (Fox Piven and Cloward 1967). Other similar rent strikes later broke out in the District of Columbia, Brooklyn, Cleveland, and Detroit. In Pittsburgh, Citizens against Slum Housing was initially formed to promote neighborhood upgrading and other self-help strategies, but the group soon turned its attention to tenants' rights issues, winning a series of legislative and administrative reforms, including a strengthened rent withholding law, a housing court, and a new city relocation agency (Indritz 1971).

Apart from the NAACP legal defense fund, there were few resources available to assist those seeking to test the plaintiff's arguments in *Dorsey v. Stuyvesant Town Corp.* that the "right to lease and occupy a home is a civil right." That changed in the 1960s, as funds became available under the Economic Opportunity Act to support local legal aid and advocacy organizations. The expanded legal advocacy network supported activism and legal action on behalf of tenants' rights. In 1969 alone, tenant advocacy organizations acted on 67 occasions to support tenants' rights. In that same year, the Chicago Tenants' Union, the Chicago Urban League, and American Friends Service Committee formed the National Tenants' Organization (NTO) to unite tenants nationally around the cause of tenants' rights (Indritz 1971). With the help of organizers sent by Rev. Dr. Martin Luther King Jr., tenants' unions were established in Chicago to act as collective bargaining agents on behalf of tenants. Civil rights attorney Gilbert Cornfield described the East Garfield Park Tenants Union as follows:



We had been picketing, there had been a lot of excitement on the West Side, and finally, here we were: they were willing to talk to us. But after all of that action, publicity and excitement, you couldn't go in and say you wanted some toilets repaired after they asked you what you wanted. We decided that what we wanted was a contract, like a collective bargaining contract, a piece of paper that guaranteed certain rights to the tenants that they hadn't had before, and that set forth some responsibilities of management to the tenant instead of always the other way around. Once you have a collective bargaining agreement, you had to have somebody to sign it on behalf of the tenants. That's how the East Garfield Park Tenants Union was born. (Indritz 1971, 18)

The expansion of legal advocacy in the 1960s also provided ammunition for the welfare rights movement, which fought to establish legal rights to welfare payments and other forms of government assistance. In 1966, Richard Cloward and Francis Fox Piven wrote an influential article in *The Nation* titled "The Weight of the Poor: A Strategy to End Poverty," which called for a mass information campaign to end poverty. The authors sought to instigate a political crisis by recruiting large numbers of the poor to enroll for the welfare benefits to which they were entitled. The authors hoped that such a crisis would lead to legislation authorizing a guaranteed minimum income. Leaders in the civil rights movement, such as George Wiley, former associate director of CORE, joined the welfare rights movement and worked to establish a coalition of civil rights and antipoverty advocates under the umbrella of the National Welfare Rights Organization (NWRO) (Fox Piven and Cloward 1971).

Legal advocates advanced new legal arguments on behalf of the right to welfare. Charles Reich (1964) argued that federal assistance to the poor should be interpreted as a new form of property and protected with the same guarantees as any other privately owned asset. If, as progressives argued, property rights were created by positive law, why should this same reasoning not be applied to rights to welfare and other forms of public assistance created by law? In *Goldberg v. Kelly* (1970), the Supreme Court declared that welfare recipients could not be removed from the welfare rolls without a fair hearing. Although the court did not say that the government had to provide welfare benefits, it did rule that the termination of welfare benefits had to respect constitutional due process rights (Sunstein 2004).

