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# **Just Housing**

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

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## 6 The Architecture of Housing Justice

Our vision is rooted in the belief that housing is a human right, not a commodity to maximize profit. We believe it is possible to create a just housing system in which everyone has affordable and dignified housing.

—“Homes for All” campaign of the Right to the City Alliance  
(Baiocchi 2018, 8)

Despite lingering tensions among US housing advocates over the issues of gentrification and residential segregation, a radical coalition has formed beneath the human rights umbrella. Advocates of the human right to the city appeal to a conception of justice that is based on the perceived incompatibility between the right to housing and the right to own private property and the perceived complementarities among the right to housing, human rights, and the collective right to the city. The remaining chapters of this book deconstruct this consensus view and reconstruct a conception of housing justice that draws on the lessons from the previous chapters.

In this chapter, I assemble the materials of justice into an evaluative framework that provides the tools to analyze housing institutions and policies. I begin with an exploration of several themes from part II of the book that provide insights into the link between housing’s social meaning and housing justice. I then examine the grounds of housing justice. I argue that the idea of human dignity implicit in the ground of human status is best understood within the context of what a dignified life means in a given society. The ground of citizenship avoids many of the limitations of the human status ground while providing a more persuasive justification for measures designed to reduce housing inequality. I express the ground of citizenship through the ideal of civic equality, which weaves T. H. Marshall’s

(1950) idea of social citizenship with elements of the liberal and republican traditions. I conclude the chapter with a discussion of the basis of housing justice, emphasizing how the rights of citizenship structure housing policy design.

### **Lessons from the History of US Housing Reform**

American housing reformers have understood housing's social meaning in a variety of ways and have drawn different conclusions about the distributive implications of housing's social meaning, but several unifying themes span reformers' diverse views. Three themes provide points of departure for the conception of housing justice developed in the remaining chapters of this book: the enduring quality of the single-family housing ideal, the tilted balance between housing's public and private functions, and the consensus around housing's special connection to American social and cultural life.

The owned single-family detached home has endured as an idealized housing type, despite changes in the underlying values that have justified the ideal. From the founding period through the late nineteenth century, reformers appealed to republican virtues and natural law to call for the expansion of liberal rights to landed property. Progressive and utilitarian reformers offered new moral frameworks that updated republican virtues for an urban era while retooling the liberal institution of private property to elevate the single-family home above other housing types. The New Deal-era federal housing policy apparatus established new institutions that transformed the American housing landscape into a homeownership republic dominated by single-family housing. Some have rejected the single-family ideal. Social critics have questioned the single-family home's contribution to domesticity, social isolation, and cultural conformity. As I argue later in this chapter, a conception of housing justice can appeal to the most morally compelling values without fetishizing the physical embodiment of these values or committing to an idealized conception of how life should be lived. The American home can accommodate a diversity of American dreams.

Housing has valuable public and private functions, yet reformers have tended to downplay the moral significance of the privacy that homes deliver. Housing reformers have linked privacy with civic virtue but have rarely appealed to privacy's value to defend the extension of rights to a private realm. Progressive legal theorists recognized a personal right to privacy but

ignored the material conditions necessary for the enjoyment of this right. From the 1960s onward, social reformers have redefined housing's public function in terms of its collective importance to those who have been historically denied access to housing. During the neoliberal era, advocates and scholars have continued to elevate housing's contribution to community life while simultaneously attacking the privatization of space and the value of privacy itself. David Harvey (34, 2007), for example, equates neoliberal capital "accumulation by dispossession" with the conversion of common and collective property into exclusively private property. In the pages that follow, I maintain that housing's role in securing privacy is an essential function that should not be ignored by housing justice theorists and practitioners. Housing has valuable public functions, but a house ceases to be a home if it does not provide a minimum of privacy and separation from the external world. This observation has implications for the link between housing and human lives, the grounds of housing justice, and the right to housing.

One public function of housing acknowledged by all of America's housing and land reform movements that plays an important role in the conception of housing justice developed in this book is housing's special connection to American social and cultural life. American life is organized around social practices that originate in, and take place in relation to, the home. Access to a home is a precondition for participation in civilized ways of living. The idea of home also pervades shared ambitions of how Americans aspire to live. Importantly, housing's connection to American social and cultural life is a vital *public* function that is defined in terms of access to the *private* space that housing secures. The homeless are ostracized, not praised, for their public exposure. These connections explain why the unequal provision of private residential space is such a moral concern.

Adam Smith provides an analogy that helps convey the moral significance of housing's connection to social and cultural life. He makes a distinction between goods that are luxuries and those that are necessities, defining the latter as those that are "indispensably necessary for the support of life" and "whatever the custom of the country renders it indecent for creditable people, even of the lowest order, to be without." He observes that in the greater part of Europe during his time, a linen shirt was a necessary because a "credible day-laborer would be ashamed to appear in public without a linen shirt" (Smith 1827 [1776], 368). Anne Phillips makes a similar point when

she says that “in a society where access to common culture has come to depend on watching the same programmes on TV, having a television set becomes a necessity rather than a luxury. In a society where car ownership has become widespread, it can be hard for those without cars to get access to basic amenities: shopping centers are often located in areas difficult to reach by public transport; indeed public transport may collapse when richer members of the community no longer use it” (Phillips 1999, 62–63).

Throughout American history, housing has been a marker of social status, an essential ingredient of “common culture,” and a vehicle for distributing the rights and benefits owed to all citizens. Housing is bundled with important local public goods, such as public education and public safety, and a home’s location in space affects the inhabitant’s ability to access social and economic opportunities. Importantly, those without homes are often socially stigmatized, labeled as homeless, and dismissed by other members of society.

Does housing’s link with common culture imply that housing should be more widely distributed, or does the link imply that goods bundled with housing, such as public education, should be decoupled from housing and allocated according to separate distributive principles? Returning to Phillips’s (1999) example, the automobile’s link to common culture may imply either that everyone should have access to an automobile or that transportation systems should be designed so that those without cars can easily access basic amenities. I argue in chapter 7 that the loss of housing entails such significant injustices that housing should be distributed to everyone. In chapter 8, I offer a housing policy reform proposal that can be understood as a way to decouple the distribution of local public goods from the distribution of housing. In the next two sections, I argue that, regardless of the distributive implications of housing’s social meaning, housing’s link to common culture has fundamental consequences for the grounds of housing justice.

### The Grounds of Housing Justice

American housing reformers have historically appealed to one of two grounds of justice: *human status* and *citizenship*. The natural rights and human rights traditions are each grounded in a nonrelational conception of human status that appeals to human beings’ intrinsic value. Human

qualities or conditions that contribute to this value, or without which human life would have no value, provide the grounds for principles of justice. For John Locke, human beings are intrinsically valuable because they are created in God's image, and this idea grounds the natural right to property. Thomas Paine and most of the nineteenth-century land reformers that he influenced held a similar view of the natural right to property grounded in a secular conception of humanity's intrinsic value.

Despite sharing a similar ground, the human rights tradition departs from the natural rights tradition in two important ways. First, human rights such as those expressed in the UDHR are not typically understood as the products of God's law, pure reason, or some universal morality that governs human actions in a prepolitical state of nature but are instead interpreted as a set of overlapping moral concerns shared by all legitimate political systems that describe the "features of an acceptable [global] institutional environment" (Bietz 2009, 55). Human rights provide a justification for preempting national laws when citizens' human rights have been violated or are otherwise not protected by a nation's laws and institutions. According to Hannah Arendt (1968, 298), "This new situation in which 'humanity' has in effect assumed the role formerly ascribed to nature or history would mean in this context that the right to have rights or the right of every individual to belong to humanity should be guaranteed by humanity itself."

