

## 5 Homes without Foundations

The basis on which the structure rests seems to me to be chalk. . . . .

—Edgar Allan Poe, “The Light-House,” in *Poetry and Tales* (1984 [1849], 925)

In 1980, UK prime minister Margaret Thatcher appeared on British television to promote the 1980 Housing Act. One of its key features was the “right to buy” government-subsidized council housing. According to Thatcher, “If you have been a council tenant for at least three years, you will have the right, by law, to buy your house” (Beckett 2015). The years that followed saw the largest divestiture of council housing since the program’s creation in the nineteenth century. Thatcher’s right-based rhetoric, which elevated private property rights over the social rights of citizenship, embodied the ideology of *neoliberalism*. From its gestation in a 1938 conference designed to chart a “third way” between socialism and laissez-faire capitalism to its violent birth in the 1973 Chilean coup d’état that brought Augusto Pinochet to power, neoliberalism emerged during the 1970s as a counterrevolutionary response to left-wing social movements of the 1960s. In the United States, President Richard Nixon set the stage for the rise of neoliberal housing policy with the appointment of four conservative Supreme Court justices, the devolution of the federal government’s responsibility to house low-income renters, and the reorientation of federal rental housing policy away from housing production subsidies to tenant-based rental vouchers. Ronald Reagan put the final pieces of the neoliberal puzzle together by slashing HUD’s budget and deregulating mortgage finance. Since the Reagan years, neither Republican nor Democratic administrations have veered substantially from the neoliberal path, even after the housing market crashed under its own weight in 2007.

The contemporary American neoliberal housing landscape is a far cry from Catherine Bauer's modern housing utopia. Today's postmodern housing reality is defined by the absence of the federal government and a housing market that is fragmented, decentralized, and segmented, exhibiting inequalities in housing price, quality, type, tenure, and location. Residential property rights that were unbundled during the Progressive Era have been reassembled during the neoliberal era into a variety of new housing options, including prefabricated homes, tiny homes, cohousing, shared-equity ownership arrangements, and flexible live-work spaces.

Contemporary American housing justice movements share a common foe in neoliberalism, but these movements are also fragmented, appealing to different moral frameworks to justify housing policy approaches that are often inconsistent with one another. The alliance between tenants' rights advocates and right to community advocates has recently clashed with a new generation of renter advocates over the question of gentrification, and the fair housing movement has come to be defined by its contentious relationship between integrationists and right to community advocates. A new housing justice movement that combines a cosmopolitan human right to housing with the collective right to the city has the potential to unify housing advocates. Still, it remains to be seen whether this new alliance can transcend the historical divisions within and between the human rights and civil rights movements.

### The Neoliberal Turn

In contemporary academic and advocacy discourse, the terms "neoliberalism" and "capitalism" are often used interchangeably to describe the underlying logic of virtually any market-based economic system. Unfortunately, neoliberalism's ubiquity has obscured its meaning. Critics of capitalism often apply the neoliberal label to a straw man caricature of the current economic order rather than pin down what is "new" or "liberal" about contemporary economic processes. The first new liberals—Green, Hobhouse, Hobson, and members of the Liberal Party who shaped British domestic policy in the early twentieth century—were staunch critics of the *laissez-faire* economies that today's neoliberals endorse.

David Harvey (2005, 2) describes neoliberalism as "a theory of political economic practices that proposes that human well-being can best be

advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade.” Contemporary neoliberalism more closely resembles the classic liberalism of John Locke and Adam Smith and the legal doctrine of laissez-faire constitutionalism that prevailed in late nineteenth- and early twentieth-century America. Contemporary neoliberalism has roots in the free-market ideology of Austrian economists Friedrich von Hayek and Ludwig von Mises and American neoclassical economists Milton Friedman, James Buchanan, and Gary Becker.

Neoliberalism first emerged not from conservative nostalgia but from a progressive attempt to define a “third way” between socialism and laissez-faire capitalism. In 1938, a group of scholars convened in Paris at the Walter Lippmann Colloquium to discuss Lippmann’s new book, *An Inquiry into the Principles of the Good Society* (1938). The discussions revolved around the topic of how liberalism could be rescued from what most at the conference saw as the failings of both laissez-faire capitalism and state-led collectivism. Although the term “neoliberalism” was coined by Alexander Rüstow to describe the third way, it has come to be associated with the views of Hayek and Mises, two attendees of the colloquium who were more optimistic about the possibilities of unchained laissez-faire capitalism than the third way (Mirowski and Plehwe 2009).

As critical geographers have observed, contemporary neoliberalism has a distinctly spatial manifestation. The erosion of the welfare state has been associated with a simultaneous rise in local and global processes that Erik Swyngedouw (1997) describes as “glocalization.” At the international level, the erosion of trade barriers (at least until the recent rekindling of trade wars between the United States and its trade partners) and deregulation of financial markets have sent capital on a global search for tax havens and a “spatial fix” (Harvey 1989). At the same time, as nation-states have devolved elements of the welfare state to state and local governments, municipalities have evolved into “growth machines” to attract the financial and physical capital needed to provide jobs and services to residents (Hackworth 2007). As discussed later in this chapter, housing justice movements during the neoliberal era have also “jumped scale,” linking local advocacy efforts with the global human rights movement (Hackworth 2007).

Although scholars have defined neoliberalism in different ways, I will stick with its common understanding as an ideology characterized by a

limited role for the nation-state in the management of economic and social policy outside the protection of private property rights. In the housing policy arena, neoliberalism is often associated with Thatcherite public housing privatization initiatives, but since government-owned housing constitutes such a small share of the US housing stock, American-style neoliberal housing policy has come to be defined by the outsourcing of the federal government's obligation to house the poor to private and nonprofit entities, the devolution of federal housing policy to state and local governments, a shift from housing production subsidies to tenant-based vouchers, and an overall decline in government low-income housing expenditures across all levels of government (Goetz 2013). Other US neoliberal housing strategies include the deregulation of home finance and various initiatives designed to stimulate private-sector affordable housing production. Although the Republican Party has embraced elements of the neoliberal agenda since the New Deal era, neoliberalism did not significantly shape federal housing policy until the 1970s, and since then both Democrats and Republicans have embraced elements of the neoliberal agenda.

Richard Nixon set the stage for neoliberal housing policy by fulfilling his campaign promise to appoint strict constructionists to the Supreme Court. The appointment of Chief Justice Warren Burger and Justices Harry Blackmun, Lewis Powell, and William Rehnquist tilted the balance of the court against those who supported the recognition of social rights. In *Lindsey v. Normet* (1972), a group of tenants refused to pay rent unless the landlord agreed to make the repairs needed to bring the renters' dwelling units into compliance with local housing codes. The lawyers representing the tenants argued that the "need for decent shelter" and the "right to retain peaceful possession of one's home" should be protected as "fundamental interests which are particularly important to the poor and which may be trampled upon only after the State demonstrates some superior interest" (Lehrer 1973, 310). The Burger court rejected this argument and found that there is no "constitutional guarantee of access to dwellings of a particular quality" and that "the Constitution does not provide judicial remedies for every social and economic ill" (Lehrer 1973, 317).<sup>1</sup>

In *San Antonio School District v. Rodriguez* (1973), the Supreme Court rejected the plaintiff's argument that the state's public school system discriminated against poor people because expenditures per pupil were higher in wealthy areas that generated more local property tax revenues. The court

went on to deny any fundamental right to education, asking, “How, for instance, is education to be distinguished from the significant personal interest in the basics of decent food and shelter? Empirical examination might well buttress an assumption that the ill-fed, ill-clothed, and ill-housed are among the most ineffective participants in the political process” (Sunstein 2004, 167). Since the Burger court had already denied that decent shelter was a fundamental right, it was clearly not going to concede that public education rose to that standard. With these and other similar cases, the Burger court resurrected the doctrine of *laissez-faire* constitutionalism to derail further attempts to recognize social rights to redistribution.

### **The Devolution and Outsourcing of Federal Housing and Community Development Policy**

The trajectory of federal housing policy during the early years of Nixon’s presidency did not veer much from the path charted by President Johnson. Aside from the establishment of a short-lived new town program, the 1970 Housing and Urban Development Act retained most programs of the Great Society era. Things changed in 1973, when Nixon issued an 18-month moratorium on HUD funding in response to widely publicized scandals in the Section 235 and 236 programs and the perceived failings of the public housing program. That same year, Nixon tried to abolish the OEO, but the courts intervened because he had failed to gain congressional approval for Howard J. Phillips’s appointment as acting director (and lead dismantler) of the OEO (Fish 1979; Welfeld 1992).