Reich's (1964) argument had the potential to revolutionize thinking about public housing and other forms of housing assistance. Echoing Roosevelt's 1944 State of the Union address, legal philosopher Frank Michelman (1970,

207) argued that welfare rights could be understood as the minimum material conditions required for equal citizenship, and the “right to be housed” could be understood as “a claim upon organized society, on behalf of each individual or household unit, to be assured of access to minimally adequate housing.” In *Shapiro v. Thompson* (1969), a case that questioned the legality of a waiting period for the receipt of California welfare benefits, the court relied on this reasoning to heavily scrutinize efforts to eliminate “food, shelter, and other necessities of life” (Sunstein 2004, 163). Other legal advocates encouraged public agencies to withhold welfare payments to landlords operating substandard rental properties. In Illinois, for example, the Cook County Department of Public Aid established a no-payment program that resulted in an injunction ordering landlords to bring buildings up to code (Indritz 1971).

Although the Supreme Court became more critical of the welfare rights argument during the 1970s, the expansion of tenant advocacy spurred the adoption of several modifications to state landlord-tenant laws, including laws recognizing an implied obligation to maintain decent living conditions for tenants (the “implied warranty of habitability”) and protections against evictions in retaliation for complaints or tenant organizing. Other reforms addressed security deposits, the right to withhold rents, utility shutoffs, and the seizure of tenants’ possessions (Drier 1984). These reforms marginally expanded tenants’ rights vis-à-vis landlords but still fell short of guaranteeing full legal rights to be housed regardless of tenure. Jesse Gray, a leader of the 1963 Harlem rent strike, had proposed merging the NTO and the NWRO to create a “real people’s movement.” According to Gray, “We both are dealing with the same people. . . . People on welfare are tenants too” (New York Times 1971). Despite Gray’s enthusiasm, both the NTO and NWRO eventually disbanded.

### **The Human Right to Housing**

In 1943, Norman Rockwell unveiled a series of paintings titled the *Four Freedoms*, memorializing Franklin D. Roosevelt’s 1941 State of the Union address. The third painting in the series, *Freedom from Want*, depicted a family free from want, gleefully anticipating a holiday feast. The *Saturday Evening Post’s* reproduction of the painting was accompanied by an essay by Carlos Bulosan, a farmer, labor activist, and author who migrated to the United States from the Philippines during World War II. Reflecting on his

journey to America, Bulosan observed that, "Our march to freedom is not complete unless want is annihilated" (Bulosan 1943).

The international human rights movement was born from the dream of extending to the world the four freedoms outlined in Roosevelt's 1941 State of the Union address. Following the Anglo-American Atlantic Conference of 1941, the United States and the United Kingdom released the jointly authored Atlantic Charter, which called for a postwar world order that would "afford assurance that all the men in all the lands may live out their lives in freedom from fear and want" (Borgwardt 2005, 4). The two allied nations expressed a desire "to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labor standards, economic advancement and social security" (Anderson 2008, 81).

In June 1945, delegates from 50 nations gathered in San Francisco, two months after Franklin D. Roosevelt's death, to sign the United Nations (UN) Charter. After the end of military conflict in September 1945, one of the first items of business for the UN was the establishment of an international declaration that would put an end to the atrocities committed by all sides during World War II. The UN Commission on Human Rights was charged with drafting the declaration, and former first lady and US delegate to the UN Eleanor Roosevelt served as the founding chair of the commission (Glendon 2002).

As the commission began its work to develop a declaration of human rights, philosophical tensions among the delegates rose to the surface. Representatives of liberal democracies appealed to the values of individualism, negative liberty, and equality, while representatives from Soviet Bloc countries argued that these same values only perpetuated the oppression of the working class. Yugoslavian delegate Vladislav Ribnikar argued that true liberty consists in "perfect harmony between the individual and the community," evoking a positive conception of freedom that echoed the German institutionalists and their American progressive pupils (Glendon 2002, 39). Lebanese delegate and eventual chair of the commission Charles Malik countered with a liberal view of human rights that hearkened back to the natural rights tradition, saying, "The 'human person' [comes before] any group to which he may belong, whether it be class, race, or nation; his 'mind and conscience' were the 'most sacred and inviolable things about him'; the group can be wrong, just as the individual can be" (Eshet 2010, 150).