Second, many of the rights listed in the UDHR are more expansive than natural rights, which were often understood by Enlightenment-era philosophers as negative protections against government interference. According to Charles Malik, one of the framers of the UDHR, the second-generation social rights outlined in the UDHR are "rights of the individual as a member of society" rather than rights "of the individual as such" (Bietz 2009, 57). According to Charles Bietz (2009, 57), second-generation rights "represent a more ambitious assumption of responsibility for the public sphere than was required by the motivating concerns of classical natural rights theories." The UDHR also identifies several third-generation collective rights that protect the right of self-determination for peoples.

Progressives, homeownership advocates, and most civil rights reformers have appealed to the ground of citizenship to derive rights, obligations, and principles of justice from the relational obligations among citizens and between citizens and the nation-state. As Karl Marx observed, political

rights are rights “which can only be exercised if one is a member of a community. Their content is *participation* in the *community* life, in the *political* life of the community, the life of the state” (Tucker 1978, 41; italics in the original). The ground of citizenship implies an elevated role for the moral value of equality, understood as the requirement to treat each member of society as an equal participant in a social order and abide by the rules that set fair terms of social cooperation (Miller 1999). Whereas the ground of human status supports a conception of equality defined by the equal protection of certain minimal entitlements, the ground of citizenship requires that any social and economic inequalities produced by institutional arrangements be justified relationally to all who are coerced by those arrangements.

An interesting question is whether there are additional grounds of housing justice that are defined by a scope that is smaller than the nation-state. It is important to separate purely local grounds of justice from local demands that appeal to a broader population and contextual considerations that justify stronger obligations among members of local communities. Most claims of housing justice made by communities are best understood as demands made to other citizens or the nation-state to respect the special rights of community members. If the audience for community demands is an external population, the scope of justice extends beyond the community’s borders. Alternatively, members of local communities may have special obligations to their members that do not hold for a broader population. For example, spatial differences in housing costs often arise from local market conditions that are in turn shaped by local public policy decisions. While this implies that there may be special obligations of justice that arise from these local contextual factors, it does not necessarily mean that local grounds of justice exist independently of those defined for a larger population. Most local obligations are best understood as nested within a broader scope of justice. They must be consistent with the principles of justice defined for a larger population, or the community must be recognized as having special rights that possibly conflict with the rights held by a broader population of individuals. In chapter 8, I explore an example of nested local obligations that arise from the capitalization of local public goods into housing prices and critique the view that housing justice requires the recognition of collective subnational rights.

### Human Status as a Ground of Housing Justice

The ground of human status is often expressed in terms of the idea of *human dignity*, which gives the reasons that human beings are bearers of intrinsic value. Philosophers have understood human dignity in a variety of different ways. Immanuel Kant's (2012 [1785]) view of morality is based on the idea that human beings are worthy of being treated as ends rather than as means for some other end. While most conceptions of justice accept this fundamental premise, this idea alone does not explain why human beings should be treated as ends. For Kant, morality is the law of reason, and human beings' unique capacity for moral agency is the source of human beings' intrinsic value. For Karl Marx (1978 [1843]), a critic of natural human rights, human dignity resides in one's consciousness of the social nature of the human condition and authentically acting in accordance with one's true nature as a social being. For Ronald Dworkin (2008), human dignity is an idea that expresses the intrinsic value of humanity and the fact that each person has a special responsibility for how their life goes. Jeremy Waldron (2009) defines dignity in terms of social status and rank, with equal dignity implying that all human beings are elevated to a similarly high rank. Martha Nussbaum's (2000) understanding of dignity combines the idea of an equally elevated rank with the Kantian conception of dignity.

The first challenge facing those appealing to human status to ground principles of housing justice is that human dignity, however it is understood, is an overly abstract concept that says little about the content of human rights. What constitutes a dignified life, and what role does housing play in delivering such a life? At a minimum, a life must be lived, which implies that human rights should minimally secure the basic conditions required to sustain human life. Unlike other material resources, housing is not consumed and converted to energy to maintain bodily functions. Housing produces bodily health indirectly through the provision of comfort. Still, it is hard to argue that everyone has a right to a climate-controlled home kept to a temperature of 72 degrees Fahrenheit. Housing delivers *security* by offering a private protective realm that insulates human beings from external threats to bodily integrity. If housing is mold infested, decorated with toxic lead-based paint, or permits the penetration of noxious chemicals, it

has failed to perform its most basic function of securing the human body from harmful environmental threats.

Housing also provides a platform for the development and exercise of *normative agency*, which refers to the capacity to offer and respond to reasons (*reason-responsiveness*) and the capacity to chart out one's own course in life (*autonomy*). Moral agents must possess the capacity to recognize and acknowledge their own intrinsic worth while simultaneously acknowledging others' intrinsic worth. Moral agents must also be able to formulate, evaluate, and act on a conception of what the good life entails. Housing supports normative agency by providing a private realm for reflection and deliberation, which in turn enables individuals to form a conception of the good life and freely pursue valued projects, unimpeded by the threat of environmental harm or the social obligation to obtain permission from others for actions performed within the home. According to Waldron (1988, 310–311), "If a man's subsistence depends on the management of resources over which he has exclusive control and for which he has sole responsibility, then habits of foresight and prudential calculation will develop, as he learns what he does today may affect his life chances tomorrow." To fully exercise normative agency, human beings must have a reasonable expectation that the home they occupy will be available for an extended period. Those continually facing the threat of eviction may be unable to fully develop their autonomous capacities, because they lack long-term control over private space. Housing also enables normative agency indirectly through the security that it provides. Human beings are unable to exercise their full moral capacities if all their time and energy is spent fending off environmental threats.

Even if we reduce human dignity to more concrete concepts such as security and normative agency, any universal conception of dignity faces a second challenge: it risks appealing to a controversial conception of human nature that not everyone would endorse. Some object to Kant's conception of human dignity, for example, because morality is not exhausted by universal obligations. Human beings have obligations that arise from particularistic social commitments and relationships that are not always consistent with universal moral law. Likewise, some object to Dworkin's (2008) elevation of responsibility as a component of human dignity, because it provides a convenient excuse for relinquishing the obligation to assist those who are in a state of deprivation because of choices for which they should be

held morally responsible (Anderson 1999). Others object to conceptions of human dignity that appeal to an atomistic, asocial conception of human nature (Sandel 1998b).

A third challenge is that the moral significance of the connection between housing and human dignity is mediated by contingent facts such as environmental conditions, legal institutions, and local market conditions. Housing minimizes exposure to extreme environmental conditions (e.g., rain, extreme cold, extreme heat, or natural hazards), but in most places on the earth that human beings inhabit, this need can be satisfied by a temporary shelter. The bodily need to be secure varies temporally and spatially. Inhabitants of temperate climates can live in comfort with minimal shelter. In contrast, those living on the Siberian tundra during the coldest winter months would quickly die from exposure without secure access to a climate-controlled shelter. Although the need to be protected from external weather conditions may be a universal need, the risk to human life from not having that need satisfied varies across space and time, and human beings' sensitivity to environmental conditions varies from person to person. A house is a sufficient but not a necessary condition for being secure.

Social contingencies also mediate the exercise of normative agency. Although normative agency may be a universal human capacity, the exercise of that capacity requires the existence of socially and historically contingent practices. According to Joseph Raz (1986, 205), "If having an autonomous life is an ultimate value, then having a sufficient range of acceptable options is of intrinsic value, for it is constitutive of an autonomous life that it is lived in circumstances where acceptable alternatives are present." Raz goes on to argue that the range of acceptable options for living an autonomous life is in turn determined by the social forms and practices prevailing in a given society. "One cannot have an option to be a barrister, a surgeon, or a psychiatrist in a society where those professions, and the institutions their existence presupposes, do not exist" (Raz 1986, 205). Similarly, one's ability to pursue a conception of the good life that includes a way of living in a home of a particular type is conditioned by the availability of that housing type.

