

8 Taking Housing Justice Seriously

There can be no fairness or justice in a society in which some live in homelessness, or in the shadow of that risk, while others cannot even imagine it.

—Jordan Flaherty, *Floodlines* (2010, 184)

The right to secure tenure grounds a sufficientarian conception of housing justice, but the ideal of civic equality provides reasons to be concerned about housing inequality, even if everyone is adequately housed. This chapter completes the circle by demonstrating how to extend the right to secure tenure in a way that is consistent with civic equality and social justice more broadly. I argue that the ideal of civic equality provides an answer to the question of who should bear the cost of extending tenure security, and after all tenure security needs have been met, civic equality provides a justification for additional measures designed to reduce inequality in housing consumption and wealth. My proposal for extending tenure security through the promotion of housing equality is based on the idea of a negative income tax, applied to housing consumption and increases in housing wealth. The proposed “negative housing tax” can be implemented through the federal income tax code by treating income spent on owner occupancy and rental occupancy equivalently. The proceeds from the tax would fund a guaranteed monthly housing allowance and a supplemental block grant allocation designed to reduce spatial inequality in housing costs. After describing the negative housing tax, I discuss complications that arise from the spatial geography of housing affordability and explore the connections among housing justice, racial justice, and the right to the city.

Civic Equality and Housing Finance Reform

Chapters 6 and 7 provided justifications for housing policy reforms that (1) guarantee that everyone has access to a minimally adequate home, (2) reduce overall levels of housing inequality, and (3) are tenure neutral. In this section, I examine the elements of a proposed federal housing policy reform that appeals to the ideal of civic equality and the public justification for private property to achieve these three goals. The proposal includes four elements: (1) a guaranteed monthly housing allowance that offsets a portion of housing costs for those experiencing the most severe housing needs, (2) a housing consumption tax, (3) a housing wealth increment tax, and (4) a supplemental block grant designed to reduce spatial inequalities in housing costs. This section examines the first three elements, which together constitute the negative housing tax, and the following section examines the fourth.

Guaranteed Housing Allowance

One straightforward way of meeting the basic housing needs of everyone in the United States is to convert the tenant-based HCV into a guaranteed monthly housing allowance. Ideally, from the standpoint of civic equality, the allowance would be universally provided to everyone regardless of the income they receive from other sources. If housing is a basic right of social citizenship, it should arguably be made available to all citizens regardless of whether or the extent to which one chooses to work to earn income. Tying the guaranteed monthly housing allowance to a work requirement may also stigmatize the poor rather than treating everyone as equal citizens who equally deserve to be housed in dignified ways. While there are sound moral reasons to prefer a universal guaranteed housing allowance, the reality of resource scarcity implies that policymakers must make certain trade-offs to prioritize housing assistance to those most in need.

A universal guaranteed monthly housing allowance potentially conflicts with the sufficientarian aim of extending the right to secure tenure to those whose tenure is most insecure if resources that could be spent alleviating homelessness are distributed first to those who earn enough income to afford decent housing. One way to prioritize housing subsidies to those experiencing tenure insecurity is to restrict the guaranteed monthly housing allowance to very low-income households who are struggling to cover

housing expenses. The question of whether the subsidy should be targeted more narrowly to those earning extremely low incomes or more broadly to those earning low or moderate incomes—and the question of whether subsidies should be targeted to those with high housing cost burdens or only on the basis of income—are questions of resource availability. If resources are scarce, then arguably housing subsidies should be targeted to households with very low incomes who experience “worst-case” housing needs. These households include those who earn incomes no more than 50 percent of the median income earned by those living in the surrounding metropolitan area and who pay more than half their income in rent, live in severely inadequate conditions, or both (Watson et al. 2020).

One potential downside of an income-based qualification test is that it may discourage work, even without an explicit work requirement, because workers may be reluctant to accept wage employment if additional income triggers the loss of a guaranteed housing allowance. Wage employment may also create other familial hardships, particularly if an affordable childcare center is not easily accessible in the neighborhood at home or work. The concern here is not that some who are currently employed will forgo higher-paying jobs but that those who currently work low-wage jobs or are unemployed may choose unemployment over wage employment rather than risk the loss of a guaranteed monthly housing allowance. To avoid these “cliff effects,” any income qualification should be high enough that those who choose to accept low-wage jobs will not risk losing their housing allowance. Alternatively, the subsidy level could simply decline proportionately with income. The goal of minimizing the disincentive to work conflicts with the aim of targeting assistance to those facing the highest housing needs, but presumably there is some optimal balance between these two priorities.

How should the guaranteed housing allowance payment level be determined? Most federal housing subsidies offset the difference between some percentage of the metropolitan FMR and 30 percent of a household’s income. The question of how to define affordable housing for the purpose of calculating housing subsidies has generated a substantial amount of research, much of which criticizes the use of an arbitrary 30 percent threshold as a basis for determining housing subsidy levels (see, for example, Bieri and Dawkins 2016). I do not wish to engage with that debate here, but from the standpoint of civic equality, the 30 percent threshold risks limiting households’ freedom to choose an optimal mix of housing and nonhousing

consumption. Providing the allowance as an in-kind subsidy that must be spent on housing expenses has a similar effect. For these reasons, the monthly housing allowance would ideally be distributed in the form of cash or a refundable tax credit. Although some will likely spend a portion of the allowance on the consumption of other goods, this is not necessarily a concern from the standpoint of civic equality, as long as households had the option of freely choosing to spend the additional income on an affordable home. The monthly housing allowance should also be made available to prospective owners of housing to guarantee tenure neutrality and more widespread access to housing options. A cash subsidy preserves this flexibility.