A statement prepared in 1947 by the American Anthropological Association questioned the universality of human rights, warning that a declaration of human rights should not be “a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America” (Glendon 2002, 222).<sup>11</sup> Advocating for a conception of rights that incorporated the right to community, the association challenged the delegates “to formulate a statement of human rights that will do more than just phrase respect for the individual as an individual. It must also take into full account the individual as a member of the social group of which he is a part, whose sanctioned modes of life shape his behavior, and with whose fate his own is thus inextricably bound” (Glendon 2002, 222). Despite some delegates’ sympathy for collective right claims, most delegates held that one of the primary purposes of a human rights declaration was to protect individual persons from state-sanctioned atrocities such as those committed by Nazi Germany. Canadian delegate John Humphrey, the author of the “Humphrey Draft” of the declaration, stated that “one purpose of both drafts was to protect individuals from their governments. If the protection of human rights did not mean that, it did not mean much” (Eshet 2010, 160).

These debates revealed three different, and often conflicting, conceptions of human rights: “first-generation rights,” the Enlightenment Era political and civil rights found in most liberal democratic constitutions; “second-generation rights,” which guaranteed rights to minimal social and economic guarantees; and “third-generation” collective rights, which protected the right of self-determination for peoples. The Soviets charged that communist nations were doing much more than most Western nations to guarantee second-generation rights, and despite Franklin D. Roosevelt’s prior endorsement of rights to the means of economic subsistence, many in the United States were reluctant to commit the nation to supporting second-generation rights (Eshet 2010; Glendon 2002).

Another sticking point was the issue of civil rights. The broad and inclusive language of the Atlantic Charter initially gave hope to American civil rights leaders who saw the emerging global human rights conversation as a potential forum for advancing the cause of racial justice in the United States and abroad. For many in the civil rights movement, racial justice meant securing “freedom from want” for everyone, regardless of the color of their skin. According to NAACP board member William Hastie, former dean of Howard University’s law school, “Starvation has no bill of rights

nor slavery a Magna Carta" (Anderson 2008, 82–83). Following the war, the NAACP outlined a list of "basic civil rights" that included the right to "unsegregated and unrestricted housing" (Anderson 2008, 83).

W. E. B. Du Bois lobbied the US State Department to have the NAACP recognized as an official consultant to the United States' UN delegation, but the NAACP's presence attracted the ire of southern Democrats such as Texas senator Tom Connally, who stubbornly opposed any measure that challenged southern Jim Crow laws and practices. In discussions surrounding the establishment of the UN Charter, the phrase "nothing in the Charter shall authorize . . . intervention in matters which are essentially within the domestic jurisdiction of the State concerned" was added by future secretary of state John Foster Dulles to appease Connally and other southern Democrats (Anderson 2008, 85–86). The Soviets, recognizing the inherent contradictions between the United States' advocacy for human rights and its legacy of racial oppression, urged the creation of the Sub-commission on Prevention of Discrimination and Protection of Minorities (MINDIS). The US State Department shrewdly shaped the agenda of the subcommission in ways that would not draw attention to the United States by redefining minorities in a way that excluded Black Americans, referring only to "national minorities," such as the Kurds, Armenians, and Basques (Anderson 2008).

These and other actions taken to downplay the United States' unflattering historical record on civil rights issues brought protests from American civil rights leaders. In 1947, W. E. B. Du Bois authored a petition on behalf of the NAACP titled *An Appeal to the World: A Statement of Denial of Human Rights to Minorities in the Case of Citizens of Negro Descent in the United States of America and an Appeal to the United Nations for Redress*. The petition called attention to the hypocrisy of a nation founded on the ideals of equality and democracy that still "finds itself continuously making common cause with race-hate, prejudiced exploitation and oppression of the common man" (Du Bois 1947, 2). Walter White of the NAACP asked Eleanor Roosevelt to be present when *An Appeal to the World* was to be submitted to John Humphrey, but she declined. While her official reason for declining was her belief that the commission should not receive petitions from anyone but member states, she was also conscious of the sensitive position of the United States on the issue of civil rights. She knew that the Soviets would use *An Appeal to the World* for their anti-American propaganda and was reluctant

to support a measure that opposed the government she represented (Eshet 2010). *An Appeal to the World*, along with an earlier petition submitted by the National Negro Congress, was eventually discussed within MINDIS but was never heard by the full UN delegation (Anderson 1996).