So far, we have examined how environmental and social contingencies mediate the realization of human dignity. A related objection is that the concept of human dignity is inherently social in nature and cannot be understood without reference to what a dignified life means within a given society. Adam Smith's example of the linen shirt, discussed at the beginning of this

chapter, illustrates this point. If housing provides access to common culture, those who are unhoused experience a form of social deprivation. Smith's analogy demonstrates that if dignity is understood as an equally elevated human status, the threshold level at which a life is considered dignified—and the necessary conditions for living that life—cannot be determined without appealing to the social bases of human dignity within the context of a given culture. While the concept of human dignity may ground a universal right to live a dignified life in whatever society a person happens to live, the content of that right is determined by prevailing social norms and the social meaning of housing. Pairing Smith's observations with Raz's (1986) argument about the importance of social practices to the exercise of autonomy, one can also conclude that in pluralistic societies such as the United States, where many different conceptions of the good life are allowed to flourish, the diversity of housing options is constitutive of housing's contribution to human dignity. Housing policies that promote a single housing style, such as the owned single-family detached home, may thwart many other lifestyles worth pursuing.

James Griffin (2008) attempts to circumvent the problems that arise from the contingent nature of human dignity by claiming that “practicalities” provide separate grounds for human rights that determine the content of rights and duties, but it is not clear that they provide adequate grounds of justice. While practicalities may be understood as external constraints that affect the feasibility of actions taken to satisfy human needs, they play no direct role in grounding the obligation to satisfy needs in the first place. In the United States, the most significant barrier to adequate shelter is its cost, which in turn derives from the fact that shelter is allocated according to exchange values and transactions legitimized by private property law. *Pace* Griffin, it would be odd to argue that the institution of private property creates the need to be protected from the cold and thus provides a ground for alleviating that need. It seems more appropriate to say that biological needs arise independently of markets, but markets may make it more difficult to satisfy needs.

Nussbaum (2000) offers one way of addressing the challenges discussed so far. Her conception of human dignity is derived not from a controversial conception of human nature but from a political conception that is the outcome of a cross-cultural dialogue among peoples designed to achieve an overlapping consensus on the basic capabilities required to lead a dignified

life in all cultures. Nussbaum argues that a cross-cultural dialogue would arrive at a list of 10 central human capabilities that should be protected as basic human rights. She does not include “housing” or “shelter” as distinct capabilities, but she mentions shelter as a component of the central capability of “bodily health,” which she defines as “being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter” (Nussbaum 2000, 78).<sup>1</sup> Although Nussbaum (2000) does not elaborate on this possibility, housing also enables the realization of several other central capabilities on her list, including bodily integrity (through the provision of privacy), affiliation, play, and material control over one’s environment (which she explicitly defines in terms of access to property).

While an improvement over other conceptions that ground human rights in transcendental ideals that have no connection to social practices, Nussbaum’s capabilities approach also has several limitations as a ground for the human right to housing. Nussbaum understands housing’s value instrumentally, with housing serving as a means to the realization of bodily health (and possibly other capabilities). According to Eric Nelson,

Shelter, for example, is not a “functioning,” and so “being able to have shelter” is not a “capability” as Nussbaum defines it. Simply employing a participle does not remove the difficulty. If shelter is to have any place on this list, it must serve as a condition for the acquisition of various capabilities. Nussbaum might have said, for instance, that one cannot learn effectively without shelter and that, as a result, an entitlement to shelter follows from the entitlement to learning. But this would be to treat shelter as a wholly instrumental good, rather than as a central human “functioning,” and would therefore contradict one of the organizing principles of the list. (Nelson 2008, 96)

Thus, as formulated, shelter either is not a central capability at all or only has instrumental value as a means of achieving higher-order functionings. A purely instrumental understanding of housing ignores housing’s constitutive value as a component of the good life itself. As argued in chapter 1, individuals often desire homes styled in a particular manner not because housing so configured would more effectively enhance personal well-being but rather because individuals often define the good itself in terms of a concrete ideal of how they aspire to live (Dawkins 2017a). The home and its sociospatial context also shape the identity of the inhabitant. Housing’s constitutive value is simultaneously private and relational—private because housing’s most important function derives from the sheltered zone of

spatial autonomy that housing provides, and relational because the home provides a platform for voluntarily engaging in associations and activities outside the home. If housing is constitutive of one's conception of the good life, it is more than merely an instrumental catalyst to human functioning.

Another limitation of Nussbaum's approach, and most other conceptions of human rights, is that the obligation to secure minimum capabilities grounds sufficientarian, rather than egalitarian, distributive arrangements. According to Nussbaum, "an adequate house or other shelter seems to be inherent in the idea of human dignity," but "it is not at all clear that an equal house is required by the very idea of human dignity or even of equal human dignity; for indeed a mansion may not be better than a modest house. House size, above a certain threshold, does not seem intrinsically related to equal dignity" (Nussbaum 2006, 293). As I discuss later in this chapter, there are reasons to be concerned about housing inequality, even if everyone is adequately housed.

Not only does Nussbaum's approach ground a sufficientarian conception of housing justice, but the threshold level of housing considered adequate across all societies is also likely much lower than the sufficientarian threshold that would be recognized within societies that assign significant meanings to housing or rely on housing to distribute access to other goods. For example, a global sufficientarian conception of housing justice may fail to account for housing's distinctive role in distributing access to local public education if most nations do not finance public education from residential property taxes. Given that nations define and distribute housing in a variety of ways, an overlapping consensus among nations is likely to yield a very thin, watered-down view of minimal housing entitlements that ignores housing's distinctive contribution to each nation's common culture.

## Two Concepts of Citizenship

Unlike the ground of human status, which appeals to the intrinsically valuable features of human life, the ground of citizenship derives its force from individuals' participation in the shared social practices that define what it means to be a citizen. Before examining the ground of citizenship, I compare and contrast the two conceptions of citizenship implied by America's two dominant political traditions—liberalism and republicanism. The discussion draws on Corey Brettschneider's (2007) distinction between

citizens' democratic roles as authors and addressees of the law. Liberalism and republicanism offer two different ways of understanding these roles.

Liberals such as John Locke and John Rawls emphasize citizens' roles as addressees of the law and are concerned with establishing the conditions under which the exercise of government coercion would be considered legitimate from the perspectives of those coerced. Citizenship is a legal status that defines the terms of social cooperation among free and equal persons (Rawls 1971). In most liberal theories, citizens' roles as authors of the law are limited to their passive roles as voters and occasional holders of public office. In the liberal conception of citizenship, political participation has no intrinsic value, although it may have instrumental value as a way of legitimizing the state's use of force. Liberalism is often tied to a democratic conception of political life not because democracy has intrinsic value but rather because the terms of social cooperation are defined by the laws and institutions that citizens endorse.

The liberal conception of American citizenship has evolved since the nation's founding. In the classic liberal understanding of citizenship, citizens' roles as authors of the law are limited to their consent to or dissent from the terms of a social contract. Beginning in the Progressive Era, citizens' roles as economic consumers became intertwined with their roles as citizens. Zoning and other land-use regulations gave citizens an economic reason to engage in local politics to protect the value of their homes. With the rise of the homeownership republic, residential mobility was elevated to the status of a political act, as consumer-voters revealed their political preferences by voting with their feet. With the globalization of capital and the retrenchment of the welfare state during the neoliberal era, local governments responded to the mobility of labor and capital by retooling the machinery of local government to minimize tax burdens while simultaneously providing amenities desired by employers and their workers. These trends have strengthened the link between liberal citizenship and housing consumption. With the devolution of public goods and other rights and benefits of citizenship to local governments, those without homes have been denied an important means of exercising democratic citizenship.