In 1972, Nixon launched his “new federalist” approach to devolving and decentralizing the administration of domestic policy.<sup>2</sup> New federalism was implemented through two channels: (1) a general revenue sharing program that redistributed federal income tax revenues directly to state and local governments and (2) the consolidation and simplification of existing categorical intergovernmental grant programs into new “block” grants that provided state and local governments more discretion over spending priorities. The 1974 Housing and Community Development Act embodied the new federalism, consolidating several categorical community development grant programs into the single Community Development Block Grant (CDBG) that was allocated to states and local governments on a formula basis for use on a wide range of community development activities.

The outsourcing of community development activities to private non-profit organizations and CDCs that began during the Johnson administration continued apace during the Nixon years. A large national network of private philanthropic organizations emerged to provide financial support and technical assistance to local CDCs. NeighborWorks America was created from a partnership between HUD and members of the Federal Home Loan Bank Board, drawing on the lessons learned from a successful grass-roots effort to attract private funding for community development activities in Pittsburgh. The Local Initiatives Support Corporation was created from a joint effort between the Ford Foundation and six major corporations to provide loans, grants, and technical assistance to CDCs. Real estate developer James Rouse founded the Enterprise Foundation (now named Enterprise Community Partners) to issue grants and loans to support low-income housing and community development activities. Initially established to support six organizations operating in six locations, Enterprise had expanded to assist 54 organizations in 27 locations within six years (von Hoffman 2012b).

### **The Deconstruction of the Federal Housing Policy Apparatus**

During President Ronald Reagan's administration, the two-tier federal housing policy apparatus began to unravel, first with cuts to HUD's budget authority and second with the deregulation (and eventual collapse) of the savings and loan industry.

#### **The Low-Income Rental Housing Tier**

Whereas neoliberalism under Nixon meant devolution of the federal government's role in the administration of housing and community development programs, Reagan wanted the federal government out of the housing and social policy business altogether. During the Reagan administration, the federal government dramatically decreased funding for its federal housing programs and reduced HUD's budget authority. According to Reagan's director of the Office of Management and Budget, David Stockman, "The idea that has been established over the last ten years, that almost every service that anyone might need in life ought to be provided and financed by the government as a matter of right, is wrong. We reject that notion" (Blau 1992, 49).

Reagan's policies attacked the social rights movement at its very core. Reagan began by slashing funding for Aid to Families with Dependent Children (formerly Aid to Dependent Children), Social Security, food stamps, and unemployment insurance. He also abolished several community development programs that had been established during President Carter's administration, along with the OEO, which had been on the Republican chopping block since the end of the Great Society era. The signature neoliberal achievement of the Reagan administration was a 70 percent reduction in HUD's budget authority. HUD's budget authority had been around 8 percent of the total federal budget in the late 1970s. With the Reagan cuts, it fell to around 1–2 percent, where it has remained since then (Schwartz 2015).

In many ways, Reagan sought to administer the welfare state according to the same principles that had guided the English Poor Law amendments of 1834, differentiating between those deserving and those undeserving of public assistance, while making public relief so undesirable that no one would prefer it over wage work. During his presidential campaigns in 1976 and 1980, Reagan regularly distinguished between those deserving and those undeserving of public assistance, evoking the racialized and feminized trope of the “welfare queen” to characterize welfare recipients as lazy, corrupt, and undeserving scam artists. The stigmatization of the poor also explains why programs targeted to the needs of the “deserving” poor, such as the elderly and disabled, received more political support. In 1959, Congress created the Section 202 program, which provided targeted housing assistance to the elderly and disabled, and in 1990 it created Section 811 to serve the housing needs of nonelderly persons with disabilities (Dawkins and Miller 2017).

Reagan also ushered in a new approach to financing affordable housing construction. Prior to the 1980s, subsidies for affordable housing production came in one of two flavors. The public housing program subsidized the construction of units that were owned and managed by local public housing agencies, and a variety of mortgage subsidy programs enacted during the 1960s incentivized private-sector developers to construct and operate affordable housing units. Most mortgage subsidy programs had been terminated by the early 1980s, and Reagan's plan to eliminate accelerated depreciation and other multifamily housing tax benefits as part of tax reform brought protests from affordable housing advocates and the homebuilding industry. In response to an aggressive lobbying campaign by these constituencies, the

Low Income Housing Tax Credit (LIHTC) was added to the Tax Reform Act of 1986 as a new incentive to stimulate the private construction of affordable housing (Case 1991). The LIHTC is currently the nation's largest federal subsidy for affordable housing production.

### **The Homeownership Tier**

By the 1980s, the long-term viability of the savings and loan, or "thrift," industry was threatened by short-term interest rate volatility, competition from new household savings vehicles, home price deflation, and Regulation Q, which limited interest payable to savings account holders (Schwartz 2015). President Reagan offered a predictably neoliberal solution to the impending savings and loan crisis: deregulation. Reforms such as the elimination of Regulation Q, the removal of restrictions on high-risk real estate investments, reductions in capital reserve requirements, and the elimination of geographic banking restrictions only exacerbated the problems facing the savings and loan industry, encouraging thrifts to pursue failed speculative real estate ventures.<sup>3</sup> In 1989, Congress passed the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) to bail out the thrift industry through the newly established Resolution Trust Corporation (RTC). Under the new Office of Thrift Supervision, established to replace the Federal Home Loan Bank Board, thrifts faced new restrictions that were designed to shore up capital reserves and reduce speculative investments, but the damage had already been done. Because of failures of preexisting thrifts along with new restrictions on lending, thrifts' market share declined from 56 percent of mortgages originated in 1975 to less than 1 percent by 2009. Between 1986 and 1995, more than one thousand thrifts collapsed, costing American taxpayers \$124 billion (Schwartz 2015).

During the post-thrift era, the American mortgage finance industry evolved from a regional enterprise into a global juggernaut, because of several changes in the mortgage industry that were spurred in part by federal policy, including an increase in the secondary mortgage market activity of government-sponsored enterprises (GSEs),<sup>4</sup> the rise in private-label mortgage-backed securities, the vertical disintegration of the mortgage industry, innovations in the pricing of credit risk, and the rise of subprime lending (Acharya et al. 2011; Immergluck 2009).

The success of the mortgage industry in the post-thrift era hinged crucially on two interrelated factors: the globalization of finance and rising American



home prices. Investors in rich but slow-growing countries sought new global investment vehicles, and mortgage-backed securities created from US home loans were very appealing, particularly with home prices on an upward trajectory. Ultimately, the housing finance tier of the federal housing policy apparatus, which during the neoliberal era had evolved into a vehicle for the global financialization of housing, was too weak to support the weight of overspeculation and lax lending practices. Home prices had risen well above historical averages, and when home prices eventually began to decline in 2006, the US mortgage market unraveled and sent shock waves across the globe. While it is tempting to blame the mortgage crisis on GSEs' increased role in low- and moderate-income homeownership, the evidence belies this claim. While GSEs did invest heavily in subprime mortgages to meet new affordable housing goals enacted during President Bill Clinton's administration, GSE purchases of subprime securities declined during the period when the subprime market rose most rapidly (Schwartz 2015; Immergluck 2009).

### **Reconstructing Federal Low-Income Housing Policy for a Neoliberal Era**

The election of President Bill Clinton was welcomed by many housing policy advocates, who had high hopes that after more than a decade of Republican leadership, a new Democratic administration would return HUD to its prior glory. Clinton expressed a desire to do so, but in practice he sold his housing policy platform by co-opting elements of the neoliberal agenda under the guise of welfare reform. There were two important elements of Clinton's housing policy strategy: public housing reform, which was initially set in motion under President George H. W. Bush, and the expansion and reform of tenant-based housing assistance. A third element—supply-side housing policy reform—reflected a continuation of trends that had been in motion throughout the twentieth century.