Determining the level of the guaranteed monthly housing allowance is more complicated if we abandon the 30 percent affordability threshold. One idea is to tie the subsidy to the median gross rent, which includes the contract rent plus payments for utilities and home fuel. In 2017, the US median gross rent was \$1,012, according to one-year American Community Survey estimates. Interestingly, this is roughly equivalent to the monthly payment on a \$200,000 mortgage at 4.5 percent interest. According to Joseph Gyourko (2009), \$200,000 would cover the cost of providing the physical structure for a standardized, modest-quality, single-family home with 2,000 square feet of living space almost anywhere in the country, excluding land costs. If we assume that a \$1,000 monthly housing allowance is provided to all homeless persons in the United States (567,715 in 2018; see Henry et al. 2020) and all renters with very low incomes who experience worst-case housing needs (approximately 7.7 million renters in 2017; see Watson et al. 2020), this would cost roughly \$99 billion per year, which would make the monthly housing allowance payment second only to overall military spending in terms of the dollar value of discretionary spending. This seems substantial, but it is still smaller than the income tax benefits that homeowners currently receive. The Office of Management and Budget (OMB) estimated that in the 2020 tax year, the mortgage interest deduction, state and local property tax deduction, capital gains tax exclusion, and exclusion of imputed rental income would be approximately \$209 billion (Office of Management and Budget 2019b).¹ The cost of the monthly housing allowance could be fully funded by eliminating the exclusion for homeowners' imputed rental income. This change alone would generate an additional \$126 billion in income tax revenue or about

60 percent of the estimated homeownership-related income tax expenditures in 2020 (Office of Management and Budget 2019b). By comparison, HUD requested only \$44 billion in gross discretionary funding in FY2020 to support its low-income housing and community development programs (Office of Management and Budget 2019a).

Housing Consumption Tax

Who should bear the burden of funding the guaranteed monthly housing allowance? The incidence of redistributive policies is often evaluated by comparing the degree of horizontal and vertical equity associated with some tax proposal against a baseline of market outcomes in a world without taxation. As Liam Murphy and Thomas Nagel (2002) point out, this “everyday libertarianism” approach leaves open the question of which public goods and services will be provided in the first place, treating taxation as though taxes were simply dumped into the ocean after they have been collected.

The ideal of civic equality and the public justification for private property provide a different way of determining who should bear the burden of funding the guaranteed monthly housing allowance. If private property is justified to the extent that it provides security of tenure, the solution to housing insecurity should inhere in the residential property regime itself. Under the current American housing policy framework, all payers of income tax share in the cost of subsidizing low-income housing. Still, the burden falls more heavily on renters, who do not receive tax relief from the income spent on housing costs and face higher cost burdens as housing prices rise. Homeowners deduct a portion of the income spent on housing costs while simultaneously capturing all the gains from individual and collective investments that increase the value of their homes. Since the current owners of residential property are complicit in the creation of tenure insecurity by supporting and benefiting from the conditions that give rise to tenure insecurity, homeowners and residential property owners should bear a larger share of the burden of alleviating tenure insecurities caused by high housing prices.

A direct tax on housing consumption provides a way of funding a guaranteed monthly housing allowance that shifts the burden of the tax to residential property owners. The guaranteed monthly housing allowance combined with a housing consumption tax can be viewed as a form of

negative housing consumption tax. To see this, we can draw on Philippe Van Parijs and Yannick Vanderborght's (2017) observation that the negative income tax is equivalent to a universal basic income with a linear income tax under the assumption that with a negative income tax, income above a threshold is taxed and redistributed as a subsidy to those below the threshold.² Assume that the housing consumption tax is linear and equal to 25 percent of housing consumption. Also, ignore any income cap on the monthly housing allowance and assume that everyone receives a housing allowance as a refundable tax credit equal to \$1,000 per month. Under this scenario, \$1,500 in monthly housing consumption would be associated with an incremental housing allowance of \$625 (because \$1,500 in consumption is taxed at a rate of 25%, and this amount is subtracted from the monthly housing allowance). The breakeven level of housing consumption (the point at which the monthly housing allowance net of consumption taxes is equal to zero) is equal to \$4,000 per month. Someone spending this amount on housing consumption receives no subsidy because their housing consumption tax exactly offsets their monthly housing allowance. More generally, for levels of monthly housing consumption above \$4,000, individuals would be taxed on their housing consumption and receive no guaranteed monthly housing allowance.

Economists often favor consumption taxes for positional goods such as housing, to reduce both socially wasteful forms of conspicuous consumption and the tax penalty on savings (Frank 2007). Civic equality provides a similar reason to support a housing consumption tax, because the tax curbs the incentive to exacerbate social status inequality through the overconsumption of housing. Civic equality also provides reasons to tie the housing consumption tax to a guaranteed housing allowance. A housing consumption tax that funds a guaranteed housing allowance reduces housing insecurity while tying redistribution directly to the source of the injustice that gives rise to the need for redistribution as well as targeting subsidies to those who consume less housing. The negative housing consumption tax helps to ensure that a market-based system of housing allocation is more acceptable to those disadvantaged by the system while also alleviating the need to rely exclusively on an income qualification test to target scarce resources to those most in need.

One concern with a negative housing consumption tax is the possibility of "downward filtering" resulting from higher-income households moving

into lower-cost housing to maximize their incremental housing allowance. An income requirement on the monthly housing allowance would mitigate this effect to some degree. However, even if high-income households receive no housing allowance, these households would still have an incentive to reduce housing consumption to lower their tax burden. One could argue that downward filtering is simply evidence that the negative housing tax is working if households earning higher incomes respond to the tax by reducing their levels of conspicuous consumption. The problem from the standpoint of civic equality is not that some high-income households choose to consume less housing than they could otherwise afford; the problem is that if the supply of housing is inelastic in the short run, purging housing consumption of conspicuous consumption will create a scarcity of homes available for rent or purchase at lower prices. This objection can be flipped on its head and serve as a justification for policies that expand the supply of affordable homes, an issue to which I will return.

Housing Wealth Increment Tax

The ideal of civic equality justifies supplementing the housing consumption tax with an additional tax on accumulated housing wealth. Following John Stuart Mill (1965 [1848]), who proposed a similar tax on unearned wealth gains, I refer to the tax on accumulated housing wealth as the “housing wealth increment tax.”³

An important issue from the standpoint of civic equality is that housing wealth gains often arise from unearned increases in home equity created by collective investments in local public goods. By creating an additional source of revenue to fund the guaranteed monthly housing allowance, a housing wealth increment tax helps to expand access to the local public goods bundled with housing that are owed equally to all citizens. A housing wealth increment tax also potentially reduces homeowners’ incentives to support exclusionary policies that have the sole purpose of elevating the collective value of existing homes. From the standpoint of moral equality, a combined housing consumption and housing wealth increment tax provides a way of satisfying the state neutrality principle by treating renters and owners equivalently for comparable levels of housing consumption.