Sensing the potential for opposition to a human rights treaty in Congress, particularly among southern Democrats, Eleanor Roosevelt proposed unrolling the document in stages, first in a nonbinding declaration, then a treaty, and then a binding enforcement mechanism. On December 10, 1948, the United Nations General Assembly voted to adopt the Universal Declaration of Human Rights (UDHR). The UDHR defines a right to housing in Article 25(1), which states that, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control” (Hohmann 2014, 16). Although no countries voted against the UDHR, five Soviet Bloc countries abstained in opposition to the overemphasis on “eighteenth-century rights” and underemphasis on economic, social, and cultural rights (Eshet 2010, 178). Yugoslavia, Saudi Arabia, and South Africa also abstained.

Implementation of the UDHR through the establishment of treaties and enforcement mechanisms was stalled by Cold War politics, but human rights language soon became incorporated into the constitutions of several new nations. Debates surrounding the UDHR then turned to the establishment of a binding treaty implementing the UDHR. To get the treaty through the southern-dominated Senate, the Truman administration proposed breaking the treaties, or “covenants,” into two parts, one that dealt with civil and political rights and another that dealt with social and economic rights. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) were not officially adopted until 1966 and were not enforced until 1976. The ICESCR enumerates the right to housing in Article 11(1) as “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” (Hohmann 2014, 17). Importantly, although President Jimmy Carter signed the ICESCR in 1977, it has remained dormant in the

Senate Foreign Relations Committee since 1979 and has never been ratified with the advice and consent of the Senate, which implies that the United States is not bound by the ICESCR to protect the human right to housing (Lewis 2008).

UN delegates held different views of what the right to housing entailed. In the deliberations leading up to the adoption of Article 11 of the ICESCR, delegates were divided over the question of whether the right to housing should be singled out or be included as a component of a more general right to an adequate standard of living. Some argued that the right to an adequate standard of living could theoretically encompass all the rights listed in the ICESCR, not merely those enumerated in Article 11. Others objected that the concept of an adequate standard of living varied among countries and over time. Delegates from the Soviet Union proposed that the right to housing be defined as a right to living accommodations, but the proposal was rejected because some felt that the language proposed by the Soviets placed undue emphasis on state-supported housing provision. The final language of the ICESCR reflected the majority opinion of the delegates that adequate housing be understood as a component of the more general right to an adequate standard of living (Craven 1995).

The marginalization of American civil rights organizations from the human rights debate ultimately shaped the tactics pursued by civil rights leaders. The NAACP's strategy of highlighting America's embarrassing record on civil rights alienated the organization from the US human rights delegation, and by broadly defining civil rights as emphasizing interracial economic equality and second-generation rights, the NAACP was labeled a communist sympathizer. Caught between a rock and a hard place, the NAACP leadership eventually left the global human rights movement, re-labeled itself as an "American organization," and reoriented its civil rights advocacy work toward the fight for interracial political equality (Anderson 2003). Civil rights advocates reinvigorated calls for interracial economic equality in the late 1960s, but the movement hit a brick wall in 1968. Rev. Dr. Martin Luther King Jr. was assassinated not long after the launch of his Poor People's Campaign, and the American public shifted its attention to the Vietnam War following the disastrous Tet Offensive. The lily-white faces in Norman Rockwell's *Freedom from Want* painting were a reminder that in the United States, people of color continued to be excluded from the rights guaranteed to all humanity.