### **The End of Public Housing as We Knew It**

Originally conceived by Catherine Bauer as a way to house two-thirds of the working class, public housing eventually came to be viewed as a low-quality, last-resort housing option for welfare recipients and the very poor. In many ways, the politics surrounding the 1937 and 1949 Housing Acts foreshadowed this outcome. In response to the desire of real estate industry

lobbyists to limit competition between private and public housing, public housing units were constructed in areas that were physically isolated from the surrounding community, and income eligibility was set below what was necessary to secure housing in the private market. Limitations on allowable construction costs meant that public housing units were often constructed according to low standards of quality, and congressional public housing appropriations were often driven by political priorities rather than actual facility needs. With declines in the average incomes of tenants over time, most local public housing agencies lacked the resources to cover rising building maintenance costs. The devolution of program administration contributed to a spatial distribution of public housing that reinforced existing patterns of residential segregation by race and income. Many suburban public housing agencies simply refused to participate in the program, and those that did participate faced vocal opposition from majority-white neighborhoods. Often, communities of color that had been abandoned by the private market were the only ones to welcome public housing investment (Schwartz 2015; Goetz 2013).

By the 1970s, critics blamed the public housing program for contributing to the same slum housing conditions that public housing was meant to replace. Apart from occasional adjustments to operating subsidies, Congress did not take any major steps to reform the public housing program until 1989, when it created the National Commission on Severely Distressed Public Housing to evaluate the condition of the nation's public housing stock. The commission concluded that about 6 percent of the nation's 1.3 million public housing units were "severely distressed," with severely poor residents living in deteriorated structures located in high-crime neighborhoods (Popkin et al. 2004). In 1992, Congress launched the HOPE VI demonstration program to replace severely distressed public housing with mixed-income housing. HOPE VI also included funding for the physical renovation of properties, various management reforms, and supportive services for residents. Consistent with the neoliberal emphasis on an active private-sector role in social policy implementation, HOPE VI was structured as a public-private partnership.

HOPE VI embodied the new urbanist design philosophy that swept urban planning circles during the 1990s. New urbanism resurrected the ideals of civic republicanism, emphasizing the civic value of front porches, small lots, diverse housing arrangements, streetscape improvements, and other

amenities thought to cultivate “social capital,” particularly among households earning different incomes. In contrast to the US homeownership movement, which seeks to instill a concern for the common good through the creation of a nation of stakeholders, new urbanists aim to create community from above, through design-based solutions, just as early American settlers shaped the design and configuration of colonial homes to signal collective virtue and tenement housing reformers regulated the urban environment to combat moral decay. President Clinton’s HUD secretary, Henry Cisneros, was a firm believer in the value of the new urbanism and sought to incorporate the same design principles into the HOPE VI program.

HOPE VI and the larger new urbanism movement itself have been criticized for failing to achieve economic inclusivity and community through design. Critics claim that HOPE VI perpetuates social segregation, only at a smaller geographic scale, through the physical separation of subsidized housing and high-priced ownership units, the displacement of former public housing residents, and the establishment of separate governing associations for homeowners and subsidized housing residents (Goetz 2013; Chapple and Goetz 2011). While the HOPE VI program has produced many successful mixed-income developments in communities around the nation, it ultimately reduced the total number of subsidized affordable housing units, often without the provision of any other subsidized alternative (Popkin et al. 2004).

### **Tenant-Based Housing Assistance**

The US Chamber of Commerce and National Association of Real Estate Boards (NAREB) first proposed the idea of providing in-kind rent subsidies directly to households in the debates leading up to the 1937 Housing Act, but progressive housing reformers feared that such a policy would simply reward slumlords. By the 1960s, the battle lines had switched. Robert Weaver, the first HUD secretary, strongly favored rent subsidies, while the US Chamber of Commerce and NAREB opposed the idea. Others saw rent subsidies as a form of social engineering designed to foster the socioeconomic integration of neighborhoods. New York congressman Paul A. Fino called rent subsidies “a social planner’s dream” that gave “the Housing Administrator a blank check to federalize American residential patterns and subsidized forced economic integration” (von Hoffman 2009, 19). President Johnson found an ally for rent subsidies in the National Association of Homebuilders, and

in part because of their support, the Rent Supplements program found its way into the Housing and Urban Development Act of 1965. Despite being enacted into law, the Rent Supplements program received little funding in subsequent appropriations bills (von Hoffman 2009).

In 1968, the President's Committee on Urban Housing (the Kaiser Commission) released a report that recommended the establishment of an experimental housing allowance program (von Hoffman 2012a). The report was released just as Richard Nixon was being sworn into office, and some in the Nixon administration saw rent subsidies as a more efficient way to provide low-income housing assistance. Despite opposition from some at HUD who feared that rent subsidies would distract attention from the guaranteed income program being developed by Daniel Patrick Moynihan, the 1970 Housing and Urban Development Act established the Federal Experimental Housing Allowance Program (EHAP), which provided tenant-based vouchers on an experimental basis to residents in select counties within the states of Arizona, Pennsylvania, Wisconsin, and Indiana. An early empirical evaluation of EHAP offered encouraging evidence to supporters of tenant-based subsidies, but the study was barely under way when Nixon called for a moratorium on HUD funding (Hays 2012). Before the findings from EHAP were released, Nixon stated in a message to the Congressional Committee on Banking and Currency that "of the policy alternatives available, the most promising way to achieve decent housing for all of our families at an acceptable cost appears to be direct cash assistance" (von Hoffman 2012a, 48). In a separate report to the Council on Environmental Quality, President Nixon objected to the "old approach" of publicly subsidizing the construction of affordable homes, claiming it was based on the erroneous "underlying assumption that the basic problem of the poor is a lack of housing rather than a lack of income" (von Hoffman 2012a, 48).

With the Watergate crisis looming, Nixon faced pressure to rescind the HUD moratorium, and a tenant-based subsidy program found its way into the Housing and Community Development Act of 1974 (Hays 2012). Section 8 of the act created the Existing Housing Program, which provided rental certificates to households earning 80 percent of the area median income, covering the difference between 25 percent (later 30 percent) of a family's adjusted income and the fair market rent (FMR), which was initially defined in terms of the median rent charged for recently leased apartments, adjusted for family size. In 1983, under the Freestanding Voucher Program,

local public housing agencies designated “payment standards” that served as the basis for maximum allowable rents. Like the Existing Housing Program, the Freestanding Voucher Program covered the difference between 30 percent of income and the payment standard, but households could choose to live in housing that cost more (or less) than the payment standard if the household covered (or kept) the additional rent. The Quality Housing and Work Responsibility Act of 1998 merged these two rental subsidy programs into the single Housing Choice Voucher (HCV) program that exists today. Under the current program, local housing agencies set payment standards between 90 and 110 percent of the FMR (up to 120 percent in some circumstances), and HUD covers the difference between the payment standard and 30 percent of a household’s income. Households can spend no more than 40 percent of their income on rent and can take the voucher anywhere in the United States. Between 1976 and 2009, the number of households receiving tenant-based rental subsidies grew from 100,000 to 2.2 million (Schwartz 2015).

Initially proposed as a more flexible alternative to supply-side production subsidies, tenant-based rental vouchers eventually became an important tool in the fight against racial segregation and the concentration of poverty. In 1966, Dorothy Gautreaux and three other Black tenants of the Chicago Housing Authority (CHA) filed a class-action lawsuit charging the CHA and HUD with discrimination in the location of federally assisted housing. The suit charged that CHA-managed public housing units were exclusively located in majority-Black residential areas and that there were few options for Black tenants seeking to live in majority-white communities. In *Hills v. Gautreaux* (1976), the Supreme Court paved the way for the CHA’s implementation of a metropolitan-wide desegregation plan that relied on tenant-based vouchers to achieve racial integration. Public housing residents and those on the waiting list for assisted housing were awarded tenant-based vouchers restricted to locations in either majority-white suburban areas or minority-majority areas located within the city of Chicago. Because tenants were randomly assigned to urban and suburban locations, the *Gautreaux* program created a unique social experiment that allowed researchers to observe the social and economic impacts of racial desegregation. Researchers found that suburban movers were more likely to be employed than those moving to urban locations, and the children of adult suburban movers reported higher levels of educational attainment upon reaching adulthood (Rubinowitz and

Rosenbaum 2000). These findings were complemented by research by William Julius Wilson (1990) and John Kain (1992), who found that the spatial isolation of central city Black workers exacerbated the problem of Black unemployment.