Implementation of a negative housing tax that consists of both a housing consumption tax and a housing wealth increment tax may seem to be administratively burdensome, but this is not necessarily true. Most features

of the tax can be implemented through the existing income tax system by simply eliminating the favored tax treatment of homeownership. Wage income spent on rental housing consumption is already taxed like a consumption tax because renters pay tax on the income spent on rent and utilities (Hall 1997). Consumption taxes for owner-occupied homes could be levied by adding the imputed rental income for owner-occupied homes directly to the tax base and eliminating the deduction for mortgage interest payments and property taxes. There are several ways to calculate imputed rental income, but all face the challenge that an owner's imputed rental income is not observed. A simple approach is to set imputed rental income equal to some fraction of the housing value estimated by local property tax assessors (Brueckner 2014). The housing wealth increment tax can be implemented by simply removing the current income tax exclusion on housing capital gains up to \$250,000 and replacing it with a progressive capital gains tax schedule to reduce the tax burden on low-income homeowners.⁴ To alleviate the tax burden facing first-time homebuyers, the tax value of the initial down payment spent on a first home purchase could be ignored and taxed when the home is sold.

One question is whether to differentiate between the housing capital gains that are reapplied to another home purchase and capital gains that are saved or applied to nonhousing consumption. Proponents of a pure consumption tax would favor taxing proceeds that are recycled into another home purchase or other goods consumption while exempting proceeds that are saved. From the standpoint of civic equality, there is a strong justification for fully taxing all housing equity gains, regardless of how the proceeds are spent. If the proceeds spent on the purchase of a second home are not taxed, this potentially encourages overconsumption of housing relative to other goods or savings.

Another question is whether to exclude capital gains on home improvements from the housing wealth increment tax base. Henry George (1942) would likely favor this approach to encourage residential property investment. One problem with this strategy is that it may create incentives to flip older properties and convert small, affordable dwellings into large luxury homes. Henry George's single tax also requires a complex assessment process that separates the value of land from the value of improvements. A second-best way to approximate a Georgist tax while minimizing

property-flipping incentives is to allow deductions for home improvement expenditures but tax the profits earned on those expenditures.

If housing capital gains taxes are added to the tax base, capital gains tax relief provides a useful way to incentivize the creation of long-term affordability options. Residential property owners who sell or rent their homes at deed-restricted affordable prices could receive a refund on their capital gains tax liabilities. The refund would ideally be provided in the form of a refundable credit so that the value of the incentive does not vary with marginal tax rates. Structured in this way, the supply of residential capital gains tax credits would be unrestricted, similar to the 4 percent credit currently available under the LIHTC program. Just as the negative housing tax may reduce the incentive to engage in collective action to increase residential property values, a capital gains tax credit may incentivize the expansion of affordable rental housing options and shared-equity homeownership opportunities.

This use of capital gains tax relief provides a response to critics who argue that the negative housing tax may thwart efforts to promote low-income homeownership. While the negative housing tax may discourage traditional fee-simple homeownership, the negative housing tax combined with capital gains tax relief provides a way of expanding nontraditional homeownership opportunities, because those who sell their homes at deed-restricted prices to prospective low-income buyers would receive a capital gains tax credit for expanding the number of shared-equity homeownership opportunities. Although deed-restricted homeownership does not provide the same opportunities for housing wealth accumulation, it does expand access to one of the most important features of homeownership: tenure security.⁵

Taken together, the three features of the negative housing tax—the guaranteed housing allowance, the housing consumption tax, and the housing wealth increment tax—complement the property reforms discussed in chapter 7 by targeting resources directly to those facing the most severe forms of housing insecurity. The negative housing tax supplemented by a property system that secures the right to secure tenure can also be viewed as a way to implement the two-part distributive ideal discussed in chapter 6. The sufficientarian portion of the distributive ideal is satisfied by a property and tax system that guarantees everyone's right to secure tenure. The negative housing tax goes one step further to reduce housing inequality

above the sufficientarian threshold. By restructuring the property regime to guarantee secure tenure while reducing the incentives to accumulate housing wealth and engage in conspicuous consumption, it is possible to realize housing justice without abandoning a market-based system of housing provision.

The Geography of Housing Justice

Homes are attached to the earth, and each home's geographic location distributes access to a wide variety of natural amenities, local public goods, social networks, and employment opportunities. Not only is housing bundled with these other spatially fixed goods, but the demand for housing is also often correlated with these goods. Those planning to raise a family, for example, often seek homes in high-performing school districts. Furthermore, because of the time and monetary costs of commuting to employment centers, most do not view homes in one labor market as substitutes for homes located in other labor markets. These features of housing imply that the price of housing exhibits considerable geographic variability.

The geographic variability in housing prices is a concern for housing justice because those unable to afford housing in high-cost areas will be excluded by the price mechanism from the enjoyment of local public goods and amenities provided in those areas. While justice does not necessarily require that everyone have access to a beachfront vista or a mountain view, certain local public goods, such as public education and public safety, are essential ingredients of social citizenship. The principle of equal concern requires that goods owed equally to all members of society be equally distributed unless there is a morally compelling reason to support unequal provision.

Under a tenant-based subsidy program, such as the HCV, that allows subsidies to vary with metropolitan-area rents, households receive higher subsidies to live in more expensive metropolitan areas. One limitation of this approach is that it induces inefficient residential mobility to expensive high-amenity locations. If a household is indifferent between living in a high-amenity area and a low-amenity area because spatial differences in housing costs offset spatial differences in amenities, a location-varying tenant-based subsidy tied to a fixed percentage of household income disrupts this equilibrium. With the subsidy, the household can choose to live in a high-amenity area and

consume housing that costs the same percentage of income as a home located in a low-amenity area (Bieri and Dawkins 2016). In addition to inducing inefficient residential mobility, spatially varying tenant-based subsidies also potentially violate state neutrality by implicitly favoring housing located in particular areas.