The distinction between the public and private realms is central to the liberal conception of citizenship. The public-private distinction does not necessarily refer to a strict separation between the private lives of individuals and their social or political lives, but it does assume that private home

life has intrinsic value worth protecting. The public-private distinction also implies a division of labor between the types of reasons that can be offered in defense of public actions versus private actions.<sup>2</sup> Within private realms, a diversity of conceptions of the good life is allowed to flourish, with individuals choosing from among a variety of conceptions of the good. Within the public realm, individuals must reach agreement on the laws and institutions that will govern public and private behavior. A justificatory separation between the public and the private realms ensures that certain privately held views will be excluded from arguments supporting public laws. Locke's view of religious toleration is an expression of this ideal. As he puts it, "All the power of civil government relates only to men's civil interests, is confined to the care of the things of this world, and hath nothing to do with the world to come" (Locke 1895 [1689], 150). By granting households the sovereignty to determine who may enter their private homes, the institution of private property introduces a spatial dimension to the liberal conceptual distinction between public and private reasoning. According to Thad Williamson,

The basic concept of private personal space embodied in privately owned domiciles today retains an appeal not only to traditional nuclear families but to many other groups as well. Consider, for instance, gay couples who rely on the privacy of the home to sustain their lifestyle, fundamentalist Christians who homeschool their children in an effort to counter the dominant strains of mass culture, or any number of private projects (some of which have public relevance) that are made possible by private ownership of homes and the assumed sanctity of private home space. Given the close connection between the practice of political liberalism and the historical institution of the private home, liberals can plausibly view private control of domestic space not merely as a cultural practice to be tolerated but as a positive good that appears to be an indispensable institution within existing liberal societies. (Williamson 2010, 152)

In contrast to the liberal tradition, the republican tradition emphasizes citizens' roles as authors of the law. Republican citizenship is an active status defined by one's engagement in public political life and does not assume a strict separation between the public and private realms. The republican citizen's public role is a virtue to be extolled and perfected, and many republicans argue that private life should play some role in the cultivation of these excellences. Whereas liberals assume that private home life has intrinsic value to individuals, republicans emphasize the instrumental value of home life for the cultivation of civic virtue. The ideal of home thought to

cultivate civic virtue has evolved over time. During the nineteenth century, liberal-republican land reformers appealed to the civic virtues of the frontier homestead. By the end of the nineteenth century, the owned single-family detached home had replaced the homestead as the archetype of civic life in an industrialized society. The homeownership republic suburbanized this ideal, and the new urbanists' nostalgia for compact living questioned the civic value of the suburban home.

Although republicans value an active citizenry, they have not always supported egalitarian conceptions of democracy. Alexander Hamilton and James Madison were more concerned with establishing the appropriate checks and balances on democracy to control the tyranny of the majority than with promoting widespread participation in governance. John Adams relied on republican reasoning to argue that voting privileges should be restricted to freeholders (Williamson 2019). Progressives appealed to similar arguments to justify exclusionary zoning policies.

Certain elements of the liberal and republican traditions are worth incorporating into a conception of citizenship that grounds housing justice, while other features are worth abandoning. I make three arguments that inform the conception of citizenship that I defend in the next section. First, I argue that housing justice should acknowledge the moral significance of the link between housing and citizenship, but justice does not require viewing housing as a means of promoting or cultivating civic virtue. Second, there are compelling reasons to acknowledge the intrinsic value of the private sphere and distinguish between public and private reasoning even if the home's value derives in part from its social and civic functions. Third, the republican conception of freedom offers a valuable way of understanding the moral significance of the privacy that homes secure.

Empirical evidence does not support the claim that homeowners are "better citizens" (McCabe 2016). If anything, homeownership encourages civic engagement for the self-serving purpose of elevating the value of one's home and isolating homeowners from other social or economic groups (Fischel 2005). It is also questionable whether the type of housing the United States promotes through homeownership policy—the owned single-family detached home—supports the cultivation of the social capital required to instill a concern for the common good (Glaeser 2011). Aside from the empirical question of whether homeownership or any other tenure arrangement promotes civic virtues, the aim of promoting virtue or

human excellence is morally questionable because it is premised on a controversial conception of the good life not shared by everyone. Virtue-based justifications for housing policy also license objectionable paternalistic government actions that violate personal autonomy. There are more examples throughout history of virtue-based arguments being used to deny rights to those not deemed virtuous rather than to support the egalitarian aim of extending rights that secure the conditions required to cultivate virtue.

The liberal distinction between the public and private realms recognizes the home's intrinsic value to inhabitants while preserving a division of labor between public and private reasoning. Although the home's value and meaning are created, in part, from the home's social functions, the home would cease to be a home if it failed to offer a minimum level of privacy and protection from external threats. This is true even for homes that shelter communal ways of living. At the same time, the home can never be fully isolated from public life, nor should it be. The privacy of the home does not provide immunity against the laws of society, and privacy itself is protected by the publicly recognized institutions of private property and civil law. Without the protection provided by a local police force, housing occupants would be unable to enforce their right to exclude unwanted trespassers. As Rawls puts it, "If the private sphere is alleged to be a space exempt from justice, then there is no such thing," because "the equal rights of women and the basic rights of their children are inalienable and protect them wherever they are" (Rawls 1997, 791).

The liberal distinction between the public and private realms is best understood as a moral division of labor that preserves privacy and freedom of association while providing a platform for engaging in public life. The private realm "acts as an enabling device whereby rival and possibly incommensurable conceptions of the good may be implemented and realized without any recourse to any collective decision-making procedure" (Gray 1993, 314). Within the public realm, citizens come together to engage in social life and agree on the laws that govern public and private lives. The public-private distinction protects individuals' freedom to voluntarily enter into and exit from each of these realms. According to Rawls (1975, 550), "The basic liberties are not intended to keep persons in isolation from one another, or to persuade them to lead private lives, even though some no doubt will, but to secure the right of free movement between associations and smaller communities."

Some feminist philosophers have criticized the liberal public-private distinction for ignoring, or in some cases contributing to, the marginalization and oppression of women within the home. Carole Pateman (1988) argues that the liberal distinction between private domestic life and the public affairs of civil society and the state denies any significant role for women in political life. Within the home, women often work for no compensation while being confined to gendered roles that do not afford the same spatial separation between home and work life that male heads of household enjoy (Hayden 1984). The home's isolation from the public sphere also subjects women to the threat of domestic violence. As Jessie Hohmann (2014) observes, women who live in abusive relationships are "essentially homeless" because of their inability to escape an oppressive living environment.

Most strains of Western philosophy, including both liberal and nonliberal traditions, are unfortunately guilty of perpetuating a gendered understanding of the public and private spheres (Okin 1979), so one should be careful not to equate a patriarchal understanding of the public-private distinction with the liberal tradition. The ancient Greeks, for example, assumed a "sharp distinction between the domestic household and the public realm which condemned women to public invisibility" (Kymlicka 2002, 390). The oppression of women within the public and private spheres arises not from the public-private distinction itself but instead from the failure of many liberals to take the public-private distinction seriously as a separation that protects the rights of individuals within the home. Since Locke equates the protection of familial rights with the protection of individual rights, his theory does not have the conceptual tools to handle instances where conflicts of rights arise within the home (Kelly 2002). Still, this problem only reflects a weakness of Locke's understanding of the public-private distinction rather than an inherent weakness of the distinction itself. The American ideal of home and the Supreme Court's interpretation of that ideal have contributed to the confusion by simultaneously insulating heterosexual nuclear families from government intrusion while ignoring the rights of women within the home. This explains why many feminists have only reluctantly supported the Supreme Court's findings in *Griswold v. Connecticut* (1965). While this case established the constitutionality of the right to privacy, invalidating a law that denied access to contraception for married women, the right to privacy secured by *Griswold* has since been interpreted by the courts as a right that protects the rights of family units, not women

within families. As Catherine MacKinnon (1987, 101) observes, “The legal concept of privacy can and has shielded the place of battery, marital rape, and women’s exploited labor.”