The *Gautreaux* evidence was of interest to policymakers at HUD who saw mixed-income housing strategies as important components of the HOPE VI program and HUD housing policy more broadly. Despite the encouraging findings from *Gautreaux*, policymakers still had limited evidence to support the claim that residential integration by income, rather than race, would produce the same benefits. In 1992, Congress responded by creating the Moving to Opportunity (MTO) demonstration program to evaluate the social and economic impacts of residential mobility out of high-poverty areas. The MTO program randomly assigned tenant-based vouchers to public housing residents for use in low-poverty neighborhoods located within the metropolitan areas of Baltimore, Boston, Chicago, Los Angeles, and New York. The findings from early studies examining the impact of residential mobility to low-poverty MTO neighborhoods were not as encouraging as the results from *Gautreaux*. Although those moving to low-poverty neighborhoods reported improvements in health conditions, MTO had little to no effect on the economic self-sufficiency of movers. More recent research examining the long-term impacts of MTO has found that the children who grew up in low-poverty MTO neighborhoods earned higher wages and were more likely to attend college upon reaching adulthood (Chetty, Hendren, and Katz 2016).

### Supply-Side Housing Policy Reform

Neoliberal housing policy requires a robust private housing sector, and the federal government has taken a variety of steps to promote the diffusion of cost-saving mass-production technologies and removal of regulatory impediments to housing production. In contrast to the New Deal-era supply-side subsidy approach, neoliberal supply-side housing policy emphasizes a lean regulatory environment, an innovative housing sector, and limited subsidies. As early as 1919, Le Corbusier called on the homebuilding industry to “occupy itself with building and establish the elements of the house on a mass-production basis” (Wallis 1991, 97). For architect Walter Gropius, the standardization of building components through mass production enabled consumers to assemble individual components into a variety

of housing configurations, thereby enhancing consumer choice (Schneider and Till 2007).

Unlike the auto industry, which was transformed by Henry Ford's assembly-line production methods, the homebuilding industry has been slow to adopt mass-production techniques. Most homebuilders are small, operate on thin margins, and lack the capital to invest in research and development. Things began to change in the early twentieth century, with the introduction of "kit homes" that could be ordered by catalog from companies such as Sears, Roebuck, and Company and Aladdin and assembled on-site. During the 1920s, several companies began to produce "travel trailers" that could be transported behind an automobile. Initially viewed solely as recreational housing options, travel trailers eventually morphed into more permanent mobile homes. By the 1950s, mobile home parks appeared in retirement communities and rural areas (Wallis 1991). In response to the shortage of housing following World War II, President Harry Truman appointed Wilson W. Wyatt as the federal government's special housing expediter. One of Wyatt's pet projects was prefabricated housing. He convinced the Reconstruction Finance Corporation to loan \$90 million to prefabricated housing companies, but the program was eventually shelved (Wheildon 1946).

In 1966, the Demonstration Cities and Metropolitan Development Act authorized HUD to conduct research and promote the adoption of industrialized housing construction methods. Through the In-Cities Experimental Housing Project, HUD produced a report that examined how local regulations, labor rules, and other policies constrained the rapid adoption of cost-saving housing innovations. During President Nixon's administration, HUD Secretary George Romney established the Operation Breakthrough demonstration program, which produced nine factory-built housing prototypes and nearly 3,000 units before the program was terminated (US Department of Housing and Urban Development 2016). Romney also established the Open Communities program, a fair housing initiative that threatened the withdrawal of HUD funding from communities that had adopted exclusionary land-use regulations. President Nixon ultimately pulled the plug on the Open Communities initiative because of vocal opposition from suburban communities.

By the 1970s, the manufactured housing industry faced two challenges. First, housing consumers viewed mobile homes as recreational vehicles or low-quality housing options that were only viable in rural areas where

mobile home parks were permitted. Second, producers of manufactured housing faced a regulatory maze of building codes that varied from state to state and land-use regulations that varied from city to city. This complex regulatory environment made it difficult for them to achieve economies of scale through high-volume production. In 1976, HUD responded by adopting the Manufactured Home Construction and Safety Standards, also known as the “HUD Code,” which created a single national construction standard for all manufactured homes (Fish 1979). The HUD Code standardized building codes for manufactured homes but did nothing to address the regulatory barriers created by local zoning and land-use regulations.

In 1998, during the Clinton administration, HUD established the Partnership for Advancing Technology in Housing (PATH) as a public-private partnership to encourage the diffusion of new homebuilding technologies, emphasizing innovations designed to promote energy efficiency in housing. One of the major initiatives to come out of the PATH program before its demise was an effort to reform local land-use and building regulations to encourage production of affordable housing. In contrast to Romney’s Open Communities program, the PATH “regulatory barriers” initiative was designed as a carrot rather than a stick, which would encourage local regulatory reform through research and the promotion of best practices. The regulatory barriers initiative produced several research reports and advanced knowledge about the extent of local regulatory barriers (US Department of Housing and Urban Development 2016), but it still failed to produce widespread local regulatory reform, primarily because many communities viewed local zoning and land-use regulations as sacred cows.<sup>5</sup>

HUD’s regulatory barriers initiatives and other similar efforts appealed to the theory that all forms of housing production ultimately benefit low-income households even if the new homes constructed are not immediately affordable. Through the “filtering” process, aging homes will eventually decline in value and be sold by higher-income households seeking to move up in the housing market, making older homes available to low-income populations at affordable prices (Ratcliff 1949). Since the New Deal era, housing advocates have cautioned against relying exclusively on the filtering process to provide affordable housing. Edith Elmer Wood (1931), for example, worried that sole reliance on the filtering process would simply relegate low-income households to inadequate homes. Filtering also does nothing to address the short-term shortage of affordable housing.



## Neoliberalism and the Postmodern American Housing Landscape

During the contemporary neoliberal era, the focus of federal low-income housing policy has shifted from public housing and urban renewal to tenant-based vouchers and affordable housing production tax credits. Catherine Bauer's dream of modern housing and Franklin D. Roosevelt's aspiration to extend social rights to housing have gone unrealized. The new postmodern neoliberal housing landscape is one that emphasizes homeownership over renting, housing choice over housing stability, and private- versus public-sector housing production. Two features of this landscape are particularly noteworthy: its overall inequality and its geographic segregation.

According to David Albouy and Mike Zabek (2016), inequality in housing values and rents declined between 1930 and 1970, roughly corresponding to the period when the New Deal-era two-tier housing policy apparatus was still firmly in place. Since 1970, inequality in housing rents and values has increased. In 2012, those owning homes valued in the top 20 percent of the home value distribution held 50 percent of all home value, a level of housing inequality that was almost identical to the level of housing inequality observed in 1930. Matthew Rognlie (2015) finds that rising housing wealth inequality accounts for much of the recent rise in global wealth inequality reported by Thomas Piketty (2014).

The US housing market is also geographically segregated by socioeconomic class. Most metropolitan areas are more integrated by race than they were in 1970, but the average white household still lives in a neighborhood with few people of color (Logan and Stults 2011). US households are also increasingly sorting into communities that are homogeneous by income, education level, political affiliation, and lifestyle preference (Bischoff and Reardon 2014; Bishop 2009). Residential sorting on the basis of preferences for local amenities has transformed overall housing inequality into geographic divides within metropolitan areas (Albouy and Zabek 2016). Residential sorting is not only creating a geographic dimension to the housing divide but also reinforcing that divide. Since 1980, the residential sorting of wealthy people into wealthy places has amplified interregional income disparities (Manduca 2019).

By enabling an increasingly unequal and segregated housing market substructure, neoliberalism has eroded previously shared social meanings of American housing. The traditional owned single-family detached home, a

cultural ideal that inspired generations of housing and land reformers, no longer has the same appeal, particularly for those who watched the value of their single-family home plummet during the 2007–2010 foreclosure crisis. Perhaps this is a good thing. The American housing market now provides a wider range of choices in home styles than has ever existed before. Tiny homes tailored to the needs of young homebuyers coexist with homes that are modifiable as families grow and shrink over time. Prefabricated modular housing components now enable homebuyers to plan and assemble homes into an infinite combination of housing styles. Housing consumers can also now choose which bundle of rights to attach to the home. Shared-equity homeownership options and community land trusts enable homeowners who seek housing security but not profit to forgo the right to earn home equity in exchange for a more affordable home. The challenge for housing reformers is to find a way to retain neoliberalism's benefits for housing diversity, flexibility, and choice while mitigating its tendency to reproduce segregation and inequality.

### **Fragmented Responses to Neoliberalism**

Just as *laissez-faire* constitutionalism shaped the battle lines of the progressive attack on private property during the early years of the twentieth century, the Burger court and rise of neoliberal housing policies set the stage for a new generation's demands for housing justice. Although echoes of the Progressive Era attack on private property still linger, neoliberal-era housing advocacy differs in important ways from the progressive attack on *laissez-faire* constitutionalism, and advocates resisting neoliberalism have pursued divergent paths to reform, with most contemporary housing advocates embracing rather than rejecting right-based approaches.