A spatially varying tenant-based subsidy funded by a national income tax also fails to equitably apportion the benefits and burdens of the subsidy. Although all US citizens have an obligation to share equally in the burden of providing a minimally adequate home on an average-priced lot, those living in Baltimore arguably have no additional obligation to share in the cost of placing that minimally adequate home in San Francisco, where land costs are higher. If San Francisco residents vote to approve higher local public expenditure levels and these expenditures inflate the cost of housing, why should Baltimoreans be held accountable for the local democratic decisions of San Franciscans? San Franciscans support the conditions that inflate local housing costs and should arguably face a higher burden to alleviate those costs. Moreover, residential property owners *within* San Francisco, who gain financially from the capitalized value of local public investments, should arguably redistribute a portion of this capitalized value to San Francisco renters, who enjoy the same public investments but do not benefit from the capitalized value of those investments.

The current US housing policy mixture of spatially varying tenant-based subsidies and supply-side LIHTCs also poorly targets housing subsidies to the conditions that give rise to spatial differences in housing cost burdens. Housing policymakers should arguably target tenant-based subsidies to soft markets and housing production subsidies to tight markets, but these two subsidies are not fungible (McClure 2019). The LIHTC also ignores land costs in the calculation of subsidy amounts. Even if it makes sense from a housing policy perspective to subsidize the construction of affordable homes in San Francisco to alleviate the shortage of affordable housing there, the current intergovernmental housing policy apparatus encourages low-income households to move to San Francisco, where tenant-based subsidy payments are higher, while at the same time making it more difficult to develop affordable housing in San Francisco because of the Bay Area's restrictive land-use regulations.

Spencer Banzhaf and Kyle Mangum (2019) provide a useful way of thinking about the geographic determinants of housing costs. They draw on the

analogy of a two-part tariff to decompose housing prices into a “ticket” price that reflects the capitalized value of local public goods and amenities and a “slope” price that is spatially invariant and increases with the level of housing services. The negative housing tax described in the previous section provides a subsidy that offsets a portion of the slope price of housing, ignoring land costs. The question that remains is how to account for the ticket price of housing, which reflects spatial variation in the implicit price of local public goods and amenities bundled with housing.

A national Georgist single tax provides one way to account for spatial variation in housing costs. Returning to Banzhaf and Mangum’s (2019) two-part tariff analogy, a national single tax would be equivalent to a “ticket tax” that recoups the portion of housing cost differences attributable to spatial differences in the capitalized value of amenities. Within the United States, implementation of a national single tax is likely to be administratively difficult and possibly unconstitutional, which points to the need to identify an alternative approach. If local public expenditures are endogenously chosen by local governments, the choice of an alternative approach becomes more complicated because local public officials can influence the geographic determinants of housing prices by altering local property tax rates and expenditures on local public goods.

The negative housing tax is similar in spirit to the single tax, with the exception that land value is taxed at less than 100 percent and a portion of the housing structure’s value is taxed. With endogenously chosen local public expenditures, the revenue raised by the “ticket tax” portion of the negative housing tax—the tax on the portion of housing value attributable to the capitalized value of local public goods and amenities—could either compensate households with high housing cost burdens in more expensive areas or be redistributed to subsidize local public good provision in jurisdictions with low property tax bases, thereby equalizing the capitalized value of local public goods across space. I refer to the first of these two strategies as the *compensation* approach and the second as the *equalization* approach. The compensation approach is similar to the policies favored by “fair share” regional housing policy advocates, who seek to equalize affordable housing opportunities across jurisdictions. In contrast, the equalization approach is similar to the policies favored by “new regionalist” proponents of regional tax-base sharing and regional public service coordination.

Walzer (1983) provides a useful way of understanding the differences between the compensation and equalization approaches. According to Walzer's ideal of "complex equality," the distribution of goods should be determined by criteria internal to the goods being distributed, and the sphere of distribution for one good should not dominate the sphere of distribution for another good.⁶ Geographic variability in housing prices that produces an unequal distribution of social and economic opportunities is objectionable according to the principle of complex equality not because an unequal distribution of social and economic opportunities is inherently unjust but because the distributive sphere of housing dominates other distributive spheres.⁷ The two different ways of responding to spatial differences in housing prices—compensation for geographic differences in housing costs that arise from local public expenditure capitalization and equalization of the capitalized value of local public expenditures—are two different ways of achieving complex equality by decoupling the distribution of housing from the distribution of local public goods. The compensation approach takes the distribution of local public goods as given and subsidizes housing for a given level of local public expenditures. In contrast, the equalization approach levels the geographic determinants of housing prices, making the distribution of housing costs dependent only on housing's geographically invariant features. Whereas the first approach accepts differences in the capitalized value of local public expenditures, the second approach is predicated on everyone having the same level of local public goods, thereby removing local public goods from the residential choice set.

An effective decoupling strategy likely involves some combination of equalization and compensation approaches. Full equalization of the capitalized value of local public goods is likely impossible because certain amenities are naturally occurring while others result from the natural tendency of human activities to cluster in space. Goods produced through collective political decisions are more amenable to equalization, and civic equality calls for the equalization of local public goods that are owed equally to all citizens. However, households should still be compensated for any remaining unjust inequalities.

To decouple the distribution of housing from the distribution of local public goods in a way that targets resources to areas with the highest affordable housing needs, I propose that any revenues collected from the negative housing tax net of the slope tax portion owed equally to all qualifying

households be redistributed to local governments as a supplemental CDBG. The CDBG would be allocated in proportion to revenues generated so that areas paying the highest negative housing tax would receive the highest CDBG allocations. Under current income tax law, coastal states with the highest housing costs generate the largest tax expenditures per capita from the mortgage interest deduction (Keightley 2014). Under my proposal, local governments in these states would receive the largest CDBG allocations to offset housing costs.

I propose that local governments have the flexibility to choose the appropriate mix of compensation and equalization approaches and have flexibility to choose an appropriate mix of supply-side and demand-side housing subsidy approaches, subject to a few constraints. Local governments would have discretion to spend supplemental CDBG allocations on (1) supplements to the national guaranteed monthly housing allowance for residents with very low income who choose to live within their jurisdictions, (2) affordable housing production subsidies, or (3) local public good provision, subject to the following constraints: (a) all recipients of supplemental CDBG allocations must remove local regulatory barriers to the production of affordable housing, and (b) jurisdictions with high housing prices may only use supplemental CDBG allocations to expand affordable housing opportunities (expenditure items 1 and 2), whereas jurisdictions with low housing prices may rely on supplemental CDBG allocations for these same purposes in addition to subsidizing expenditures on local public goods and services (expenditure items 1, 2, and 3). Constraint (b) is designed to ensure that wealthy jurisdictions do not use supplemental CDBG allocations to exacerbate geographic inequalities in the capitalized value of local public goods.