## From the Common Good to Social Citizenship

Roosevelt's two-tier federal housing policy apparatus was both the apotheosis of the progressive movement's consumer consciousness and a return to the right-based rhetoric of the liberal tradition. In his Second Bill of Rights, Roosevelt gave voice to Catherine Bauer's vision of housing as a "fundamental right to which every citizen is entitled, the provision of which becomes a responsibility of government" (Aronovici 1934, 21). Unfortunately, progressivism's exclusionary legacy tainted the egalitarian aims of New Deal-era housing policy. Rather than extend housing rights to all American citizens, the housing policies adopted during the Roosevelt and Truman years gave birth to a postwar homeownership republic that denied housing opportunities to people of color and destroyed vibrant communities.

The postwar welfare state evolved to grapple with these contradictions, and several social movements proposed new conceptions of rights that redefined the obligations of the state, the rights of citizens, and the meaning of citizenship itself. Welfare rights advocates fought for the formal recognition of second-generation rights. On the international stage, UN delegates called for the formal recognition of third-generation collective rights for national ethnic minorities, and, in the United States, right to community advocates appealed to a similar conception of rights to empower disenfranchised communities, at times evoking the same civic republican ideals of self-governance espoused by the American founders.<sup>12</sup>

Thomas Humphrey (T. H.) Marshall, a British social theorist and student of Leonard T. Hobhouse, proposed the concept of "social citizenship" in 1950 to capture the new right-based understanding of citizenship introduced by the twentieth-century welfare state. According to Marshall,

Citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed. There is no universal principle that determines what those rights and duties shall be, but societies in which citizenship is a developing institution create an image of an ideal citizenship against which achievement can be measured and towards which aspiration can be directed. The urge forward along the path thus plotted is an urge towards a fuller measure of equality, an enrichment of the stuff of which the status is made and an increase in the number of those on whom the status is bestowed. . . . Citizenship requires a bond of a different kind, a direct sense of community membership based on loyalty to a civilization which is a common possession. It is a loyalty of free men endowed



with rights and protected by a common law. Its growth is stimulated both by the struggle to win those rights and by their enjoyment when won. (Marshall 1950, 28–29, 40–41)

Echoing Franklin D. Roosevelt's 1944 State of the Union address, Marshall argued that *social rights* include “the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society” (Marshall 1950, 11). While Marshall does not appear to have shaped the thinking of those in the American civil rights movement, his understanding of citizenship captures the ideals expressed by civil rights leaders, who fought to extend full citizenship—through equal civil, political, and social rights—to American citizens who had historically been denied those rights. Civil rights leaders such as Rev. Dr. Martin Luther King Jr. would likely have agreed with Marshall that the ideal of full social citizenship, if realized, could have a powerful “integrating effect” by instilling in all citizens a feeling of equal social worth (Marshall 1950, 40).

Although Marshall was not directly involved in the international human rights dialogue, he shared the American Anthropological Association's skepticism of appeals to universal moral principles. His experience leading the Social Sciences Department of the United Nations Educational, Scientific and Cultural Organization (UNESCO) between 1956 and 1960 further solidified his view that universal human rights would be difficult to realize in a world with diverse sociopolitical cultures (Moses 2019). For Marshall, citizenship embodies a common understanding of what it means to be a full member of a political community. This understanding, in turn, establishes the moral foundation of rights and duties. Since the definition of citizenship varies among nations, the grounds of rights and duties also vary.

Marshall's conception of social citizenship offers a different interpretation of the common good than the one favored by republicans and progressives. For Marshall, the common good is not a goal that a chosen few strive for but rather a justification for society's obligations to its members. A society's institutions are bound by a duty to protect civil, political, and social rights so that all citizens are full members of society, regardless of their virtues. As discussed in later chapters, the right to a decent home, the civil right to fair housing, and the right to reside securely in one's chosen community can all be interpreted as extensions of the rights of social citizenship.