During the late nineteenth and early twentieth centuries, *laissez-faire* constitutionalism flourished, in part because the federal government had emerged from the Civil War as a strong protector of individual rights. Progressives generally supported a strong role for government but understood that role as that of a steward of collective welfare and the common good, even if certain individual rights, such as the rights to use and earn income from property, were constrained. Many progressives viewed the language of rights as impoverished, atomistic, and antithetical to the pursuit of the common good. By the 1960s, the quandary facing housing advocates was

that many Progressive Era reforms defined the common good in ways that excluded the poor and people of color. Progressive zoning had produced segregated neighborhoods, urban renewal had destroyed communities of color, and public housing had reinforced the spatial concentration of poverty. Right-based reforms regained their appeal during the 1960s because claims of right directly challenged the majoritarian institutions that had infringed on the social rights of people of color and those living in poverty. Furthermore, the reinterpretation of rights as collective moral claims allowed community-based advocates to avoid the critique that rights were grounded in an overly individualistic morality.

During the neoliberal era, housing advocates abandoned their 1960s era antipathy for top-down federal housing programs and challenged the state's inaction rather than its overextension, fighting against the rising tide of neoliberalism while simultaneously demanding new federal subsidy programs geared toward specific categories of housing need and the recognition of minimal entitlements for those marginalized by neoliberal institutions. At the same time, the contemporary housing justice movement's nearly unanimous opposition to neoliberalism has fostered an antipathy toward liberal housing policy solutions, both of the "neo" and "welfare state" varieties.

As the federal government largely withdrew from the low-income housing policy arena during the 1980s, community-based organizations and CDCs picked up the slack. The expansion of the philanthropic sector and large national networks such as the National Low Income Housing Coalition and the Coalition for the Homeless provided a new institutional structure to support community-based housing movements, and nonprofit foundations such as the Enterprise Foundation provided financial support. International nongovernmental organizations charged with monitoring compliance with human rights treaties provided a new global platform for discourse on housing justice issues. The new global infrastructure supporting community organizations did not flatten the place-based orientation of the housing justice movement. Instead, the emphasis on place only became stronger with the global attention drawn to gentrification and forced displacement, fostering new alliances while simultaneously exposing inherent contradictions within the housing justice movement. The remainder of this section explores how the social movements examined in chapter 4 coevolved during the neoliberal era, at times producing new movements on behalf of those facing housing insecurity.

### Enough Housing Is Good Enough

Individuals and families have gone without homes throughout America's history, but curiously homelessness never became a major focus of federal housing policy until the 1980s. Assistance to those without homes has historically been viewed as the responsibility of state and local governments and charity organizations. Single room occupancy apartments and hotels provided inexpensive temporary housing until the postwar era, when many were demolished as part of larger downtown redevelopment and urban renewal initiatives (Feldman 2004). By the 1970s, the homelessness problem had attracted national attention, and housing advocacy organizations began to mobilize on behalf of the homeless. In 1979, Robert Hayes, founder of the Coalition for the Homeless, brought a class-action lawsuit against the city and state of New York in *Callahan v. Carey* (1979). The suit charged that both had violated the New York State Constitution, which states that "the aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions" (N.Y. Const. art. XVII § 1). As part of a consent decree, the city agreed to provide shelter that met basic health and safety standards to all homeless men who were on welfare or were homeless because of disability, effectively creating a right to shelter in New York. *Eldredge v. Koch* (1983) extended the same right to homeless women. A handful of other municipalities soon followed suit by enacting local right-to-shelter ordinances (Foscarinis 2004).

Advocates for the homeless also called for the establishment of a federal program designed to address the homelessness problem. One of the most visible mobilization efforts was the Association of Community Organizations for Reform Now (ACORN) squatter campaign. ACORN was created in 1970 by Wade Rathke, who had been approached by welfare rights advocate George Wiley to form an antipoverty organization comprised of working-class and poor people (Mandell 2012). In 1979, ACORN organized a squatter campaign designed to push city officials to make vacant city-owned properties available for those in need of housing. This effort expanded in the 1980s to 13 cities and in June 1982 led to the creation of a squatters' "Tent City" in Washington, DC. ACORN's advocacy work had impact. ACORN criticized HUD's urban homesteading program for ignoring city-owned properties and failing to prioritize housing to those most in need.<sup>6</sup> Congress listened and incorporated most of ACORN's suggestions into the Housing and Urban-Rural Recovery Act of 1983 (Rohe 1991).

The National Union for the Homeless and the Community for Creative Non-Violence (CCNV) joined ACORN to draw attention to the growing problem of homelessness. Their tent cities were often described as “Reaganvilles,” a jab hearkening back to Depression-era “Hoovervilles.” Mitch Snyder of the CCNV held a hunger strike that led to negotiations with the White House and congressional action on the homelessness issue (Mink and O’Connor 2004). Legal advocates also joined the antihomelessness cause, drafting model legislation that was eventually incorporated into federal law (Foscarinis 2004). This broad coalition’s signature achievement was the 1987 Stewart B. McKinney Homeless Assistance Act, named in honor of its Republican sponsor and advocate, who died soon after the bill’s adoption. The McKinney Act (later named the McKinney-Vento Act to acknowledge Representative Bruce Vento’s ongoing support) established the Interagency Council on Homelessness and federal funding to support a variety of homeless assistance initiatives.

Antihomelessness advocacy since 1987 has focused primarily on extending the limited funding provided through the McKinney-Vento Act and improving its effectiveness. In 2009, President Obama signed the Helping Families Save Their Homes Act, which reauthorized the McKinney-Vento Act and modified it to emphasize the new “housing first” philosophy of providing rapid rehousing before the provision of social services. The act also consolidated several existing programs into a single Continuum of Care program and expanded the definition of homelessness to include people at imminent risk of homelessness.

In addition to their work lobbying for the passage of federal antihomelessness legislation, legal advocates have mobilized in opposition to local and state laws that criminalize homelessness. In contrast to the strategy of advocating on behalf of government funding for shelter provision, this strategy accepts the reality of homelessness while working to protect a homeless person’s ability to access the guaranteed rights of citizenship. During the welfare reform years of the 1980s and 1990s, many local governments in the United States either eliminated their right-to-shelter laws or imposed work requirements and other limits on shelter stays. Other cities imposed criminal sanctions on those sleeping in public. In response to these trends, the National Coalition for the Homeless called for the adoption of “Homeless Bills of Rights,” and several states and localities have passed laws that recognize special legal protections for those without shelter (Rankin 2015).

Legal advocates have also put forth new legal arguments to strike down laws that criminalize homelessness. In *Pottinger v. City of Miami* (1989), for example, the court found that because of the scarcity of shelter beds in Miami, the homeless had no alternative to sleeping in public and that criminal punishments for life-sustaining conduct were cruel and unusual and in violation of the Eighth Amendment (Foscarinis 2004).

Regardless of whether antihomelessness advocates have pushed for homeless assistance funding, legal rights to shelter, or legal protections for those without homes, antihomelessness advocacy has emphasized the distributive goal of *sufficiency* over *equality*. Harry Frankfurt describes the “doctrine of sufficiency” as follows: “With respect to the distribution of economic assets, what is important from the point of view of morality is not that everyone should have the same but that each should have enough. If everyone had enough, it would be of no moral consequence whether some had more than others. I shall refer to this alternative to egalitarianism—namely, that what is morally important with respect to money is for everyone to have enough—as ‘the doctrine of sufficiency’” (Frankfurt 1987, 21–22).

Samuel Moyn (2018, 3; italics in the original) argues that “sufficiency concerns how far an individual is *from having nothing* and how well she is doing *in relation to some minimum of provision* of the good things in life. Equality concerns how far individuals are *from one another* in the portion of those good things they get.” What matters, from the antihomelessness advocate’s standpoint, is that some lack housing, not that some live in homes that are more lavish than others. While an emphasis on sufficiency has helped advocates secure several legal and legislative victories on behalf of the homeless, advocates have largely ignored the role that neoliberal property markets play in excluding the propertyless from privately owned spaces. Instead, many of the strategies pursued by antihomelessness advocates actually *require* neoliberal property markets to generate enough income and wealth to fund redistributive programs adequately. By focusing attention on the state’s role as a redistributor of propertied income rather than its role as the architect of property-based institutions, antihomelessness advocates have left the institution of private property intact.