The Color of Housing Justice

As documented in previous chapters, US housing inequalities often cause, and are caused by, racial and ethnic injustices. Does the racial and ethnic dimension of US housing inequality raise distinct housing justice concerns, and if so, does housing justice call for policies designed to promote the integration of neighborhoods by race and ethnicity? In this section, I argue that the ideal of civic equality justifies a variety of policies that combat racial and ethnic housing market injustices. Still, the front lines of the fight

against racial and ethnic injustice extend beyond the sphere of housing justice. Furthermore, while civic equality does not require the realization of perfectly integrated residential outcomes, it is consistent with the procedural aim of removing certain housing market barriers that perpetuate segregated living conditions.

From the standpoint of housing justice, the racial and ethnic dimension of US housing inequality is a concern for several reasons. First, it often results from unjust discriminatory treatment in housing transactions, which is a concern from the standpoint of virtually any conception of justice. Housing discrimination is also a direct concern for housing justice because it constrains housing choices and compromises the tenure security of those facing discrimination. Second, given the special social and economic significance of housing, racial and ethnic housing inequalities often produce, and are produced by, unjust group-based inequalities in social status and economic and political power. Third, housing inequality arising from the residential segregation of households by race and ethnicity is a distinct form of injustice because it reinforces group-based inequalities across space.

The housing reform strategies discussed so far do not directly target the racial and ethnic dimension of US housing inequality. Still, the ideal of civic equality is consistent with policies such as the FaHA that are designed to eliminate unjust forms of housing discrimination. The ideal of civic equality is also compatible with measures that aggressively target predatory lending. Although the elimination of racial and ethnic discrimination in all aspects of a housing market transaction would remove the injustice associated with allocating housing on the basis of race or ethnicity, antidiscrimination laws do not directly target the racial and ethnic gap in housing wealth or racial and ethnic segregation.

Racial and ethnic gaps in housing wealth arise from three separate factors. First, historic inequalities created by *de jure* segregation have limited the ability of families of color to accumulate housing wealth and transfer it to future generations. The legacy of past discrimination robs young families of color of resources that could have been applied to a down payment on a mortgage. This down payment constraint directly contributes to racial and ethnic gaps in homeownership rates. A second factor arises from the combined influence of racial and ethnic segregation and spatial differences in home price appreciation between majority-white communities and communities of color. Because of redlining, discrimination, and

whites' aversion to minority-majority neighborhoods, homes located in communities of color often do not appreciate as rapidly as homes located in majority-white communities. Finally, people of color are more likely to be victimized by predatory lending practices and ownership tenures that end in foreclosure, as discussed in the introduction (Asante-Muhammad et al. 2017; Bocian et al. 2010; Shapiro 2004; Wolf 2014).

The negative housing tax and property law reforms discussed so far offer a partial solution to the racial and ethnic gap in housing wealth. The negative housing tax is designed to eliminate housing wealth inequalities that arise from the disproportionately high number of low-income people of color who experience housing instability. Furthermore, the capital gains tax incentives to place homes sold under affordability deed restrictions are designed to expand the supply of affordable homes. The justification for a secure tenure property regime offered in chapter 7 provides a rationale for policies designed to reduce the likelihood of foreclosure for those who are currently struggling to meet mortgage payments.

Above the floor of sufficiency, the negative housing tax and property law reforms discussed so far do not directly target the racial and ethnic gap in housing consumption or wealth. Instead, the negative housing tax discourages extremely high levels of housing consumption and housing wealth accumulation for all racial and ethnic groups. Leveling down the disproportionately high levels of white housing wealth may reduce the racial and ethnic housing wealth gap to some extent, but the negative housing tax does nothing to elevate the housing wealth of Black or Hispanic households. Even so, the ideal of civic equality is consistent with a variety of measures that target opportunity hoarding. If majority-white communities rely on exclusionary land-use policies to prop up the collective value of their homes, civic equality justifies eliminating these policies.

A deeper problem arises from the persistence of historical injustices created by generations of discriminatory and exclusionary housing policies. Even if current housing policies are just, the nonideal world of injustice echoes across generations. As discussed in previous chapters, policies such as exclusionary zoning, exclusionary private covenants, and discriminatory FHA underwriting criteria have constrained the housing choices of people of color for generations. Even though *de jure* forms of housing discrimination are now prohibited by law, the housing wealth robbed from previous generations that could not be passed on to current generations constrains

the housing choices of young families of color. With fewer (and in some cases zero or negative) resources being transferred between generations, families of color are often more likely than white families to rely on their own savings rather than on family assistance to purchase a home (Shapiro 2004). These issues raise questions of “corrective justice,” which Tommie Shelby (2016, 13) describes as follows: “Theorizing about corrective justice is more than laying down principles for compensating the victims of past injustice or reducing their disadvantages. It also includes the philosophical aim of collective efforts to establish a society regulated by a mutual commitment to justice. Reformers and revolutionaries should be aiming to create a society in which the principles of justice are fully realized in its institutions and in which citizens comply with institutional rules because these are in accord with their shared conception of justice. It is in this way that ideal theory serves as a guide for nonideal theory.”

Does housing justice call for additional corrective justice measures beyond those discussed so far? According to Shelby (2016), corrective justice requires compensating the current generation for unjust inherited disadvantages, transforming historically unjust distributive arrangements, and reorienting society toward justice. A difficult problem from the standpoint of corrective justice is that capitalism and the institution of private property permit the commodification of race by creating economic value or disvalue from a person’s racial identity (Leong 2013; Robinson 1983). Prejudiced white households contribute to the commodification of race by paying more for housing located in majority-white neighborhoods, a phenomenon that David Cutler, Edward Glaeser, and Jacob Vigdor (1999) describe as “decentralized racism.” Antigentrification advocates characterize the displacement of communities of color as a form of “racial banishment” that is equivalent to apartheid and racial cleansing (Roy 2017, A8).