According to Will Kymlicka (2002, 396; italics in the original), the family-based conception of privacy fails in two ways: “On the one hand, it has failed to protect women’s desire for privacy when threatened by abusive husbands or fathers. On the other hand, it has condoned the *involuntary* privacy of women—i.e. it has condoned the unwanted isolation, seclusion, or forced modesty of mothers and daughters who desired to escape from the confinement of domestic roles to participate in public life.”

Anita Allen (1988, 180–181) describes this “privacy problem” as the “problem of getting rid of unwanted forms of privacy” and “acquiring the privacy they do not have.” This problem can only be solved by decentering the right to privacy from household units to individuals within the household. If the right to privacy is an individual right supported by the right to housing, both the right to housing and the right to privacy protect the rights of women to exit oppressive relationships without having to compromise their right to a secure private realm. This interpretation of the right to privacy also justifies supporting a woman’s right to enjoy the same spatial separation between home and work enjoyed by male heads of household who labor outside the home. As Virginia Woolf observes, “A woman must have money and a room of her own if she is to write fiction” (Woolf 1929, 4).

Although I have so far defended a liberal conception of citizenship that is grounded in a distinction between the public and private realms, I also argue that the republican conception of freedom provides a more useful way of understanding the value of privacy and the home’s contribution to that value. According to Philip Pettit (1997), republican (which I henceforth refer to as “civic”) freedom is distinct from liberal freedom in its emphasis on nondomination, or independence from the arbitrary will of others. Pettit gives the example of a slave who is free from interference but whose will is still dominated by a master. This slave enjoys liberal freedom but does not enjoy civic freedom because the master has dominion over the actions taken by the slave. The value of privacy, in the civic conception of freedom, lies in the ability to pursue projects and life plans without the constant need to gain external approval for projects pursued. As Arendt observes, “What is necessary for freedom is not wealth. What is necessary is security

and a place of one's own shielded from the claims of the public. What is necessary for the public realm is that it be shielded from the private interests which have intruded upon it in the most brutal and aggressive form" (Arendt 2018, 512). As discussed in chapter 7, the idea of civic freedom provides a useful way of understanding the injustice of tenure insecurity.

### The Normative Foundations of Equal Citizenship

The previous section made the case for a liberal-republican conception of citizenship that is not virtue based, recognizes a moral division of labor between public and private reasoning, and appeals to the value of civic freedom. In this section, I expand on this conception by incorporating T. H. Marshall's (1950) idea of social citizenship. The Supreme Court's opinion in *Goldberg v. Kelly* (1970) paints a picture of the conception of social citizenship that I have in mind:

From its founding the Nation's basic commitment has been to foster the dignity and well-being of all persons within its borders. We have come to recognize that forces not within the control of the poor contribute to their poverty. . . . Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community. [Public] assistance, then, is not mere charity, but a means to promote the "general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity." (Sunstein 2004, 161–162)

Whereas human status is a ground of justice that derives its moral force from the intrinsically valuable aspects of the human experience, citizenship is a relational ground that appeals to a shared understanding of what citizens owe one another and what the government owes its citizens. Civil institutions such as private property laws, the judicial system, and government tax-and-spend policies are expressions of social citizenship. These institutions are based on, and in turn define, what it means to live a dignified life in a society governed by those institutions. According to Marshall (1950, 29), "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."

To deny housing to an American citizen is to deny that person one of the materials required to live a civilized life. Not only is housing a prerequisite for a civilized life, but it is also unfair to ask those who are unhoused to make sacrifices for the public good when their basic housing needs have not been met. Although unhoused Americans may be recognized as citizens in the legal sense, they are not citizens in the sense of enjoying the full rights of citizenship that legitimize the obligations of citizenship. According to Arendt (2018, 510), “To ask sacrifices of individuals who are not yet citizens is to ask them for an idealism which they do not and cannot have due to the urgency of the life process. Before we ask the poor for idealism, we must first make them citizens; and this involves so changing the circumstances of their private lives that they become capable of enjoying public life.”

I propose the concept of *civic equality*, understood as an ideal where every citizen is treated as an equal in accordance with a shared understanding of what citizens owe one another and what the government owes its citizens, as an expression of social citizenship. Civic equality includes two dimensions: *moral equality* and *relational equality*.<sup>3</sup>

*Moral equality* is a concept best expressed by T. M. Scanlon (2018, 4) as “the idea that everyone counts morally, regardless of differences such as their race, their gender, and where they live.” According to David Rondel (2018), liberal egalitarian philosophers often appeal to moral equality to express the ideal vertical relationship between citizens and the state. Ronald Dworkin (1978, 272), for example, understands this ideal in terms of the state’s duty to “treat those whom it governs with concern, that is, as human beings who are capable of suffering and frustration, and with respect, that is, as human beings who are capable of forming and acting on intelligent conceptions of how their lives should be lived.”

Egalitarian conceptions of justice often appeal to two separate dimensions of moral equality: *equal concern* and *equal respect*. Equal concern refers to the equal provision of goods that are owed equally to all citizens and a corollary requirement to offer an acceptable justification for the unequal provision of such goods. According to Scanlon (2018, 7), objections to inequality “apply when an institution or agent owes some benefit to every member of a certain group but provides this benefit only to some, or more fully to some than others.” Showing equal concern to citizens implies that when goods or benefits are provided unequally, the agent distributing the good provides

a sound reason for doing so that is acceptable to those who receive less. In the case of housing, the equal concern requirement may apply to housing or goods distributed through housing, such as local public education. If positions in society are awarded according to meritocratic criteria that reward educational attainment, it can be argued that all individuals have an equal claim to the benefits provided by public education. Given the comparative and competitive nature of the advantages conveyed by public education, it is not enough that some students simply receive a minimally adequate education, because a child's ability to succeed in life depends in part on the child's relative education level compared to others (Brighthouse and Swift 2006; Dawkins 2017b). Distributing local public education according to the ability to pay for housing violates the principle of equal concern by unfairly providing higher-quality educational opportunities to some and not others.

Equal respect implies treating citizens as moral agents capable of formulating and pursuing a conception of the good as they define it within the context of the opportunities provided by society. According to Charles Larmore (2003, 56), to show equal respect for a person is to "view him as capable of elaborating beliefs that we would respect." The obligation to show equal respect is met by equally recognizing everyone's capacity to work out a coherent view of the world (Larmore 2003). Stated differently, equal respect can be understood as a moral standard that expresses the state's obligation to respect citizens' capacity for normative agency.

Both dimensions of moral equality provide guides for evaluating the public justifications for policies that alter the distribution of housing. Recall from chapter 1 that a public justification is based on the idea that "the application of power should be accompanied with reasons that all reasonable people should be able to accept" (Macedo 1990, 41). Following the requirement to show equal concern for all citizens, a public justification must demonstrate that those disadvantaged by the exercise of coercive political authority would accept (or not reject) the exercise of that authority. For example, an institution of private property rights that denies property to some must be justifiable to those who are denied property. Furthermore, the use of taxation to provide public goods must be justifiable to those who are taxed and those denied public goods.

Whereas equal concern identifies what needs to be publicly justified (deviations from equality) and to whom (those with less), equal respect provides a justification for public justification itself along with a path to

justification. The norm of equal respect provides a reason to keep the conversation going in the face of reasonable disagreement. As Larmore puts it,

Whatever we do that affects another is something with which he must deal with from within his own perspective. When he demands that we justify our action to him, he is recognizing that we, too, have a perspective on the world in which presumably our action makes sense, and indicating his willingness to discuss it rationally with us. . . . The *obligation* of equal respect consists in our being obligated to treat another as he is treating us—to use his having a perspective on the world as a reason for discussing the merits of our action rationally with him. (Larmore 2003, 56–57; italics in the original)

Given the plurality of conceptions of the good life to which parties engaged in a rational conversation may appeal, equal respect implies that justifications for actions will, to the extent possible, bracket and set aside justifications based on controversial beliefs that reasonable people may reject. If equal respect is a requirement that binds government actions, public justification implies a corollary commitment to *state neutrality*, which means that government agents should not justify their actions by appealing to controversial conceptions of the good life that are subject to reasonable disagreement (Rawls 1993). In this way, public justification is distinguished from private justification by the types of reasons offered in support of actions (Gaus 2011).