### Tenants’ Rights and Renter Advocacy

In contrast to the antihomelessness movement’s deference to neoliberal institutions, tenants’ rights advocates have demanded that property-based

institutions be restructured to favor renters. The contemporary tenants' rights movement has joined forces with the right to community movement to advance a conception of housing justice that appeals to collective rights. Alongside the tenants' rights movement, a new generation of renter advocates, identified by their embrace of the YIMBY (yes in my backyard) acronym, is calling for reforms that protect private developers' rights to produce rental housing. The question of gentrification has driven a wedge between these two movements.

Much as the labor movement has challenged employers' rights to define the terms of wage contracts, tenants' rights advocates have sought to restructure laws governing lease contracts to prioritize tenants' occupancy rights over landlords' rights to earn income from, manage, and control the use of privately owned residential property. During the 1970s, tenant advocates achieved several state and local legislative victories. For example, advocacy by the New Jersey Tenants Organization led to one of the nation's strongest state landlord-tenant laws and rent controls in 120 New Jersey municipalities (Ceraso 1999). In 1972, the National Conference of Commissioners on Uniform State Laws published the Uniform Residential Landlord and Tenant Act (URLTA), and several states adopted state landlord-tenant laws that were based on the URLTA or the American Law Institute's Model Landlord Tenant Act, on which the URLTA was based (Glendon 1982).

There have been a few sporadic attempts to organize tenants nationally. The NTO, described in chapter 4, had affiliates in most large and medium-sized cities within a few years, but the organization's membership declined in the 1970s (Drier 1984). In 1980, tenant organizations around the country held the first convention for a newly created National Tenants Union, but the organization eventually lost steam because of the twin difficulties of attracting funding and organizing tenants (Ceraso 1999).

The historical alliance between tenants' rights advocates and right to community advocates has shaped the character of tenants' rights claims, with tenant organizations often appealing to a collective conception of tenants' rights. In theory, the expansion of tenants' rights vis-à-vis landlords does not require viewing tenants as members of a collective group. Tenants' rights could be defined in terms of tenants' individual claims of right, taken severally, not to be deprived of their means of material subsistence, but the Burger court questioned the constitutional basis of such claims. Ironically, by denying the extension of social rights to individual renters, the courts

provided ammunition for the tenant movement's appeal to collective rights. During the neoliberal era, tenants' rights advocates have expanded the idea of housing security to encompass collective rights to live securely in a place and sustain the community where tenants live, particularly in cities facing gentrification. The new antigentrification alliance emphasizes the "right to stay put" amid housing price inflation (Hartman 2002; Imbroscio 2004). Just as Native Americans asserted their rights to community during the nineteenth century in response to the US government's confiscation of native lands, the new antigentrification alliance condemns gentrification as a form of neocolonialism, which, according to Neil Smith (2010, 117), "justifies monstrous incivility in the heart of the city."

The case of Washington, DC, illustrates how the politics of race and place often intersect around tenants' collective rights claims, particularly in cities facing gentrification. In 1973, the District of Columbia gained the home rule right to govern itself at the same time that market forces were threatening to displace the city's majority-Black population. The conflux of these two events meant that tenants' collective rights not to be displaced from DC were part and parcel of their collective rights of self-governance. The District of Columbia subsequently passed several laws designed to shift the balance of residential property rights from landlords and property developers to renters. The Citywide Housing Coalition lobbied for the successful adoption of a rent control ordinance in 1975. The Condominium Conversion Act of 1976 required mayoral and tenant approval of condominium conversions. In 1978, DC imposed an antispeculation excise tax on those who held property for a short period in order to discourage speculation and the flipping of residential property. In a novel twist on Thatcher's "right to buy," tenant advocates successfully pushed for the adoption of the Tenant Opportunity to Purchase Act (TOPA) in 1980. In contrast to Thatcher's policy adopted that same year, TOPA granted tenants the right of first refusal to purchase their occupied rental buildings before the building was offered for sale on the private market. The city also provided financing to assist with a home purchase. Under TOPA, tenants could accept a payment to vacate their occupied rental unit, negotiate to stay for a negotiated or reduced rent, purchase their home, or assign their rights to a third-party negotiator (Huron 2018; Gallaher 2016).

California's coastal cities have also been at the center of debates surrounding gentrification and rental housing affordability. Like DC, California has a



long history of tenant advocacy. Proposition 13, which reduced local property taxes by an average of 57 percent, was primarily intended to benefit homeowners, but it was also sold as a form of tax relief that would be passed on to renters (Capek and Gilderbloom 1992). When renters were greeted with notifications of pending rent increases shortly after the adoption of Proposition 13 in 1978, tenants' rights organizations erupted in protest (Heskin 1983; Capek and Gilderbloom 1992). In the following months, Los Angeles, Beverly Hills, Berkeley, and Davis froze and rolled back rents. Voters in Santa Cruz approved an antispeculation tax similar to what was enacted in Washington, DC. In 1979, voters in Santa Monica approved rent control legislation (Leepson 1979; Capek and Gilderbloom 1992). The real estate industry, represented by the California Housing Council, was alarmed by the backlash from renters and over the next decade and a half lobbied to pass a statewide law that preempted local rent control laws. They were successful in 1995 when Democratic state senator Jim Costa and Republican assemblyman Phil Hawkins jointly sponsored the 1995 Costa-Hawkins Rental Housing Act, which limited cities' ability to enact rent regulation and extend existing rent control laws. Since then, tenants' rights organizations have been united in their opposition to the Costa-Hawkins Act. Bills to repeal the act have been defeated due to pressure from real estate organizations and lobbyists representing landlords.

For the new California YIMBY coalition, the solution to rising rental housing prices is not rent control or tenant protections but instead the removal of regulatory barriers to affordable housing production, a solution that harkens back to the neoliberal supply-side approach that has been advanced by HUD for decades. While YIMBY advocates support private developers' rights to produce rental housing, California's tenants' rights advocates and their allies oppose market-oriented solutions to the housing crisis, advocating instead for tenant protections combined with an expansion of government subsidies for public housing construction. Led in California by the Los Angeles Democratic Socialists of America, so-called PHIMBY (public housing in my backyard) advocates initially aligned with the YIMBYs but were turned off by the YIMBY pro-market ideology. For the PHIMBYs, a large-scale social housing program on the scale of that found in many European countries offers the most effective solution to the contemporary housing crisis (Keeling 2018). Tracy Jeanne Rosenthal, cofounder of the Los Angeles Tenants Union, calls for a resurrection of Catherine Bauer's modern housing vision,

echoing Bauer's belief that "the private market cannot provide adequate housing for poor and working people" (Keeling 2018).

The YIMBYs have also encountered opposition from the right to community wing of the civil rights movement. YIMBY activists want to make it easier to construct housing at any price range, but tenant advocates and right to community advocates object to market-rate housing development when it results in displacement and gentrification. Although for decades housing advocates have objected to NIMBY opposition to affordable housing construction, the California YIMBY movement is a relative newcomer to the housing advocacy movement. Tenants' rights advocates and anti-gentrification groups have characterized California YIMBYs as being out of touch with the housing advocacy movement's roots in civil rights and community organizing, a charge also levied against ACORN in its early years (Mandell 2012). The conflict between tenant advocates and the YIMBYs was on public display in 2018, when YIMBY activists disrupted a rally to oppose SB 827, the controversial statewide zoning reform bill mentioned in the introduction (Axel-Lute 2019).

The state of Oregon has managed to overcome these divisions to pass sweeping reforms of local land-use and rent control laws. In 2019, Oregon legislators passed Senate Bill 608, which restricts yearly rent increases to 7 percent and provides just-cause protections against evictions, two measures that tenant advocates have sought for decades. Later that year, Oregon passed House Bill 2001, which requires cities with a population of 10,000 or more to allow duplexes in single-family zones. Since Oregon's housing advocacy movement has not been characterized by the same divisions that have shaped the California housing debate, Oregon has managed to address the rental housing affordability crisis from multiple angles (Axel-Lute 2019).

There is a growing national constituency for the local land-use policy reforms favored by YIMBY advocates. Several states are now considering the adoption of Oregon-style laws, and in September 2019, Democratic US House representative Denny Heck and Republican representative Trey Hollingsworth introduced the "Yes in My Backyard" Act (YIMBY Act, US House of Representatives 2020) for consideration by the US Congress. The act requires CDBG recipients to report periodically on progress removing local regulatory barriers to affordable housing production. As of this writing, the YIMBY Act has been passed by the House and is awaiting consideration by the Senate.