Do civic equality and the public justification for private property address the commodification of race within private housing markets? To some extent, yes. The solution to tenure security consists in viewing private property in terms of its contribution to civic equality while attenuating the right to earn income from the sale or rent of residential property. If white home seekers avoid minority-majority neighborhoods because of a perception that such neighborhoods are less likely to appreciate over time, decoupling wealth from housing consumption eliminates the economic incentive to engage in this form of decentralized racism. Similarly, by reducing the incentive to engage in

collective action to protect the investment value of the home, majority-white communities no longer have a purely economic reason to adopt exclusionary local land-use policies. Racist whites may still act on their individual prejudices when seeking homes. Still, as society at large becomes more diverse, racists will incur a personal cost by acting on their prejudices when making residential location decisions, because their housing choices will be constrained by their reluctance to live in racially and ethnically diverse neighborhoods.

Even with structural institutional reforms designed to eliminate the vestiges of *de jure* discrimination and reorient private property around the ideal of civic equality, prejudiced households may still consider the racial and ethnic composition of neighborhoods a relevant stick in the housing bundle, even if neighborhood racial and ethnic composition only proxies for other neighborhood conditions. To the extent that households sort into neighborhoods on the basis of race or ethnicity and a sufficient number of home seekers view minority-majority neighborhoods negatively, majority-white neighborhoods may still appreciate more rapidly than minority-majority neighborhoods, thereby perpetuating the racial and ethnic housing wealth gap and the commodification of race in housing markets. This points to one additional advantage of the previously discussed equalization approach to addressing spatial inequalities in housing costs: equalization of the capitalized value of local public expenditures will tend to lift the value of homes in many minority-majority neighborhoods. Even with full equalization of the capitalized value of local public expenditures, however, neighborhood gaps in home price appreciation may persist if decentralized racism remains.

The persistence of race and ethnicity as factors shaping housing market decisions has led some to conclude that racial and ethnic equality can only be achieved by eliminating residential segregation. According to David Rusk (2001), segregation imposes a tax on people of color that is priced into the value of their homes. From the standpoint of moral equality, racial segregation is a concern because segregation often produces unequal access to local public goods and amenities. Segregation is a concern from the standpoint of relational equality if segregation results from discriminatory treatment, stigmatizes certain racial or ethnic groups through place-based stereotyping, or contributes to unequal social, political, or economic relations between groups. Segregation may also be a concern if it compromises the social solidarity needed to support social citizenship in the first place.

Elizabeth Anderson (2010) provides the most comprehensive philosophical case for promoting residential integration. Her defense of prointegrative policies rests on many of the same arguments that follow from the ideal of civic equality, with the exception that she assigns a more prominent role for democracy than the ideal of civic equality that I have defended would support. In the conception of social citizenship that I defended in chapter 6, democracy has instrumental value as a way to evaluate political arguments, reach consensus, protect civic freedom, and promote social solidarity. Still, democracy has no intrinsic value apart from its instrumental role in promoting civic equality. Anderson (2010) is saying something more: that democracy has an intrinsic value that cannot be realized within a racially segregated society. I reject both the intrinsic value of democracy and the claim that democracy is only possible in a world where neighborhoods are integrated by race and ethnicity.

Anderson's (2010) democratic justification for prointegrative housing policy violates the principle of moral equality because not everyone would accept the controversial claim that the good life consists of active participation in public life. In this book, I have defended the alternative view that the good life often consists of being able to retreat from the public realm from time to time. According to Arendt, "The four walls of one's private property offer the only reliable hiding place from the common public world, not only from everything that goes on in it but also from its very publicity, from being seen and being heard. A life spent entirely in public, in the presence of others, becomes, as we would say, shallow" (Arendt 1958, 71). In addition to appealing to a controversial conception of the good life, grounding a conception of housing justice in the intrinsic value of democracy ignores the unequal burdens of democratic participation that often fall on those who do not currently receive their fair share of the benefits of citizenship. There is an essential unfairness associated with requiring residents of disadvantaged communities to constantly fight for the provision of basic services through democratic mobilization when residents of advantaged communities enjoy the privilege of retreating to the private realm with the assurance that such matters are being adequately addressed by public institutions.

Even if democracy is a value worth promoting from the standpoint of justice, it does not necessarily require integrated living patterns. Iris Marion Young (1990; 2002) argues that democracy is a core ingredient of justice

that requires the inclusion of underrepresented groups in democratic decision-making processes. Still, her conception of democratic inclusion does not require members of different racial and ethnic groups to live near one another. Instead, Young favors a spatial pattern of “differentiated solidarity” defined by voluntarily formed racial and ethnic enclaves with open borders that allow residential mobility between communities and a regional governance structure that promotes a flow of resources across communities (Young 1999; Young 2002). Even if all neighborhoods are perfectly integrated by race and ethnicity, propinquity does not guarantee solidarity, nor does it necessarily produce bridging social ties across racial and ethnic lines (Shelby 2016).

Even if integration is not required for democracy, does housing justice require prointegrative housing policies? In many ways, this question gets to the heart of the distributive tensions inherent in the pluralist conception of housing justice that I have defended. The injustice of segregation from the standpoint of tenure security is that segregation may limit the availability of housing options for those whose tenure is insecure. From the standpoint of civic equality, segregation is a concern if it is associated with moral or relational inequalities, even if everyone is adequately housed. Whereas moral equality discourages policies that privilege particular ways of living, relational equality is consistent with some measures that privilege a conception of the good life favored by those who are currently disadvantaged by segregated living patterns. The distributive tensions within the ideal of civic equality arise primarily from the antiperfectionist principle of state neutrality implied by moral equality.

Policies that aim to achieve a particular spatial pattern of households by race or ethnicity risk violating moral equality while compromising tenure security. For example, mixed-income housing programs such as HOPE VI often displace low-income residents of color while favoring mixed-income living arrangements. Similarly, prointegrative residential mobility programs such as MTO favor housing located in particular areas while reducing the resources available to meet urgent housing needs, given that subsidies designed to encourage prointegrative moves could have been allocated to a larger number of households seeking housing in less expensive locations. The same critiques can be applied to some antigentrification policies that reinforce existing patterns of residential segregation by race and ethnicity. Policies designed to spatially fix segregated living patterns by discouraging

new housing investment in segregated areas may compromise the tenure security of those who are currently homeless while promoting a controversial conception of the good life that is premised on the superiority of segregated living patterns.