*Relational equality* is an ideal achieved when all citizens view one another as equal participants in the social order and equally respect one another's civic freedom. According to Elizabeth Anderson (1999, 331), an egalitarian social order is one “in which persons stand in relations of equality. They seek to live together in a democratic community, as opposed to a hierarchical one.” Citizens should not fall into a state of absolute social deprivation such that they are not viewed as full members of civil society. Likewise, citizens should not experience relative social deprivation because of the unequal distribution of social, political, and economic power. Relational equality is an expression of the *antisubordination* theory of equal protection, which “looks to the shared effects of an action in order to address persistent group disparities in a social system in which some are systematically disadvantaged” (Steil 2018, 2).

In contrast to moral equality, which is a vertical conception of equality that obtains when the state treats everyone with equal respect and equal

concern, relational equality is a horizontal egalitarian ideal that refers to the relationships among people in society (Rondel 2018). Given that state actions often shape the horizontal distribution of civic freedom, I argue that the state has an obligation both to respect citizens' relational equality vis-à-vis one another and to take actions to alleviate unjust relational inequalities, because the laws and institutions of the state play an important role in determining who counts as a citizen and how citizens are treated by one another. For example, antidiscrimination laws such as the FaHA have symbolic meaning beyond their direct purpose because they undermine "the racist social meanings built into contemporary American society" (Lessig 1995, 1013). The disparate impact doctrine discussed in chapter 5 signals to local governments that exclusionary land-use policies having an adverse impact on protected classes will not be tolerated, even if the adverse impact is unintentional.

While the moral equality requirement constrains the state from engaging in overly paternalistic or intrusive measures to shape private lives, relational equality implies a more proactive role for the state to ensure that citizens actively respect one another as equals. This proactive stance runs the risk of violating moral equality if the state appeals to a *perfectionist* morality to justify its actions. According to Steven Wall (1998), a perfectionist political morality is one that is committed to the promotion of one or more sound ideals of human flourishing, even if those ideals are controversial or subject to reasonable disagreement.

To promote relational equality in a manner that simultaneously respects moral equality, I argue that government agents should, to the extent possible, avoid perfectionist policy justifications. For example, US homeownership policies are often justified by appealing to the idea that homeowners are better citizens or that suburban lifestyles are superior. These perfectionist justifications clearly violate moral equality because they appeal to a controversial standard of human excellence or a contested ideal of human flourishing. A neutral justification for homeownership might begin by asking whether an owned home is one of the basic material goods that society is obligated to provide to all citizens. If the answer is yes, this provides a justification for securing everyone's social right to own a home and a corresponding duty on the part of society to support the fulfillment of such a right.

## Deconstructing Civic Equality

In this section, I elaborate on the relationships among the moral dimensions of civic equality by exploring the tension between autonomy and state neutrality, investigating the distributive implications of civic equality, and examining the implications of civic equality for those who are not legally recognized as citizens.

### Autonomy and State Neutrality

I have argued that the moral significance of home can be traced, in part, to the home's contribution to the development and exercise of personal autonomy. Autonomy is an aspect of normative agency and provides one reason to treat citizens as moral agents capable of formulating and pursuing a conception of the good as they define it. One potential problem with this view is that autonomy-based justifications for housing provision risk violating the principle of state neutrality if autonomy is interpreted as an elevated ideal of human flourishing or an aspect of the good life.<sup>4</sup>

The ground of citizenship provides a useful way around this dilemma. The ideal of civic equality is derived from a shared understanding of the material ingredients of a civilized life in a given society. A home that fails to provide secure and durable privacy, or one that is disconnected from the social and economic opportunities required to live a flourishing life, falls below the threshold of adequacy in American society. Autonomy, while not necessarily a component of the good life within all societies, is an important ingredient of a flourishing American life, and to deny some the resources required to cultivate autonomy would fail to show equal respect and equal concern to all citizens. The ideal of autonomy that emerges from this shared understanding of the material ingredients of a civilized life should not be confused with a conception of the good. As Ben Colburn (2010) suggests, conceptions of the good refer to first-order valuations of states of affairs. In contrast, autonomy is a second-order value that tracks the specification of nested first-order values. Stated differently, autonomy is among the second-order conditions that make it possible to formulate and pursue a conception of the good in the first place.

It is also important to emphasize that the principle of state neutrality is a prohibition on justifications for government action that appeal to *controversial* conceptions of the good (Larmore 1987). The discussion of the

American home's social meaning in part II and the beginning of this chapter revealed that certain aspects of the home's social meaning have been contested throughout history, whereas others have been shared widely. My argument is tied not to a controversial claim about housing's connection to the good life, such as the idea that homeowners are more virtuous or that certain lifestyles are superior, but to the more modest claim that adequate shelter is a necessary ingredient of a flourishing American life that enables citizens to reflect on, formulate, pursue, and possibly revise their conception of the good. This is a mildly perfectionist view, to the extent that autonomy is constitutive of the second-order conditions required to live a successful American life. Still, nothing I have said implies that autonomy is the *only* ingredient of a flourishing American life. Furthermore, the state's obligation to promote autonomy through the provision of housing does not prohibit citizens from living nonautonomous lives or pursuing communal ways of living. The balance between state neutrality and autonomy that I defend is consistent with John Stuart Mill's antipaternalist "harm principle," which states that "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" (Mill 1978 [1859], 9).<sup>5</sup>

### The Distributive Implications of Civic Equality

What are the implications of civic equality for the distribution of housing, and how do the distributive principles implied by civic equality relate to the distributive principles implied by the ground of human status? I argue that civic equality is consistent with a two-part distributive ideal that combines a sufficientarian threshold, where everyone has access to shelter that would be recognized by society as providing a minimum level of security and comfort, with an egalitarian distribution above the floor of sufficiency defined by the absence of extreme housing inequalities. This ideal is achieved if everyone is adequately housed, there are no stark disparities in housing consumption and wealth, and the spatial distribution of housing does not foster extreme inequalities in access to local public goods and amenities.

The sufficientarian threshold implied by civic equality may be more or less demanding than the threshold implied by the ground of human status. In communal societies where autonomy is not constitutive of a dignified life, access to a spatial zone of privacy may not be important, for example. Similarly, in nations where local public goods are not distributed in a

decentralized fashion through housing, the spatial geography of housing may be less of a concern. In nations such as the United States, where housing is constitutive of the good life and distributes access to other important local public goods, civic equality justifies a threshold level of housing services for everyone that is likely higher than the threshold that would be justified by appealing to the ground of human status alone.

As discussed previously, the ground of human status says little about the distribution of housing above the threshold of sufficiency. The world currently lacks a global government whose exercise of coercive authority must be justified, so it is difficult to extend the public justification requirement beyond national borders to justify a global egalitarian distribution of housing. Although some may argue that the actions of certain global institutions—such as the United Nations, the World Trade Organization, and the International Monetary Fund—are pervasive in human lives and must be publicly justified to all global citizens (see, for example, Pogge 2002), these institutions do not directly influence the distribution of American housing. Furthermore, realizing global housing equality in a world where housing is distributed through national and subnational institutions and markets is simply not feasible. Housing inequality *within* nations is arguably at least as concerning, if not more, from the standpoint of housing justice.