The tenants' rights movement has assumed a different character in cold housing markets facing disinvestment and decline. In these markets, the challenge has been to find ways of enabling low-income tenants to remain in their homes when faced with job loss and the outmigration of friends and family. During the 1970s and 1980s, the tenants' rights movement pursued various self-help strategies to gain access to homes that had recently been acquired through tax delinquency or foreclosure proceedings. In response to a series of rent strikes in New York City, the state of New York adopted the Article 7-A Amendment, which allowed residents of deteriorated rental buildings to deposit rents with the local judge, who then appointed an administrator to allocate the collected rents to needed repairs. When a recession hit New York City during the 1970s, many landlords simply walked away from their properties, and tenants relied on Article 7-A to collectively acquire and manage the buildings themselves (Gold 2014). Thus, advocacy on behalf of tenants' rights to live in habitable buildings was expanded into a collective right to acquire and manage residential buildings.

In other communities facing disinvestment and decline, community-based organizations have turned to collective land acquisition strategies to catalyze successful grassroots community development campaigns. The Boston-area Dudley Street Neighborhood Initiative (DSNI) has received national acclaim for its efforts to reverse decades of disinvestment. Through a novel arrangement that granted the Dudley Neighbors Incorporation powers of eminent domain, DSNI catalyzed the construction of deed-restricted affordable housing that was then sold to low-income buyers and rented to low-income households (Meehan 2014).<sup>7</sup> The DSNI and other similar community land trust initiatives are the latest manifestation of Henry George's strategy of recouping land value to promote community investments.

Despite some successes, both the old and new generations of the tenants' rights movement face many of the same challenges. Expanded tenants' rights benefit those who are already tenants but do not guarantee a rental unit to those who are currently homeless. Strong antieviction laws may actually have the opposite effect of reducing the turnover of rental units to the next prospective renter. Furthermore, stringent rent controls may restrict the supply of new rental housing and discourage landlords from making property improvements. Tenant advocates have devoted most of their energy to tenure-specific solutions while ignoring broader inequalities in housing

wealth and housing security between those who rent and own homes and those with and without housing. Just-cause eviction laws and rent control ordinances improve rental lease terms for those who already have a lease, but these measures do nothing to alter housing inequalities that span the tenure spectrum.

### **Divergent Paths to Fair Housing**

Just as tenants' rights advocates have fought to alter the institutions of private property to favor renters, civil rights advocates have fought for legal reforms designed to open up housing opportunities to people of color. It was widely recognized by many in the fair housing movement that the compromises needed to pass the 1968 FaHA limited its effectiveness, and much of the advocacy work in the post-FaHA era has been oriented toward improving the fair housing enforcement apparatus through the adoption of various laws that complemented the FaHA, including the 1974 Equal Credit Opportunity Act, the 1975 Home Mortgage Disclosure Act, and the 1977 Community Reinvestment Act. In 1988, Congress also amended the FaHA to strengthen its enforcement mechanisms (Yinger 1995).

Despite relative agreement on the FaHA's overall objective of eliminating housing market discrimination on the basis of race and ethnicity, philosophical disagreements among advocates over the issue of residential segregation have splintered the fair housing movement. In the early 1970s, HUD interpreted the FaHA's AFFH clause as a mandate to integrate the suburbs through regionalist housing policy strategies. The short-lived Open Communities program described earlier conditioned the receipt of HUD funding on the removal of regulatory barriers to affordable housing, and the Regional Housing Mobility program provided incentives to expand regional affordable housing opportunities (Goetz 2003; Goering 1986). Central city mayors, civil rights organizations, affordable housing advocates, and even some HUD officials criticized these and other regionalist initiatives for "allowing housing only where it's not wanted and not putting it where the people are in dire need," in the words of then HUD undersecretary Victor Marrero (Goering 1986, 201).

Tensions also arose over HUD's subsidized housing siting guidelines. In response to *Shannon v. HUD* (1969), which found that the construction of subsidized housing in a majority-Black Philadelphia neighborhood violated the FaHA's AFFH mandate, HUD developed new guidelines that steered

HUD-subsidized housing away from minority-majority neighborhoods. Black politicians criticized HUD's siting guidelines because they limited housing options for Black residents who needed housing assistance but preferred to live in majority-Black neighborhoods (von Hoffman 1998b). Congress held hearings on the HUD siting guidelines in 1979. Representative Cardiss Collins of Illinois objected that residents in minority-majority neighborhoods were in a "Catch 22 situation" that prevented "those who wish to remain in their present neighborhoods from enjoying better housing" in those neighborhoods (Goetz 2018, 107).

The HOPE VI and MTO programs have been criticized on similar grounds. Critics of HOPE VI argue that the program caused massive displacement, catalyzed the gentrification of low-income communities, and failed to foster meaningful social connections between low-income and high-income residents (Goetz 2003; Chapple and Goetz 2011). Critics of MTO argue that the program overemphasized residential choice through mobility while ignoring the needs of communities left behind by movers (Imbroscio 2012). Some also cite the early evaluations of the MTO program, which failed to find conclusive evidence of positive economic impacts for those moving to low-poverty neighborhoods, to argue that the benefits from moving to opportunity were overstated (Goetz and Chapple 2010). Those responding to these critiques point out that MTO and HOPE VI addressed poverty deconcentration but not necessarily racial desegregation, unlike the earlier *Gautreaux* program, on which MTO was based, so the evidence from these studies should not be interpreted as an indictment against initiatives designed to promote racial integration (Goering and Feins 2003).

Two recent developments have rekindled tensions between the integrationist and right to community wings of the fair housing movement. The 2015 *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.* Supreme Court case found that the Texas Department of Housing and Community Affairs' (TDHCA) policy of disproportionately allocating LIHTCs to low-income communities of color constituted a disparate impact violation of the FaHA. A disparate impact is said to have occurred whenever public or private entities rely on policies or practices that adversely impact members of a protected class without having any other legitimate purpose, even if the policy does not explicitly reference the protected class being discriminated against (Yinger 1995). Recognition of the constitutionality of the disparate impact doctrine in fair housing cases is

significant because, unlike individual instances of discrimination, the disparate impact doctrine has a uniquely spatial interpretation, given that disparate impacts are often explicitly defined in terms of segregated residential patterns (Dawkins 2018).<sup>8</sup>

The second source of recent tension can be traced to President Barack Obama's decision to implement the FaHA's AFFH mandate more aggressively. Under previous presidential administrations, local recipients of HUD funding were required to submit an Analysis of Impediments to Fair Housing Choice (AI) plan to demonstrate compliance with the FaHA. A report by the US Government Accountability Office (2010) reviewed 441 AI reports and found widespread problems, including AIs that were outdated, incomplete, and lacked clear implementation guidelines. HUD had previously proposed a regulation in 1998 to clarify and improve the AI process, but the rule was rescinded because of opposition from US mayors.

In 2015, HUD promulgated new rules requiring that all recipients of HUD funds adopt and submit to HUD an Assessment of Fair Housing (AFH) that identified fair housing issues in the local jurisdiction, identified the factors contributing to those issues, and established goals and strategies for responding to those issues. The AFH differed from the previous AI in important ways. First, the AFH was a more standardized process that gave HUD more oversight over the local fair housing planning process. Second, HUD provided online geospatial data to assist in the completion of the AFH. Third, and perhaps most importantly, AFFH objectives were more explicitly tied to residential integration (overcoming historic patterns of segregation and fostering inclusive communities) and geographic access to opportunity goals (US Department of Housing and Urban Development 2015, § 5.152).

Just as HUD seemed poised to tackle residential segregation head-on, President Donald Trump's administration reversed the pro-integrative housing policy path charted by his predecessor. After initially exploring a new AFFH rule that would have downplayed the emphasis on residential integration objectives, the Trump administration officially dismantled the 2015 AFFH rule in July 2020. The Trump administration also significantly revised an Obama-era HUD disparate impact rule to remove references to segregation and make it more difficult to prove disparate impact claims. It remains to be seen whether these reforms will survive beyond the Trump presidency, but President Joe Biden's vocal support for Obama's policy

agenda points to a return to pro-integrative housing policy. As of this writing, the future direction of fair housing policy remains uncertain.