Although racial and ethnic segregation is often unjust for a variety of reasons, segregation patterns also result from a variety of morally benign reasons, and perfectly integrated living patterns are neither a sufficient nor a necessary condition for the realization of housing justice. Achieving a balance between housing justice and racial justice is much easier if the emphasis on particular spatial outcomes is abandoned in favor of an emphasis on the decommodification of race within the American private property regime. This approach resembles George Galster's (1992) recommendation to promote a "stable integrative process" rather than a perfectly integrated spatial outcome. Galster (1992, 271) defines a stable integrative process as a "dynamic in which home seekers representing two or more races actively seek to occupy the same vacant dwellings in a substantial proportion of a metropolitan area's neighborhoods over an extended period."⁸ Such a process assumes that individuals are not denied (or awarded) housing on the basis of their race or ethnicity nor financially penalized (or rewarded) because they happen to live in neighborhoods where certain racial or ethnic groups are in the majority. An emphasis on the realization of a stable integrative process is consistent with the aim of respecting the diversity of legitimate ways of living that may entail segregated or integrated living patterns. The conception of housing justice offered in this book suggests that the aim of promoting tenure security should take priority over the aim of promoting integration, and when housing resources are scarce, the aim of housing those with the greatest housing needs should take priority over the goal of encouraging those in need to move to integrated neighborhoods.

Another way of approaching the question of residential segregation is to ask whether those most disadvantaged by segregation patterns—people of color—might reasonably object to prointegrative policies. Many prointegrative policies would be reasonably rejected by people of color who would be forced to take on a larger share of the burden to realize integrated living patterns. Programs such as *Gautreaux* that require people of color to move to majority-white areas to achieve integration restrict the liberty of people of color, not whites, and measures that foster mixed-income communities by displacing people of color compromise, rather than promote,

tenure security. Just as homeowners and residential property owners should shoulder a larger share of the burden of expanding tenure security, whites should shoulder the majority of the burden of realizing more integrated living patterns (Goetz 2018).

This section only scratched the surface of the complex relationships between housing justice and racial justice, but civic equality is a robust ideal that justifies a range of antiracist policy reforms beyond those discussed in this section. Because racist attitudes are a direct manifestation of the injustice associated with citizens not viewing one another as equal participants in the social order, the ideal of relational equality justifies a range of policies that attack racism at its core, including reforms that are designed to eliminate exclusionary land-use regulations, housing market discrimination, and race-based predatory lending.

Attacking the injustices that arise from racist beliefs embedded within society at large requires a response that is broader than the sphere of justice occupied by housing alone. Still, the ideal of civic equality and the public justification for private property can provide the foundation for sweeping reforms of property-based institutions. For example, calls to “defund the police” grew louder in the wake of George Floyd’s brutal death at the hands of the Minneapolis police. Local police departments protect property owners from unwanted trespassing and theft of owned property, but if police officers violate a person of color’s basic right to life and right to be treated as an equal under the law, this property-based justification for police protection falls apart. If the justification for police protection derives instead from the security of tenure that police protection safeguards, it seems justifiable to reallocate a portion of the police budget to affordable housing provision when the police fail in their duties to protect the social rights of citizenship.

Gentrification and the Right to the City

As discussed in chapter 5, a new alliance appeals to the idea of human rights to housing and the city to justify measures designed to fight gentrification. This understanding of housing justice raises two questions. First, is the right to housing, understood as a right to secure tenure, complementary to or in conflict with the right to the city? Second, is the fight against gentrification a cause that aligns with principles of housing justice? The right to housing I described in chapter 7 is an incident of private property, stripped of the

right to earn income. This is an individual right, which suggests that it may come into conflict with the right to the city, which is often understood as a collective right. As I argue in this section, there is no conflict between the right to housing and the right to the city if the right to the city is understood as an individual right that supports the right to inhabit. In this case, the right to housing provides ammunition in the fight against gentrification. When the right to the city is interpreted as a collective right, there are potential conflicts between the right to the city and the right to housing. I argue that when faced with these conflicts, housing advocates should prioritize the right to housing over the right to the city.

Henri Lefebvre (1968) understands the right to the city as encompassing two distinct rights: the right to participation, or the right to contribute to the production of urban space, and the right to appropriation, or the right to physically access, occupy, and use urban space (Purcell 2002). According to David Harvey (2008, 23), “The right to the city is far more than the individual liberty to access urban resources: it is a right to change ourselves by changing the city. It is, moreover, a common rather than an individual right since this transformation inevitably depends upon the exercise of a collective power to reshape the processes of urbanization. The freedom to make and remake our cities and ourselves is, I want to argue, one of the most precious yet most neglected of our human rights.”

As Don Mitchell (2003) suggests, the right to housing protects one form of appropriation. It is a right to *inhabit* space: “a place to sleep, a place to urinate and defecate without asking someone else’s permission, a place to relax, a place from which to venture forth” (Mitchell 2003, 19). Mitchell (2003) goes on to argue that the right to inhabit is distinct from the right to own private property. Still, it is not clear how the right to inhabit differs from the right to use and occupy property, which is among the bundle of rights assigned to property owners. Arguably, anything less than the rights to use and occupancy enjoyed by owner-occupants would fail to provide secure tenure. It seems more appropriate to say that the right to housing, understood as a right to inhabit, is an incident of the right to own property that possibly conflicts with other ownership incidents when ownership is understood in terms of the bundle of rights associated with full liberal ownership.