Within the United States, civic equality provides reasons for being concerned about extreme levels of housing inequality, even if everyone is adequately housed. From the perspective of moral equality, an equal distribution of housing has *prima facie* legitimacy as a way to show equal concern to all citizens, with all deviations from equality being subject to a public justification requirement. Typical justifications for deviations from equality include utilitarian considerations (an unequal distribution may maximize total utility)<sup>6</sup> or choice (those who have freely chosen to have less deserve no compensation, and those who have freely chosen to have more without harming others should not be penalized).<sup>7</sup> Given that housing distributes access to important local public goods and amenities, housing inequality is objectionable from the standpoint of moral equality if it produces extreme inequalities in the distribution of bundled public goods guaranteed to all citizens, such as public education and public safety. Ignoring inequalities in public goods bundled with housing, inequalities in housing consumption above the sufficientarian threshold may or may not violate moral equality, depending on the public justification offered for the policies that influence

the distribution of housing. Requiring everyone to be equally housed may be self-defeating from the standpoint of moral equality because absolute equality may fail to respect the diverse ways of living that appeal to diverse conceptions of the good. Similarly, if government housing policies are justified by appealing to the superiority of particular housing types, styles, or tenure arrangements, these policies may fail to equally respect individuals' capacities to choose their own paths in life.

From the standpoint of relational equality, extreme inequalities in housing consumption and wealth are a concern if they are associated with unjust social relations. As discussed in previous chapters, American housing has historically been denied to the members of certain racial and ethnic groups. The housing choice constraints resulting from discrimination are both a direct concern of housing justice, because certain groups are unjustly denied housing options made available to others, and an indirect concern, because the constraints were justified on the basis of prejudiced beliefs. Extreme housing inequalities produced by conspicuous consumption are also a concern from the standpoint of relational equality. If housing consumption is a marker of social status, all members of society face strong incentives to overconsume housing to acquire power and prestige. The hierarchical social structure produced by the pressure to signal social status through housing consumption undermines the ideal of relational equality.

When local public goods and amenities are bundled with housing, housing inequalities may also be associated with unacceptable relational inequalities in access to local political and economic power. Majority-white suburban communities often act collectively to protect their accumulated housing wealth and exclusive local public goods through private gated communities, restrictive covenants, and exclusionary zoning ordinances (Goetz, Damiano, and Williams 2019). For example, in the suburbs of Atlanta, Georgia, unincorporated majority-white neighborhoods have consolidated local political power by seceding from their surrounding majority-Black counties and incorporating into new municipalities (Rosen 2017). This "opportunity hoarding" (Tilly 1999; Reeves 2017) violates relational equality and the principle of equal concern if certain groups are excluded from the enjoyment of public goods owed equally to all citizens.

Unjust relational inequalities may or may not require that housing be distributed equally. If housing inequality places some in a state of absolute material or social deprivation, relational equality calls for the elimination

of this injustice through the provision of adequate housing to everyone. The contribution of conspicuous consumption to *relative* social deprivation may also justify additional measures that reduce extreme levels of housing inequality, even if everyone is adequately housed. If housing inequality is caused by the social domination of one group over another, it may be more appropriate to address this relational inequality directly rather than being concerned about its effects on housing distributions. If, on the other hand, housing inequality causes or exacerbates relational inequality, reducing housing inequality may be the only way to eliminate this injustice. The injustice associated with opportunity hoarding, for example, persists as long as majority-white communities enjoy exclusive access to certain local public goods.

These arguments imply that even if everyone is adequately housed, civic equality has additional procedural and substantive implications for the distribution of housing above the sufficientarian threshold. Procedurally, civic equality requires that housing be distributed in a manner that respects the variety of ways that individuals value and assign meaning to housing. Civic equality is consistent with policies that promote a variety of housing styles and living arrangements and is inconsistent with policies justified on the basis of the moral superiority of particular ways of living. Civic equality is also consistent with the procedural aim of ensuring that public policies and private housing market agents do not unfairly discriminate against particular racial or ethnic groups. Substantively, civic equality calls for measures that reduce extreme inequalities in housing consumption and wealth, even if everyone's basic housing needs are adequately met, to reduce social status inequality and eliminate unjust concentrations of local political and economic power.

The tension between state neutrality and the promotion of autonomy, and the conflict between the sufficientarian and egalitarian aims of civic equality, implies that housing justice practitioners will often face difficult choices among incommensurable moral principles. These tensions are exacerbated by resource scarcity. If public funding for housing provision is prioritized to those who are homeless, there may be no additional funds to improve the housing conditions of those who are currently housed but live in unsafe conditions. In the face of resource scarcity, there are compelling reasons to support a lexical ordering of distributive principles, prioritizing

the sufficientarian aim of minimally adequate housing provision over the realization of other distributive goals.

Despite these tensions, there are areas of complementarity between the sufficientarian and egalitarian aims of civic equality. In general, a tendency toward distributional equality will increase the number of those who are adequately housed. Strategies that reduce housing inequality while expanding the diversity of housing options, and antidiscrimination measures that expand housing choices for people of color, simultaneously promote moral equality and relational equality. “Win-win” distributive outcomes such as these offer useful avenues for prioritizing the allocation of scarce resources.

### **Civic Equality and Legal Citizenship**

Although the argument so far has emphasized the appeal of the citizenship ground of housing justice over the ground of human status, particularly as a justification for egalitarian distributive aims, the two grounds considered together provide insights into the obligation to house those who are not legally recognized as citizens. Rather than view human status and citizenship as competing grounds of justice, it is more useful to consider each as nested grounds, with human status grounding obligations binding on all humanity and citizenship grounding special relational obligations among members of a political community.

Even though the United States has not ratified the ICESCR, it is a nation that recognizes and protects human rights, including the right of asylum, and to be a US citizen is to be a member of a society that protects human rights. If the United States takes this charge seriously, it should not uphold conditions that place any human being in a state of deprivation so severe that their humanity is compromised, nor should it deny the benefits of citizenship to those who have been forced from nations that do not recognize and protect human rights. As Nancy Kwak (2015) documents, the US government promulgated foreign aid policies during the Cold War era that were explicitly designed to promote the global proliferation of America’s distinctive homeownership institutions. This fact provides an additional reason to mitigate the harms associated with these particular institutions wherever they arise, whether in the United States or abroad.

Global justice theorists argue that the geographic location of one’s birth is a morally arbitrary circumstance that should not influence one’s prospects

in life. According to Alvaro de Vita (2007, 109), “It is nowadays difficult to find such a morally arbitrary factor that weighs as heavily on a person’s life chances as the place of the world where one happens to be born. As a matter of moral argument, it is difficult to make sense of the idea that a person being born a few miles to the north or a few miles to the south of the Mexican–American border should make such a huge difference in her opportunities to have a good life.” This argument suggests that those who were not born in the United States should not be excluded from the benefits of US citizenship simply because they were born elsewhere.

Citizenship entails voluntary acceptance of the obligations of citizenship and a willingness to respect the equal rights of other citizens. Those who move to the United States to establish citizenship and refugees who are fleeing oppressive political regimes register their tacit acceptance of the obligations of US citizenship by voting with their feet. Thus, the ground of citizenship, as I understand it, implies a more expansive and inclusive conception of citizenship than what is implied by the formal legal definition of US citizenship. All who permanently reside within US borders—both legally recognized citizens and those who have tacitly accepted the obligations of citizenship by moving to the United States to establish permanent residence—deserve to be treated in accordance with the ideal of civic equality.