### **The Human Rights Umbrella**

On the international stage, the human rights debate around housing issues did not begin in earnest until the 1990s. The content of the right implied by the UDHR and the ICESCR was clarified in December 1991, when the Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comment Number 4, which for the first time outlined the specific entitlements that comprised the right to adequate housing. These include the legal security of tenure; the availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy (Committee on Economic, Social and Cultural Rights 1991). General Comment Number 7 outlined additional protections against forced evictions (Committee on Economic, Social and Cultural Rights 1997). In 2000, the Commission on Human Rights appointed a special rapporteur on adequate housing, whose mandate has been to focus on adequate housing as a component of the right to an adequate standard of living as recognized under international human rights law.

In the United States, several housing advocacy organizations built on the momentum from the 1996 UN Habitat II conference in Istanbul to initiate a national dialogue on the human right to housing. Initial advocacy efforts following the conference addressed homelessness as a human rights violation. The National Law Center on Homelessness & Poverty (NLCHP) produced several reports identifying litigation strategies and advocacy approaches. In 2003, the NLCHP organized a national forum on the human right to housing, and in 2004 it released a report detailing the homelessness problem in the United States and its human rights implications. Several other organizations followed suit with similar efforts, including the American Civil Liberties Union and the Ford Foundation (Foscarinis 2006).

In 2008, Catherine Powell wrote an influential report titled *Human Rights at Home: A Domestic Policy Blueprint for the New Administration* (Powell 2008). The paper launched a new coalition committed to applying the human rights framework to a variety of federal, state, and local policy reforms. The NLCHP, an important partner in the aptly named "Human Rights at Home Campaign," published *Human Rights to Human Reality: A 10 Step Guide to Strategic*

*Human Rights Advocacy* to assist those seeking to employ the language of human rights to advocate on behalf of rights for the homeless. According to the guide (National Law Center on Homelessness and Poverty 2014, 7), “We have understood that if we are to achieve our mission of ending and preventing homelessness in America, we must gain recognition—by the government, and by the public at large—of housing as a human right to which all are entitled. For close to two decades, we have learned much, through trial, error, and dogged persistence, about how we could use the tools of human rights to strategically aid in our domestic advocacy on behalf of poor and homeless people across the country.”

Human rights advocates have also joined forces with a new generation of advocates in the fight against urban gentrification. Some have interpreted the CESCR’s language on forced evictions to obligate public and private actors to refrain from actions that threaten the legal security of tenure (Ponder 2016). The new human rights campaign against gentrification draws on Henri Lefebvre’s (1968) concept of the “right to the city,” which integrates the right to contribute to the production of urban space with the right to access, occupy, and use urban space (Purcell 2002). Both UN Habitat and UNESCO have supported efforts to incorporate a right to the city into the broader human rights agenda (Purcell 2013).

In the United States, the Right to the City Alliance draws on the human rights framework to incorporate a right to a decent and sustainable home into a broader conception of inhabitants’ right to inhabit and participate in the creation of their community (Knafo 2015). The Right to the City Alliance, an umbrella organization that includes 45 organizational members, combines a place-based orientation with an emphasis on housing justice, economic justice, racial justice, environmental justice, and immigrant justice to oppose neoliberal urban policies directly. The Alliance’s “Homes for All” campaign supports a Renter Rights Committee, comprised of 12 community organizations seeking to pass renters’ rights ordinances, and Renter Nation assemblies that advocate on behalf of tenants’ rights and antigentrification causes (Right to the City Alliance 2015).

The new US human rights and right to the city coalition has been shaped by its interactions with the global human rights movement. The Chicago Anti-Eviction Campaign, an urban homesteading and antigentrification organization, was instrumental in organizing a 2009 visit to the United States by the UN special rapporteur on adequate housing, Raquel Rolnik. Ashraf



Cassiem, a leader of the Western Cape Anti-Eviction Campaign in South Africa, visited leaders of the Chicago Anti-Eviction Campaign to provide tactical advice on how to mobilize the poor to oppose displacement and eviction (Roy 2017). Cassiem saw his visit to Chicago as a way to get to the heart of the global urban crises created by neoliberalism. According to Cassiem,

The problem, you see, is not in South Africa. It's in America. I wanted to go to the root of it, to the root of neoliberal capitalism, to the University of Chicago where the policy was born. It was created in Chicago and so it was there that it had to be dismantled. Evictions were not really the point. It was about the monetization that had made us separate individuals. And so it was in Chicago that I wanted to show up. It was there that we had to kill neoliberalism, rescind it, burn it. That's where we had to shut down the Milton Friedman project. I thought that if we won in Chicago, we would automatically win in South Africa, we would win all over the world. This is why winning in Chicago mattered for us. (Roy 2017, A6)

So far, the new alliance between human rights advocates and right to the city advocates has yet to have a major impact on federal housing policy. Advocacy on behalf of the human right to housing has been complicated by the United States' reluctance to ratify the ICESCR. Proposals to enact the right to housing in US law through a constitutional amendment and legislation were introduced but never adopted (Foscarinis 2006). The Obama administration expressed support for, but failed to act on, a United Nations Human Rights Council recommendation that the United States "continue its efforts in the domain of access to housing, vital for the realization of several other rights, in order to meet the needs for adequate housing at an affordable price for all segments of the American society" (Byrne and Culhane 2011, 386).

As legal historian Samuel Moyn documents in *Not Enough: Human Rights in an Unequal World* (2018), the human rights movement was born from the aspiration to extend the egalitarian welfare state to the world, but human rights advocates abandoned their concern for global egalitarianism just as neoliberalism was on the rise. As neoliberalism exacerbated the gap between the global rich and the global poor, human rights advocates refocused their efforts to assist those hurt most by global capitalism. Something similar happened to US housing advocates during the neoliberal era. Except for those aligned with the PHIMBY movement, most housing advocates no longer call for a large-scale, state-sponsored "modern housing" program, as Catherine Bauer proposed decades ago. Instead, advocates

have become hyperfocused on protecting the basic housing entitlements that are most threatened by the neoliberal tide, while paddling against the political rhetoric surrounding welfare dependency and the stigmatization of those without homes. Antihomelessness advocates have fought to provide minimally adequate housing to the homeless during times of urgent need, and tenants' rights advocates have aligned with right to community advocates to protect low-income renters from imminent eviction and the loss of community. Meanwhile, the overall rise in housing inequality during the neoliberal era has been ignored.

### The American Home's Chalk Foundations

The passage by Edgar Allan Poe cited at the beginning of this chapter is from Poe's last written work, "The Light-House," in which Poe describes a structure that had become a place in which to be "thoroughly *alone*" (Poe 1984 [1849], 924; italics in the original). By the end of the passage, the narrator's quest to find peace and quiet within the cylindrical walls of the lighthouse has been derailed by the discovery of structural flaws in the building's foundation. "It seems to me that the hollow interior at the bottom should have been filled in with solid masonry" (Poe 1984 [1849], 925). Poe, the presumed narrator, tries to find comfort in the fact that "a structure such as this is safe enough under any circumstances," but he eventually accepts the precarity of his living situation: "The basis on which the structure rests seems to me to be chalk" (Poe 1984 [1849], 925).

The American home and the policies that govern its distribution rest on a similarly chalky foundation. The contemporary neoliberal postmodern housing landscape is defined by the ascendancy of private property rights, the deregulation of the institutions of housing finance, the absence of minimal entitlements to basic housing, and a housing market that is characterized by its inequality, fragmentation, and segregation. While the US housing market now provides a wider range of choices in styles and tenure arrangements than has ever existed before (for those with the means and willingness to vote with their feet), neoliberalism has eroded previously shared social meanings of housing.

American housing advocacy has evolved beyond its origins in nineteenth-century social and land reform movements. Nineteenth-century land reformers attacked land and housing inequality directly, through

right-based reforms designed to reduce the number of propertyless citizens. Progressive and utilitarian reformers criticized liberal rights and their natural law foundations, shifting the basis of housing justice from rights to collective goals and civic virtues. Franklin D. Roosevelt presented a vision of the welfare state that included housing among the social rights guaranteed to all citizens, but his vision was never realized. During the 1960s, a variety of social movements resurrected and redefined rights to save communities from the exclusionary consequences of previous generations' reforms. The housing advocacy movement splintered during the neoliberal era, primarily around the issues of segregation and gentrification, and has largely ignored broader housing inequalities, focusing instead on securing minimal housing entitlements for those hurt most by the retrenchment of the welfare state. The contemporary human rights umbrella provides home to a mosaic of new housing justice causes. Still, it remains to be seen whether the prevailing conception of housing justice, grounded in the human right to the city, provides a coherent and actionable basis for American housing reform. The next several chapters provide reasons to be skeptical.



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# Just Housing

## The Moral Foundations of American Housing Policy

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