Lefebvre’s right to inhabit is not a collective right unless it is interpreted as a right that is exercised by a group of individuals who collectively inhabit urban space. Exercising the right to “a place to sleep, a place to urinate and

defecate without asking someone else's permission, a place to relax, a place from which to venture forth" (Mitchell 2003, 19) requires the opposite. It requires having the civic freedom that is protected by private property. Another sense in which the right to inhabit may be considered a collective right is when homeless persons are treated as a distinct class of citizens who are defined by their lack of residential property and who have special claims to exist and be afforded the rights of citizenship despite their lack of property. This conception of the right to inhabit essentially transforms the right to housing into a right to exist in a civilized manner without housing. For example, as discussed in chapter 5, those advocating on behalf of the homeless have called for the adoption of homeless bills of rights, which protect the homeless from laws that criminalize sleeping in public and afford homeless persons the same civil rights enjoyed by those with homes. This understanding of the right to inhabit actually *denies* the right to housing, seeking instead to recognize, on the grounds of citizenship, the rights of the homeless to equal protection under the law despite their propertylessness. Thomas Dumm (1994) goes one step further to suggest that homelessness is the embodiment of the spiritual freedom of the nomad, and a just society is one in which homelessness is supported and made possible.

Another way of understanding the right to inhabit as a collective right is to interpret it as a collective "right to stay put" and not be displaced by gentrification (Hartman 2002). The right to stay put is an expression of the "right not to be excluded," which C. B. Macpherson (1987) argues is a corollary claim implied by the liberal right to exclude. The right to stay put is generally characterized in one of two ways. If the right is interpreted as a right not to be arbitrarily displaced from one's residence, it is hard to see how this is any different from the individual right to secure tenure, where the right to secure tenure is justified, in part, by the home's contribution to one's place-based sense of identity and personhood (Radin 1993).

Alternatively, the right to stay put may be interpreted as a collective right that a place, and all of its sociohistorical and cultural attributes, continue to exist. Nicholas Blomley, in his study of antigentrification activism in Vancouver, observes that the ownership claims of private property investors often "ignore the collective constitution of the 'community,' and its moral right not only to continue as an entity, but to remain *in situ*. For activists, the injustices wrought by gentrification and displacement extend beyond the denial of the property rights of individual residents to the use of their

hotel rooms. Development pressures challenge the collective entitlement of poor community members to the use and occupation of the *neighborhood as a whole*" (Blomley 2004, 52; italics in the original). This is a reasonable way of understanding the right to inhabit as a collective right because place has meaning independently of the individuals living there. Still, one can easily imagine how this collective right may conflict with an individual right to housing, particularly if the place in question lacks adequate and affordable housing for those who wish to call the place home.

This collective understanding of the right to stay put, or "right to place," may also justify exclusionary measures designed to protect the aesthetic qualities of the place at the expense of those who wish to become inhabitants. Historic district designations that increase the cost of housing and large-lot zoning measures that restrict housing supply to preserve rural character are two examples. Given these two possible interpretations of the right to stay put, the individual right to stay put is a more attractive basis for a right to housing than a collective right to place and a more defensible basis for one's right not to be displaced by gentrification.

Another way of viewing the right to stay put as a collective right to place is to define it as a right that only protects those places inhabited by groups who have been marginalized by majoritarian institutions and whose place-based identity has been threatened. This is a more defensible conception of the collective right to place because it cannot be evoked to defend exclusionary policies that contribute to opportunity hoarding in majority-white communities. Still, the potential for conflict with the individual right to secure tenure remains, particularly if the collective right to place justifies exclusionary prohibitions on affordable housing investment within marginalized communities.

The collective nature of the right to the city may also derive not from the right to inhabit but rather from the right to participation or the right to contribute to the production of urban space. If this is the case, the question then becomes whether the right to participation conflicts with the right to inhabit. Setting aside the question of how the right to participation is distinct from other democratic rights, a collective right to participation can be understood in several ways. First, it may refer to the right to exercise voice in collective decision-making bodies that play a role in shaping the built environment. If this is how the right to participation is understood, it is difficult to see how it necessarily supports the right to housing, because

collective land-use decision-making bodies have more often relied on their collective authority to exclude rather than approve low-income housing. If the collective right to participation is meant as a collective right to produce affordable housing for those who lack it, it can only be interpreted as a right that trumps collective efforts to adopt exclusionary land-use policies. If this is how the right to participation is understood, this right is no different from an individual right to housing, understood as an individual immunity against collective decisions to exclude housing provision.

Another way of understanding the right to participation as a collective right is to interpret the right as one held by tenants to collectively organize to secure rights to the homes that they inhabit or seek to inhabit. For example, the Washington, DC, TOPA law recognizes tenants' collective rights of first refusal to purchase rental buildings prior to the building's sale as a condominium (Huron 2018; Gallaher 2016). Shared-equity ownership arrangements such as limited-equity cooperatives and community land trusts are other examples of collective rights to property that provide tenure security to individual inhabitants. While these alternative tenure arrangements can be understood in terms of collective rights, the right to collectively organize or collectively manage common space should not be confused with the individual right to housing that collective action secures. Collective forms of ownership may or may not enhance security of tenure for individual inhabitants. In some cases, the time and resources required to organize collectively and the coordination costs of making collective decisions may compromise tenure security for individual occupants, particularly if common property is not managed effectively or agents hired to represent collective interests engage in rent-seeking behavior and act in ways that are contrary to the interests of tenants. The litmus test for these forms of collective rights is whether, in the end, they support tenants' individual rights to secure tenure.

Completing the Arc of Housing Justice

This chapter completed the book's conception of housing justice by examining several concrete proposals designed to extend tenure security to all while promoting housing equality. The negative housing tax is a tax on housing consumption and the capital gains from home sales that provides revenues to fund a guaranteed monthly housing allowance. Revenues exceeding the

amount needed to cover the cost of extending a location-invariant monthly housing allowance to all those experiencing insecure tenure would be allocated as a supplemental CDBG designed to alleviate spatial inequalities in housing costs.

I also examined the connection between housing justice, racial justice, and the right to the city. The conception of housing justice offered in this book provides an indirect way to decommodify race from housing markets by eliminating the institutional mechanisms that translate racial prejudice into housing market inequalities. I argued that housing justice does not require the realization of integrated residential patterns but is consistent with certain measures that promote the progressive realization of stable integrative processes. I also argued that the right to housing should be interpreted as an individual right, and this understanding of the right to housing provides a justification for measures designed to mitigate the harms of gentrification. To the extent that the right to the city is understood as a collective right, it may conflict with the right to housing, and in the face of this conflict, housing justice may require prioritizing the right to housing over the right to the city.

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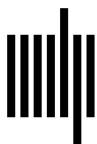
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