### **Rights and the Structure of Moral Reasoning**

As discussed in chapter 1, most theories of justice have either goals, rights, duties, or virtues as their basis. As revealed by the discussion in part II of this book, American housing reformers have frequently appealed to rights to underscore the moral urgency of their demands for reform. Before the Civil War, an egalitarian interpretation of the natural right to private property fueled radical land reform movements. Right-based reforms did not sit well with progressives, who rejected natural rights and the preemptive authority of individual rights, or utilitarians, who justified policies on the basis of their aggregate consequences. Franklin D. Roosevelt’s welfare state was based on a conception of social rights that secured positive freedoms to minimal consumer welfare, but his federal housing policy apparatus ultimately failed to extend the basic entitlements of social citizenship to everyone. Human rights and civil rights reformers appealed to more inclusive conceptions of second- and third-generation rights. By the neoliberal era,

housing justice advocates were calling for an expansion of human rights to housing and collective rights to the city while rejecting liberal individual rights, particularly the right to own private property. This chapter has provided reasons to interpret the right to housing as a civil right that is grounded in a conception of social citizenship, but this still leaves open the question of whether rights offer a morally compelling basis for housing justice.

One way of understanding the appeal of a right-based approach is to consider it in relation to the alternatives. A well-known criticism of goal-based policy justifications is that appeals to aggregate consequences or the common good may license morally objectionable trade-offs between individual and collective aims. For example, utilitarianism justifies the sacrifice of an individual's life if the sacrifice would save several other lives. Policies justified on the basis of their aggregate consequences or collective good also fail to respect the separateness of persons. As Robert Nozick (1974, 33; italics in the original) observes, "To use a person [for another's benefit] . . . does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has. *He* does not get some overbalancing good from his sacrifice."

Virtue-based and duty-based theories also face limitations. While virtues may be worthwhile individual aims, it does not follow from this that I am obligated to behave virtuously or that others have a right to insist that I exercise my duty to be virtuous. As discussed, the perfectionist quality of virtue-based theories also violates the state neutrality requirement to respect the reasonable plurality of conceptions of the good. Duty-based conceptions of justice tend to get the relationship between rights and duties backward. Since rights are generally understood as interests sufficient to ground duties (Raz 1986), it seems odd to justify an obligation to act in some way to promote someone else's benefit without first acknowledging whether or how that person benefits from a duty. The conception of housing justice presented in this book appeals to the duties of social citizenship to derive principles of justice, but these duties are secondary to the fact that individuals have fundamental rights to be treated as moral equals. The duties of social citizenship are empty without some prior acknowledgment of one's moral entitlement to equal citizenship.

To more fully understand the benefits of a right-based approach, it is useful to say more about the role that rights play in moral reasoning.<sup>8</sup> According to Gerald Gaus (2011, 373), rights can be understood as "spheres

of moral authority in which the rightholder's judgement about what is to be done provides others with reasons to act." Rights partition social space by decentralizing normative control over certain actions to the individual rightholder (Mack 2000). In the cases of the rights to housing and property, the partitioning implies a further partitioning of geographic space. John Gray (1993, 314) illustrates how private property rights function in this way: "The importance of several [i.e., private] property for civil society is that it acts as an enabling device whereby rival and possibly incommensurable conceptions of the good may be implemented and realized without any recourse to any collective decision-making procedure. . . . One may even say of civil society that it is a device for securing peace by reducing to a minimum the decisions on which recourse to collective choice—the political or public choice that is binding on us all—is unavoidable."

This "jurisdictional" view of rights provides an account of a common structural feature of rights within moral theories. According to Ronald Dworkin (1978), rights "trump" other moral considerations, including the obligations that one has to others and collective aims to promote the common good or aggregate utility. By partitioning social space so that some have legal powers over defined spheres of social activity, rightholders can demand justifications from those violating their social space. According to David Lyons (1982, 111), "If I have a right to do something, this provides an argumentative threshold against objections to my doing it, as well as a presumption against others' interference." This preemptive feature of rights does not necessarily imply that rights are absolute but rather that the burden of proof rests on violators of rights to demonstrate that violations of rights are justified by stronger moral considerations. Rights also structure democratic decision-making so that majoritarian aims do not subject minority rightholders to morally objectionable harms.

According to Jeremy Bentham (1843), rights also shape expectations and the incentives of individual actors acting in a decentralized fashion. Take the right to own property, for example. If property owners enjoy all rights to use, modify, earn income from, and exchange the property owned, the authority of the owner over the object's use limits what others can expect to gain from any attempt to use or modify the object. Homeowners can appeal to the state's police power to enforce their rights to evict squatters, for example. Similarly, constitutional restrictions on government takings of private property without due compensation provide assurances to owners

that their plans and projects that make use of property will not be frustrated by government interference. A different property rights regime that acknowledged the right to own, use, and modify an object but limited the right to earn income from the object would create a different set of incentives and expectations for owners and nonowners.

By structuring the incentives of economic actors prior to exchange, a right-based housing policy approach is distinct from traditional redistributive policies that rely exclusively on taxes and subsidies to reallocate economic resources. Right-based approaches rely on “predistribution,”<sup>9</sup> rather than redistribution, to reassign rights and alter economic incentives without necessarily having to correct inequalities after the fact. For example, just-cause eviction laws and rent control ordinances expand tenants’ rights while simultaneously reducing landlords’ rights to evict tenants arbitrarily or earn rent above a predefined ceiling.

A right-based housing policy approach also gives official recognition to a nation’s “constitutive commitment” to housing its citizens. According to Cass Sunstein (2004, 62), a nation’s constitutive commitments “have a special place in the sense that they are widely accepted and cannot be eliminated without a fundamental change in social understanding. These rights are genuinely constitutive in the sense that they help create, or constitute, a society’s basic values. They are also commitments in the sense that they are expected to have a degree of stability over time. A violation would amount to a kind of breach—a violation of trust.”

By establishing a constitutive commitment to housing provision, a right-based approach prioritizes housing in public deliberations that involve the allocation of scarce resources. Canada’s right-based National Housing Strategy provides an example of how a nation’s constitutive commitments can structure public decisions. In 2017, Canada rolled out an ambitious Can\$40 billion plan to reduce chronic homelessness and meet the housing needs of its most vulnerable citizens. Canadian officials tied the National Housing Strategy to specific targets that embody Canada’s commitment to progressively realizing the human right to housing. The federal government is required to report regularly to Parliament on progress toward the achievement of these targets. By establishing a constitutive commitment to realizing the right to housing, Canada elevated the satisfaction of housing needs to a special place of importance within public policy deliberations (Government of Canada 2017).

Not all arguments for a right to housing are right based, and not all right-based arguments appeal to a conception of the right to housing. As an example of the former, many contemporary tenants' rights advocates justify stronger tenant right protections by appealing to the beneficial consequences of having tenants' rights secured. As an example of the latter, welfare rights advocates often called for the recognition of rights to public assistance without including housing assistance on the list of rights to be recognized. Arguably, US housing policy is already right based to the extent that private property rights shape the allocation of housing. Owners enjoy the right to occupy owned residential property, while renters' rights are limited to the terms of a lease agreement. This observation implies that the relevant question for policymakers is not whether rights are the appropriate basis of justice but rather whether the rights of those who occupy dwellings should preempt owners' rights to evict occupants. I return to this question in chapter 7.

### **Placing the American Home on a Solid Foundation**

This chapter assembled the materials of housing justice. I began by exploring the significance of housing's social meanings for a conception of housing justice. I also explored different grounds of housing justice and argued that citizenship provides the most defensible ground for it. I proposed the ideal of civic equality and argued that its two dimensions—moral equality and relational equality—offer distinctive reasons for being concerned about housing inequality. These reasons justify different distributive principles that are in tension with one another, yet complementarities among the principles suggest ways to prioritize the allocation of scarce resources. I also argued that all US inhabitants, regardless of legal status, deserve to be treated in accordance with the ideal of civic equality. I concluded with an exploration of the basis of housing justice and a defense of a right-based approach to housing justice. Chapter 7 examines the content of the right to housing in more detail.